Neighborhood Economic Development Advocacy Project

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Comments of Claudia Wilner, Senior Staff Attorney
Neighborhood Economic Development Advocacy Project

Federal Trade Commission Roundtable
Debt Collection: Protecting Consumers

January 8, 2010

Thank you for the opportunity to submit written comments regarding the debt buyer industry and its use of the courts to collect debts. I am Senior Staff Attorney at the Neighborhood Economic Development Advocacy Project (NEDAP), where I direct the Consumer Law Project. NEDAP is a nonprofit resource and advocacy center that provides legal, technical and policy support to community groups in New York City's low-income neighborhoods and communities of color. NEDAP's mission is to promote community economic justice and to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty.

NEDAP's Consumer Law Project provides free legal information, advice, referrals, and representation to low-income New Yorkers who have problems concerning debt collection, credit reporting, and lending discrimination. We provide services through a legal hotline, a community legal clinic, and direct representation of consumers in state and federal court. We have helped thousands of low-income New Yorkers who are struggling with debt collection issues.

From our position on the front lines, we see directly how individual consumers, and their communities, have been impacted by the rise of the debt buying industry and particularly by debt buyers' use of the courts to extract money from unsophisticated and unrepresented individuals. We routinely see behavior that is extremely troubling. Debt buyers and their attorneys engage in sewer service, file cases on debts that are past the statute of limitations, restrain and seize exempt funds, pressure consumers to make payments on invalid debts, and file false affidavits with the courts, which they use to secure default judgments against unsuspecting individuals. These actions often violate the Fair Debt Collection Practices Act, are unethical, and sometimes rise to the level of criminal fraud. To date, far too little has been done to curb these unlawful and abusive practices.

1. *Sewer Service*

It is no secret that many defendants in debt collection cases fail to appear to defend themselves in court. In New York City, the default judgment rate is approximately 75%, and the answer rate hovers around 10%.

We believe that sewer service – the practice of failing to serve a summons and complaint and then filing a fraudulent affidavit of service – is the primary reason that most defendants do not appear in court. Sewer service deprives people of due process because they do not get notice of the lawsuit and are denied their day in court. We recently completed an in-depth analysis of cases handled by our hotline in 2008. We found that more than 71% of callers who were sued by debt buyers reported improper service, and 56% reported that they never received any notice at all. Only 8% reported service that complied with the law, and, of those, only 3% were personally served. 64% of callers sued by debt buyers learned of the suit only because their bank account was frozen, their wages garnished, or they saw the judgment on their credit report.

In one recent case, we discovered that Ms. V, a single working mother who lives in the Bronx, supports four children, and speaks only Spanish, had seven default judgments against her. All seven judgments were obtained by debt buyers, and Ms. V was not served in any of the cases. Ms. V learned about two of these cases when the debt buyers began garnishing her wages. The other five were discovered by searching court records for any other default judgments entered against Ms. V. Upon further investigation, we found that four of the seven lawsuits had been served at a nonexistent address, and the remaining three alleged substitute service on a fictitious family member. Ms. V had no actual notice in any of the cases.

NEDAP and our partners, MFY Legal Services and Emery Celli Brinckerhoff & Abady, P.C., recently filed a class action lawsuit against a debt collection law firm, a network of related debt buyers, and a process serving agency. The suit alleges that these entities conspired to obtain tens of thousands of default judgments based on fraudulent affidavits of service and affidavits of merit, then used these judgments to extract money from the unsuspecting defendants. A copy of the class action complaint is attached as Exhibit A to this testimony, and a New York Times article describing the lawsuit is attached as Exhibit B.

The New York State Attorney General recently filed a groundbreaking lawsuit against a process serving agency, American Legal Process, and 35 debt collection law firms. The suit seeks to overturn 100,000 default judgments that were obtained as a result of sewer service. The complaint details many examples of faulty service, including numerous instances in which individual process servers claimed to be in two or more places at the same time – a physical impossibility. NEDAP believes that the practices described in this lawsuit are not unique to suits involving American Legal Process, but are standard practice in debt collection cases involving debt buyers. A copy of the complaint and affirmations in that case are attached as Exhibit C to this testimony.

2. Evidence of Indebtedness

The sewer service issue is closely connected to the fact that debt buyers generally lack admissible evidence (or any evidence) that the consumer actually owes a debt. Debt buyers are unable to win lawsuits in court in contested cases; therefore, they have a strong interest in obtaining default judgments through sewer service.

As described in the Federal Trade Commission's 2009 report, *Collecting Consumer Debts: The Challenges of Change*, and as confirmed by many participants in the recent series of Roundtable Discussions, debt buyers purchase accounts in bulk, receiving only an electronic spreadsheet with very minimal information about the debt. Debt buyers do not typically purchase the underlying documentation of the debt, including the contract, account statements, detailed payment records, and customer service records that would reflect customer disputes. Some debt buyers may have the ability to go back to the creditor and request documentation of the debt in a limited number of cases. Others are contractually prohibited from ever obtaining this documentation. Attached to this testimony as Exhibits D and E are examples of two purchase and sale agreements. In the first agreement, the debt buyer is allowed to obtain an affidavit from the original creditor in 2% of cases. In the second agreement, the debt buyer is not allowed to obtain any documentation of the accounts at all. What becomes apparent from examining the structure of these agreements is that, for the vast majority of cases filed by debt buyers in court, the debt buyer is contractually prohibited from ever obtaining evidence in support of its case.

Many of the cases filed by debt buyers are, in fact, without merit. In NEDAP's analysis of our case files from 2008, we found that 35% of cases filed by debt buyers against our clients were clearly devoid of merit, meaning that the statute of limitations on the debt had expired, the debt was discharged in bankruptcy, the debt was the result of fraud, or the debt was already paid. The other 65% of cases were not necessarily meritorious. Clients had many questions about those cases as well. For example, clients often could not remember whether they owed the debt, or they recognized the name of the original creditor but the amount for which they were being sued was far in excess of anything they recalled owing.

For example, in the case of Ms. V, described above, most (if not all) of the seven default judgments obtained against her are clearly without merit. Three of the judgments concern a First USA account, but Ms. V never had a First USA account. One of the judgments concerns a Providian account, but Ms. V also never had a Providian account. Two of the judgments concern a Sears account, but Ms. V only ever had one Sears account. The last judgment concerns a Chase account. Ms. V did once have a Chase account, but it appears that she may not have had the particular Chase account at issue in the lawsuit: The lawsuit was served at an address where Ms. V never lived and alleges a different time period from the one during which Ms. V recalls using her account.

In a recent study entitled *Where's the Proof?*, District Council 37 Municipal Employees Legal Services (MELS) conducted an analysis of 238 cases involving debt buyers handled by its office. The study found that in 94.5% of cases, the debt buyer was unable to substantiate the alleged debt. Furthermore, in the few cases that the debt buyer did come up with some kind of documentation, that documentation often showed that the defendant did not, in fact, owe the debt. The report can be found at http://www.dc37.net/benefits/health/pdf/MELS_proof.pdf.

In our own practice, we have never seen a debt buyer come forward with proper, admissible evidence that a consumer owes a debt. We can only conclude that many of the hundreds of thousands of default judgments that have been secured by debt buyers across the country are cases in which the consumer does not, in fact, owe the debt. Debt buyers then work untold harm by using these judgments to collect money from consumers.

3. Statute of Limitations

In our experience, debt buyers frequently file lawsuits on which the statute of limitations has expired. For example, our client Ms. M. was sued in 2007 by Palisades Collection on an alleged debt past the statute of limitations. Ms. M went to court and proved that the debt was past the statute of limitations. The case was discontinued. Two years later, the same debt buyer hired a different law firm to sue Ms. M again for the same debt. By this time, the debt was nearly ten years old. Even though Ms. M had already established two years earlier that this debt was uncollectible, she had to appear in court to defend herself all over again. Incidentally, Ms. M did not owe the underlying debt because the debt arose from a legitimate credit dispute. In the late 1990's, Ms. M was charged hundreds of dollars on her credit card for pornographic magazines that she never ordered or received. Ms. M disputed the charges, but the creditor refused to remove them. By the time Ms. M was sued by a debt buyer many years later, this fraudulent charge had inexplicably ballooned to thousands of dollars.

In addition to filing suits beyond a state's typical statute of limitations for credit card disputes, debt buyers routinely and willfully refuse to apply shorter statutes of limitations that may apply in particular cases. For example, in New York the general statute of limitations for a breach of contract is six years, but contracts for the sale of goods are governed by the Uniform Commercial Code, which has a four year statute of limitations. Yet we see debt buyers suing individuals on debts that fall under the UCC (for example, deficiencies after an automobile repossession) but are between four and six years old.

In one particularly dramatic example that is well worth investigation and pursuit by the Federal Trade Commission, the Federal Telecommunications Act contains a two year statute of limitations for telephone-related debts. 47 U.S.C. § 415 ("All actions at law by carriers for recovery of their lawful charges, or any part thereof, shall be begun within two years from the time the cause of action accrues, and not after."). Certain debt buyers, such as Palisades Collection, have huge portfolios of defaulted AT&T Wireless debts, and have filed tens, if not hundreds, of thousands of lawsuits against individuals to collect these debts. All or nearly all of these debts are more than two years old, and thus time-barred as a matter of federal law. Unfortunately, most consumers are unrepresented and unaware of the two year statute of limitations for this kind of debt.

4. Restraint and seizure of exempt funds

For many years, the problem most often faced by our clients was restraint and seizure of their exempt funds by creditors. At one point, nearly one quarter of my time was spent helping clients to obtain release of their exempt funds, which never should have been restrained in the first place. When my clients' Social Security, Unemployment, or other benefits were frozen by debt collectors, they were unable to pay rent or buy food or medicine. They suffered incredible hardship, as it often took weeks to obtain the release of an account.

Fortunately, in 2008, New York State passed the Exempt Income Protection Act (EIPA) to address this problem. Since this law took effect on January 1, 2009, we no longer have significant problems in this area. Banks are prohibited from restraining accounts that receive directly deposited exempt benefits and contain less than $2,500. Banks likewise must not freeze any account belonging to a natural person that contains less than $1,740, the amount of minimum

wage income that is protected under all circumstances. New York also has a streamlined procedure for claiming an exemption when accounts contain exempt funds in excess of the threshold amounts. EIPA is functioning very well and has made a tremendous difference for low-income New Yorkers. Every state should implement such a law.

In the meantime, we understand that the U.S. Treasury intends to implement a similar rule to protect bank accounts containing federally deposited exempt funds, which would apply nationwide. We wholeheartedly support the Treasury proposal and would like to see it adopted as soon as possible.

5. *Recommendations*

- **The FTC should investigate the debt buyer industry and file more enforcement actions**. As describe above and in the attachments, we believe that debt buyers have been engaging in massive fraud as they routinely secure default judgments on the basis of false affidavits. These practices are harming low-income individuals in New York and across the country, and they cannot be allowed to continue. More investigation and enforcement action is needed to document and stop these unlawful practices.

- **The FDCPA should be amended to prohibit debt buyers from filing lawsuits unless they have admissible evidence that the debt is owed.** As discussed, one of the greatest problems consumers currently face is a rash of debt collection lawsuits filed by debt buyers that cannot provide documentation of the debt. The FDCPA should be amended to outlaw this practice, which is fundamentally unfair and deceptive. Consumers should not be hauled into court unless there is a realistic possibility that the debt buyer can win the case on the merits.

- **The FDCPA should be amended to prohibit debt buyers from filing lawsuits when the statute of limitations to collect a debt has expired.** Case law has already established that it violates the FDPCA to file lawsuits on out-of-statute debt. This law should be incorporated into the statutory language so that the law is clear and applies uniformly across the country.

- **The FDCPA should be amended to prohibit debt collectors from restraining funds that are exempt from collection under federal or state law.** The freezing of bank accounts that contain exempt funds is a huge problem. While we have been able to address this problem in New York State, most states have no such protections. The FDCPA should specifically prohibit the practice of restraining exempt funds, subject to the bona fide error defense. Disabled and elderly consumers would benefit immeasurably from this change, as collection law firms would enact procedures designed to prevent the restraint of exempt funds. Where collection law firms fail to enact such procedures, consumers will gain an effective tool to use to obtain the release of their exempt funds.

- **The FDCPA should be amended to provide for injunctive relief.** The FDCPA does not currently provide for injunctive relief. The lack of an injunctive remedy impairs the ability of legal services providers to advocate for low-income clients. The kinds of violations we see most often do not create significant actual damages for our clients as

individuals, but they are repeated on a large scale and thus cause great harm to communities. An example is the repeated filing of false affidavits in order to obtain thousands of default judgments against low-income New Yorkers. A money judgment in an individual case, or even in a class action (in which the judgment is limited to 1% of the defendant's net worth) simply will not curtail this illegal behavior or prevent it from occurring in the future. It is clear from the tremendous number of FDCPA violations that there is not enough enforcement of the law. Consumers need an injunctive remedy so that they can serve as effective private attorneys general.

- **The FTC should clarify that debt collectors must provide meaningful verification that is specific to the consumer's dispute**. As discussed above, the FDCPA verification requirement has been watered down to the point where it is no longer useful to consumers. Debt collectors should be required to provide verification that is specific to the consumer's dispute. For example, if a consumer raises an identity theft dispute, the debt collector should provide verification that relates to the identity of the cardholder. If the consumer raises a dispute as to the amount, the debt collector should provide verification that relates to the amount. The verification should consist of copies of actual documents, not just a confirmation and renewed demand for the amount.

- **Statutory damages must be raised to a meaningful level.** Statutory damages of $1000 per plaintiff per case are so low as to be meaningless, effectively allowing collection agencies to break the law with impunity. The $1000 statutory penalty is simply a cost of doing business. Statutory damages must be raised to a meaningful level, and they should be available per violation, not per case. Only then can statutory damages serve their intended purpose as an effective deterrent of unlawful behavior.

- **The Internal Revenue Code should be amended to eliminate the unfair tax burden imposed on successful plaintiffs.** The IRS views attorney fee awards to successful plaintiffs as taxable income to the plaintiff. The Supreme Court endorsed this view, at least insofar as contingent fee awards are concerned, in the case of *Commissioner v. Banks*. Following this case, Congress amended the Internal Revenue Code to provide an above-the-line deduction for attorney fees in employment and discrimination cases. This deduction should be extended to apply to consumer cases. Counting attorney fees as taxable income is completely unfair to our low-income clients, as they never see or benefit from that income in any way. In the case of our clients, who are poor enough to qualify for free legal services, the attorney fee award generally exceeds their own recovery, and may even surpass their income for the entire year. Depending on the size of the fee award, counting it as income could prevent our clients from qualifying for the Earned Income Tax Credit, on which they depend for basic survival. Thankfully, that factual scenario has not yet arisen in our practice. Nevertheless, the idea that our low-income clients should have to pay taxes on our attorney fee awards is completely unjust and should be remedied.

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MONIQUE SYKES, RUBY COLON, REA VEERABADREN, and FATIMA GRAHAM, individually and on behalf of all others similarly situated,

Plaintiffs,

- against -

MEL S. HARRIS AND ASSOCIATES LLC; MEL S. HARRIS; MICHAEL YOUNG; DAVID WALDMAN; KERRY LUTZ; TODD FABACHER; MEL HARRIS JOHN/JANE DOES 1-20; LEUCADIA NATIONAL CORPORATION; L-CREDIT, LLC; LR CREDIT, LLC; LR CREDIT 10, LLC; LR CREDIT 12, LLC; LR CREDIT 18, LLC; JOSEPH A. ORLANDO; PHILIP M. CANNELLA; LR CREDIT JOHN/JANE DOES 1-20; SAMSERV, INC.; WILLIAM MLOTOK; BENJAMIN LAMB; MICHAEL MOSQUERA; and SAMSERV JOHN/JANE DOES 1-20,

Defendants.

ECF Case
No. 09 Civ. 8486 (DC)

~~AMENDED CLASS ACTION~~ COMPLAINT AND JURY DEMAND

Plaintiffs Monique Sykes, Ruby Colon, Rea Veerabadren, and Fatima Graham, on behalf of themselves and all others similarly situated, for their complaint, allege, upon personal knowledge as to themselves and information and belief as to other matters, as follows:

INTRODUCTION

1. This class action seeks to vindicate the rights of more than 100,000 New York City residents who have been victimized for years by a massive scheme to deprive them of due process and fraudulently obtain and enforce thousands of default judgments worth millions of dollars in violation 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"), and New York General Business Law § 349.

2. The primary players in this fraudulent enterprise are (1) a law firm, Mel S. Harris and Associates LLC, and its principals (the "Mel Harris Defendants"); (2) a publicly traded corporation, Leucadia National Corporation, its shell and alter ego debt buying companies—L-Credit, LLC, LR Credit, LLC, LR Credit 10, 12, and 18 LLC—and their principals (the "Leucadia Defendants"); and (3) a process serving agency, Samserv, Inc., and its principal (the "Samserv Defendants").

3. Since 2006, the Leucadia Defendants have filed more than 100,000 "consumer credit actions," or debt collection lawsuits, in the Civil Court of the City of New York ("Civil Court"). The Mel Harris Defendants represent the Leucadia Defendants in virtually all of the debt collection lawsuits they bring. The vast majority of these lawsuits result in default judgments in favor of the Leucadia Defendants. On information and belief, more than 90% of the people sued by the Leucadia and Mel Harris Defendants do not appear in court.

4. On information and belief, in nearly all of these lawsuits, Defendants engage in "sewer service"—failing to serve the summons and complaint and then filing fraudulent affidavits of service. The Leucadia and Mel Harris Defendants regularly hire the Samserv Defendants to perform this task. Defendants' practice of sewer service deprives Plaintiffs and putative class members of due process; without notice of the lawsuit filed against them, Plaintiffs and putative class members are denied their day in court. On information and belief, sewer service is the primary reason so few of the people sued by Defendants appear in court to defend themselves.

5. On information and belief, in nearly all of these lawsuits, Defendants do not possess and cannot obtain proof that the people they sue owe the alleged debts.

6. In order to secure default judgments, the Leucadia and Mel Harris Defendants file false affidavits of service claiming that people were served when they were not, and false affidavits of merit claiming that Defendants have personal knowledge of the facts necessary to secure a default judgment when they do not. Relying on these false affidavits, the Civil Court issues default judgments against Plaintiffs and putative class members.

7. After Defendants have fraudulently obtained default judgments, they proceed to wrongfully restrain bank accounts, garnish wages, threaten to seize personal property, and/or pressure people into unaffordable payment plans. These fraudulent judgments appear on people's credit reports, preventing them from obtaining housing, employment, insurance, and affordable credit.

8. Plaintiffs seek to end these abhorrent practices once and for all. Plaintiffs and putative class members are entitled to preliminary and permanent injunctive relief, including disgorgement, declaratory relief, and damages.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692k(d) and 18 U.S.C. §§ 1961-68, and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 18 U.S.C. § 1965.

PARTIES

Plaintiffs

10. Plaintiff Monique Sykes is a 29-year-old mother of two who resides in Bronx, New York. Ms. Sykes is a "consumer" as that term is defined in 15 U.S.C. § 1692a(3).

11. Plaintiff Ruby Colon is 38-years-old and disabled. She resides in Brooklyn, New York. Ms. Colon is a "consumer" as that term is defined in 15 U.S.C. § 1692a(3).

12. Plaintiff Rea Veerabadren is a 57-year-old Mauritian immigrant who resides in Queens, New York. Ms. Veerabadren is a "consumer" as that term is defined in 15 U.S.C. § 1692a(3).

13. Plaintiff Fatima Graham is a 30-year-old single mother who resides in New York, New York. Ms. Graham is a "consumer" as that term is defined in 15 U.S.C. § 1692a(3).

Defendants

14. Defendants Mel S. Harris and Associates LLC, Mel S. Harris, Michael Young, David Waldman, Kerry Lutz, Todd Fabacher, and Mel Harris John/Jane Does 1-20 are referred to collectively as the "Mel Harris Defendants."

15. Defendant Mel S. Harris and Associates LLC ("Mel Harris LLC") is a New York limited liability company with its principal place of business at 5 Hanover Square, 8th Floor, New York, New York 10004. Defendant is a law firm and is regularly engaged in the business of collecting consumer debts alleged to be due to another via the mail, telephone, internet, and civil debt collection lawsuits, on behalf of its clients and co-conspirators, including but not limited to Defendants L-Credit, LLC, LR Credit, LLC, and LR Credits 10, 12, and 18, LLC, who are also debt collectors. Defendant Mel Harris LLC's principal business is debt collection. It is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

16. Defendant Mel S. Harris ("Harris") is a natural person, and the Senior

Member and a Manager of Defendant Mel Harris LLC. Defendant Harris regularly collects, directly or indirectly, consumer debts alleged to be due to another via the mail, telephone, internet, and civil debt collection lawsuits. Defendant Harris is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

17. Defendant Todd Fabacher ("Fabacher") is a natural person who is employed by Defendants Mel Harris LLC, Leucadia National Corporation, L-Credit, LLC, LR Credit, LLC and/or LR Credits 10, 12, and 18, LLC. Defendant Fabacher claims to be the "authorized and designated custodian of records" for all or nearly all of the accounts on which Defendants file suit. Defendant Fabacher regularly collects, directly or indirectly, consumer debts alleged to be due to another via the mail, telephone, internet, and civil debt collection lawsuits. Defendant Fabacher is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

18. Defendant Michael Young ("Young") is a natural person, and the Executive Director and Chief Operating Officer of Defendant Mel Harris LLC. Defendant Young notarizes all or nearly all of Defendant Fabacher's affidavits of merit. Defendant Young regularly collects, directly or indirectly, consumer debts alleged to be due to another via the mail, telephone, internet, and civil debt collection lawsuits. Defendant is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

19. Defendant David Waldman ("Waldman") is a natural person, and a Member and Manager of Defendant Mel Harris LLC. Defendant Waldman regularly collects, directly or indirectly, consumer debts alleged to be due to another via the mail, telephone, internet, and civil debt collection lawsuits. Defendant Waldman is a "debt collector" as defined

by the FDCPA, 15 U.S.C. § 1692a(6).

20. Defendant Kerry Lutz ("Lutz") is a natural person, and a partner of Defendant Mel Harris LLC. Defendant Lutz regularly collects, directly or indirectly, consumer debts alleged to be due to another via the mail, telephone, internet, and civil debt collection lawsuits. Defendant Lutz is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

21. Defendants "Mel Harris LLC John/Jane Does 1-20" are persons associated with Defendant Mel Harris LLC who were involved in the violations of law alleged in this Complaint.

22. Defendants LR Credit 10, LLC, LR Credit 12, LLC, and LR Credit 18, LLC, are referred to collectively as "LR Credits 10, 12, and 18."

23. Defendants Leucadia National Corporation, L-Credit, LLC, LR Credit, LLC, LR Credits 10, 12, and 18, Joseph A. Orlando, Philip M. Cannella, and Leucadia John/Jane Does 1-20 are referred to collectively as the "Leucadia Defendants."

24. Defendants L-Credit, LLC, LR Credit, LLC, and LR Credits 10, 12, and 18 are also referred to collectively as the "LR Credit Defendants."

25. Defendant Leucadia National Corporation ("Leucadia") is a corporation with its principal place of business at 315 Park Avenue South, 20th Floor, New York, New York 10010. Leucadia is the parent company of the LR Credit Defendants. On information and belief, the LR Credit Defendants are wholly-owned subsidiaries of Leucadia. The president and vice president of LR Credit, LLC and LR Credits 10, 12, and 18 are high-ranking Leucadia executives. Leucadia and the LR Credit Defendants share the same address. On information and belief, Leucadia has complete control over the LR Credit Defendants' debt collection activities,

and the LR Credit Defendants are mere instrumentalities of Leucadia. On information and belief, all of the profits of the LR Credit Defendants flow directly to Leucadia. Accordingly, through its wholly-owned subsidiaries, Leucadia is a purchaser and collector of defaulted consumer debts; is regularly engaged in the business of collecting, directly or indirectly, consumer debts alleged to be due to another via mail, telephone, internet, and civil debt collection lawsuits; and is principally engaged in debt collection. Defendant Leucadia is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

26. Defendant L-Credit LLC ("L-Credit") is a Delaware limited liability company. L-Credit transacts business in New York and lists its address as 315 Park Avenue South, New York, New York 10010. However, L-Credit has no registered agent for service of process in the State of New York and is not currently registered with the New York Department of State. On information and belief, L-Credit is a wholly-owned subsidiary of Leucadia. In turn, L-Credit is the sole corporate owner of Defendant LR Credit, LLC. In legal pleadings, LR Credit Defendants list their addresses as c/o L-Credit, LLC. L-Credit is a purchaser and collector of defaulted consumer debts; is regularly engaged in the business of collecting, directly or indirectly, consumer debts alleged to be due to another via mail, telephone, internet, and civil debt collection lawsuits; and is principally engaged in debt collection. Defendant L-Credit is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

27. Defendant LR Credit, LLC is a Delaware limited liability company. LR Credit, LLC transacts business in New York and is located at 315 Park Avenue South, 20th Floor, New York, New York 10010. Defendant's registered agent in the State of New York is C T Corporation System, 111 Eighth Avenue, New York, NY 10011. LR Credit, LLC is wholly

owned by L-Credit. LR Credit, LLC is also the sole owner of Defendants LR Credits 10, 12, and 18. The President and Vice President of LR Credit, LLC are high-ranking Leucadia executives. LR Credit, LLC is licensed as a debt collection agency by the New York City Department of Consumer Affairs ("DCA"). LR Credit, LLC is a purchaser and collector of defaulted consumer debts; is regularly engaged in the business of collecting, directly or indirectly, consumer debts alleged to be due to another via mail, telephone, internet, and civil debt collection lawsuits; and is principally engaged in debt collection. Defendant LR Credit, LLC is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

28. Defendants LR Credits 10, 12, and 18 are New York limited liability companies. They transact business in New York and are located at 315 Park Avenue South, 20th Floor, New York, NY 10010. Their registered agent in the State of New York is C T Corporation System, 111 Eighth Avenue, New York, NY 10011. LR Credits 10, 12 and 18 are wholly owned by Defendant LR Credit, LLC. The president and vice president of LR Credits 10, 12, and 18 are high-ranking Leucadia executives. In legal pleadings, LR Credits 10, 12, and 18 each list their address as c/o L-Credit, LLC. LR Credits 10, 12, and 18 are licensed as debt collection agencies by the DCA. They are purchasers and collectors of defaulted consumer debts; are regularly engaged in the business of collecting, directly or indirectly, consumer debts alleged to be due to another via mail, telephone, internet, and civil debt collection lawsuits; and are principally engaged in debt collection. Defendants LR Credits 10, 12, and 18 are "debt collectors" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

29. Defendant Joseph A. Orlando ("Orlando") is a natural person. Defendant Orlando is Vice President and Chief Financial Officer of Leucadia, and President of LR Credit,

LLC and LR Credits 10, 12 and 18. In his capacity as President of LR Credit, LLC and LR Credits 10, 12 and 18, Defendant Orlando is a purchaser and collector of defaulted consumer debts; is regularly engaged in the business of collecting, directly or indirectly, consumer debts alleged to be due to another via mail, telephone, internet, and civil debt collection lawsuits; and is principally engaged in debt collection. Defendant Orlando is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

30. Defendant Philip M. Cannella ("Cannella") is a natural person. Defendant Cannella is Assistant Vice President and Director of Taxes of Leucadia, and Vice President of LR Credit, LLC and LR Credits 10, 12 and 18. In his capacity as Vice President of LR Credit, LLC and LR Credits 10, 12 and 18, Defendant Cannella is a purchaser and collector of defaulted consumer debts; is regularly engaged in the business of collecting, directly or indirectly, consumer debts alleged to be due to another via mail, telephone, internet, and civil debt collection lawsuits; and is principally engaged in debt collection. Defendant Cannella is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

31. Defendants "Leucadia John/Jane Does 1-20" are persons associated with the Leucadia Defendants who were involved in the violations of law alleged in this Complaint.

32. Defendants Samserv, Inc., William Mlotok, Benjamin Lamb, Michael Mosquera and Samserv John/Jane Does 1-20 are referred to collectively as the "Samserv Defendants."

33. Defendant Samserv, Inc. ("Samserv") is a New York corporation with its principal place of business at 140 Clinton Street, LF, Brooklyn, New York 11201. Defendant Samserv is a process serving agency regularly engaged in the business of collecting consumer

debts by assisting the other defendants in this case to file and maintain civil debt collection lawsuits and to obtain default judgments in those cases by utilizing the mail, telephone and internet. Samserv regularly collects, directly or indirectly, consumer debts alleged to be due to another via mail, telephone, internet, and civil debt collection lawsuits. Defendant Samserv is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

34. Defendant William Mlotok ("Mlotok") is a natural person who resides at 17 Hollywood Drive, Plainview, New York 11803. Defendant Mlotok is the Chairman and Chief Executive Officer of Defendant Samserv. Defendant Mlotok is regularly engaged in the business of collecting consumer debts by assisting the other defendants to file and maintain civil debt collection lawsuits and to obtain default judgments in those cases by utilizing the mail, telephone and internet. Defendant Mlotok regularly collects, directly or indirectly, consumer debts alleged to be due to another via mail, telephone, internet, and civil debt collection lawsuits. Defendant Mlotok is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

35. Defendant Benjamin Lamb ("Lamb") is a natural person who resides at 537 West 149th Street, New York, New York 10031 and works for Defendant Samserv as a process server. Defendant Lamb is regularly engaged in the business of collecting consumer debts by assisting the other defendants to file and maintain civil debt collection lawsuits and to obtain default judgments in those cases by utilizing the mail, telephone and internet. Defendant Lamb regularly collects, directly or indirectly, consumer debts alleged to be due to another via mail, telephone, internet, and civil debt collection lawsuits. Defendant Lamb is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

36. Defendant Michael Mosquera ("Mosquera") is a natural person who works

for Defendant Samserv as a process server. Defendant Mosquera's address is unknown to Plaintiffs' counsel at this time. Defendant Mosquera is regularly engaged in the business of collecting consumer debts by assisting the other defendants to file and maintain civil debt collection lawsuits and to obtain default judgments in those cases by utilizing the mail, telephone and internet. Defendant Mosquera regularly collects, directly or indirectly, consumer debts alleged to be due to another via mail, telephone, internet, and civil debt collection lawsuits. Defendant Mosquera is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

37. Defendants "Samserv John/Jane Does 1-20" are persons associated with Defendant Samserv who were involved in the violations of law alleged in this Complaint.

FACTS

A. *Background Facts*

1. *Debt Buyers*

38. New York City is an epicenter for debt collection lawsuits. According to records obtained from the Civil Court, debt collectors have been filing nearly 300,000 lawsuits *per year* since 2006. A substantial number of these lawsuits were brought by debt buyers.

39. "Debt buyers" are companies, like the Leucadia Defendants, that buy defaulted, charged-off debts for pennies on the dollar and then seek to collect the full face value of the debts for themselves. Many debt buyers also resell debts to other debt buyers. Thus it is not uncommon for debts to be bought and sold numerous times over.

40. Debts are priced on a sliding scale, with freshly charged-off debts commanding a higher price than older debts that other debt buyers and collection agencies have previously tried and failed to collect. There is even an active market for debts that are past the

statute of limitations and for debts that have previously been discharged in bankruptcy.

41. A typical purchased portfolio of debts contains, for each account listed in the portfolio, the consumer's name, Social Security number, last known address and telephone number, and the account number, charge-off date, date and amount of last payment, and alleged amount owed. This information is transmitted to the debt buyer electronically in the form of a spreadsheet and is often referred to as "media." The debt buyer typically does not purchase or obtain documents showing an indebtedness between the original creditor and debtor, such as a contract and any subsequent amendments to the contract, account statements, customer service records, or customer dispute records.

42. Some debt purchase and sale agreements provide that the debt buyer may go back to the original creditor and obtain account documentation for only a limited period of time and in only a limited number of accounts, such as 2% of accounts. Other purchase and sale agreements provide that the debt buyer may *never* obtain *any* documentation for any debts in the portfolio. In addition, each time a debt is resold, it becomes less likely that the purchaser will be able to obtain documentation of the debt.

43. As a result, most debt buyers have significant difficulty substantiating their claims, which has been widely recognized as a problem for the industry and for consumers. *See, e.g.*, Federal Trade Commission, *Collecting Consumer Debts: The Challenges of Change* (2009) (discussing problem and proposing solutions).

44. Debt buyers use multiple tools to collect consumer debts, including contacting consumers directly by mail, telephone, text message and e-mail, reporting the debt to credit reporting agencies, and hiring other debt collectors to collect the debt for them.

Increasingly, however, debt buyers have turned to the courts to collect consumer debts.

45. Under New York law, debt buyers, like other plaintiffs in civil lawsuits, bear the burden of proof in legal actions. In order to prevail, the debt buyer must submit admissible evidence demonstrating that it is the rightful owner of the account and that the defendant actually owes the debt in the precise amount claimed. *See, e.g., Citibank v. Martin*, 807 N.Y.S.2d 284 (Civ. Ct. N.Y. County 2005).

46. Debt buyers generally do not obtain additional account documentation prior to bringing a lawsuit against a consumer. Instead, debt buyers generally bring lawsuits based solely upon the skeletal "media" obtained upon purchase of the account portfolio. This "media" is not sufficient to meet the debt buyer's burden of proof as the plaintiff in a lawsuit.

47. Furthermore, because purchase and sale agreements severely limit or wholly eliminate debt buyers' ability to obtain documentation of the debts from the original creditor, debt buyers are actually *unable* to obtain admissible evidence of the debt in the vast majority of cases that they file.

48. Recent court decisions confirm that many debt buyers do not possess, and cannot obtain, the evidence required to make out a prima facie case. *See, e.g., PRA III, LLC v. Gonzalez*, 54 A.D.3d 917 (App. Div. 2d Dep't. 2008); *CACH, LLC v. Davidson*, 21 Misc. 3d 1106(A) (Civ. Ct. N.Y. County 2008); *PRA III, LLC v. McDowell*, 15 Misc.3d 1135(A) (Civ. Ct. Richmond County 2007); *Rushmore v. Skolnick*, 15 Misc.3d 1139(A) (Dist. Ct. Nassau County 2007); *Citibank v. Martin*, 11 Misc.3d 219 (Civ. Ct. N.Y. County 2005); *Palisades Collection, LLC v. Gonzalez*, 10 Misc.3d. 1058(A) (Civ. Ct. N.Y. County 2005); *Colorado Capital Investments, Inc. v. Villar*, 06/18/09 N.Y.L.J. 27, col. 3 (Civ. Ct. N.Y. County); *Palisades*

Collection, LLC v. Haque, 4/13/06 N.Y.L.J. 20 (Civ. Ct. Queens County); *CACV of Colorado, LLC v. Chowdhury*, Index No. 94642/07 (Civ. Ct. Bronx County Feb. 19, 2009) (unpublished); *CACH v. Cummings*, Index No. 2274/07 (Civ. Ct. N.Y. County Nov. 10, 2008) (unpublished); *CACV of Colorado Capital Investments v. Pierog*, No. 64449/05 (Civ. Ct. N.Y. County, Sep. 2, 2008) (unpublished).

49. Because of the high rate of defaults by defendants in debt collection lawsuits, however, debt buyers are rarely put to their proof.

50. Consumers appear to defend themselves in only about 10% of the cases in the Civil Court, and debt buyers obtain default judgments in the vast majority of lawsuits that they bring. On information and belief, sewer service is the primary reason so few defendants appear in court.

B. "Sewer Service"

51. The term "sewer service" is widely used to describe the practice of failing to serve a summons and complaint and then filing a fraudulent affidavit of service. Sewer service deprives people of due process because they do not get notice of the lawsuits and are denied their day in court. Default judgments are then entered on the basis of defendants' failure to appear. As the affidavit of service often appears facially valid—indeed, its very purpose is to pass facial review—the fraud generally goes undetected unless the defendant discovers and challenges the fraudulent affidavit after a default judgment has been entered.

52. Sewer service has a long history in New York City. During the late 1960s and early 1970s, the Civil Court was inundated with tainted consumer claims, many of which were reduced to judgment when the defendant defaulted as a result of sewer service. When the

court learned of the widespread fraud, it employed its general police powers to vacate thousands of default judgments.

53. Sewer service remained "rampant" into the 1980s, according to a 1986 report issued by the Office of the New York State Attorney General and the New York City Department of Consumer Affairs (the "Joint Report"). The Joint Report concluded that 39% of all service in New York City was sewer service, and that "a staggering number of illegal default judgments—48,649, or one third of all default judgments—are entered annually."

54. The Joint Report further concluded that low pay for process servers was the primary cause of sewer service. At the time, debt collection attorneys paid $6 to $12 to process serving agencies per service of process in a debt collection lawsuit. The agencies, in turn, generally paid only $3 to the individual process server who was assigned the task of serving the defendant. Moreover, the process server was paid only for completed services, not for unsuccessful attempts.

55. The Joint Report detailed the experience of an investigator for the New York City Department of Consumer Affairs who worked for one month as a licensed process server in order to determine whether a process server could attempt to effect proper service and still make a living at the prevailing pay scales. During that month, the investigator was given over 400 papers to serve and was paid $3 per completed service.

56. According to the Joint Report, the investigator was unable to serve almost one-half of the papers because the defendants no longer lived at the addresses provided for service. After making 537 attempts, the investigator was able to serve only 217 complaints, resulting in earnings of about $600 before deductions for taxes and expenses (such as gas).

Thus, the investigator made less than half of the minimum wage.

57. The Joint Report concluded that process serving agencies, by underbidding the true cost of proper service, effectively sold sewer service.

58. Finally, the Joint Report included a comprehensive review of the logs of 37 randomly selected process servers. The Joint Report found that 95% of the process servers reported duplicate, or "superman," services. That is, they claimed to have served process at two or more different places at the exact same time—a physical impossibility.

59. In 1987, the New York Court of Appeals noted "a continuing and pervasive problem of unscrupulous service practices by licensed process servers." *Barr v. Dep't of Consumer Affairs*, 70 N.Y.2d 821, 822-23 (1987). The Court explained:

> These practices deprive defendants of their day in court and lead to fraudulent default judgments. Often associated with consumer debt collection and landlord-tenant litigation, questionable service practices have their greatest impact on those who are poor and least capable of obtaining relief from the consequences of an improperly imposed default judgment.

60. Sewer service in debt collection cases remains rampant to this day.

61. In April 2008, acknowledging the high rate of defaults in debt collection lawsuits, the Civil Court issued a new directive requiring that the clerk mail an additional notice to defendants in consumer credit actions.

62. In June 2008, MFY Legal Services ("MFY") issued a report, *Justice Disserved* ("Justice Disserved"), documenting highly questionable process serving practices in consumer credit cases.

63. On June 13, 2008, the New York City Department of Consumer Affairs held a public hearing on process servers in New York City ("DCA hearing"). Testimony at the

hearing revealed that: (a) process serving agencies generally charge between $15 and $45 for service of a summons and complaint in a consumer credit action in New York City; (b) the companies retain most of the fees to pay for overhead; (c) individual process servers were paid between $3 and $6 per completed service.

64. Process servers in debt collection lawsuits today are thus paid basically the same wages as they were *23 years ago*. In 1986, subway fare was $1 and a gallon of gas cost 93 cents. Since 1986, the cost of living has increased substantially and the minimum wage has more than doubled, yet process server wages have remained stagnant at a rate that was insufficient to cover the costs of proper service even then. Process servers in other types of legal actions are paid substantially more.

65. At the DCA hearing, every process serving agency that testified said debt collection attorneys will not pay for service attempts that are not completed. In other words, a process server who visits the last known address of a debtor and learns that the debtor has moved or died will only be paid if he perjures himself. The Vice President of the New York State Professional Process Servers Association questioned the ethics of debt collectors paying only for completed service and will not accept contracts with such a condition.

66. On information and belief, the Mel Harris and LR Credit Defendants will pay defendant Samserv and other process serving agencies only for completed service, thereby knowingly promoting the use of false affidavits of service.

67. Moreover, at the DCA hearing, executives from three different process serving agencies testified that they refused to accept work from consumer debt collection attorneys because they could not make a profit based on the low fees the collection attorneys

demand unless their process servers engaged in sewer service. For those who testified, this meant that they cannot do business with operations like those run by the Mel Harris and LR Credit Defendants. Others, however, like the Samserv Defendants are less scrupulous and thus willing to join and further a fraudulent enterprise.

68. In 2008 and 2009, after the DCA hearing, the Office of the New York State Attorney General ("Attorney General") audited the process server logs of a single process serving agency called American Legal Process ("ALP").

69. The Attorney General found that: (a) ALP was paid $30-$35 by the debt collection law firms per service of a summons and complaint in a consumer matter (usually credit card related); and (b) ALP in turn paid its process servers as little as $3 per service and no more than $7 per service, for an average of $5.

70. The Attorney General reviewed process server logs for internal inconsistencies and found countless examples of sewer service. For example, one process server claimed to have made 69 service attempts in a single day in two different New York counties that were 400 miles apart—at 8:19 a.m., he claimed to have attempted service on a defendant in Brooklyn, and one minute later, at 8:20 a.m., on another defendant in Western New York. The Attorney General found that the process server would have had to drive more than 10,000 miles that day to make all his purported service attempts, and further found that such physically impossible movements were documented repeatedly throughout the service logs of ALP's 20 busiest process servers.

71. The Attorney General also uncovered significant notary fraud on the part of ALP's owner.

72. In July 2009, the Attorney General and Chief Administrative Judge of the New York Courts sued American Legal Process and 37 debt collection law firms and debt collectors, seeking to overturn 100,000 default judgments that had been entered as a result of sewer service by ALP's process servers.

73. On information and belief, the practices exposed by the Attorney General are not unique to ALP, but are standard practice throughout the debt collection and process serving industries.

74. Debt collection law firms and their debt buyer clients plainly benefit from sewer service. By not serving consumer debt defendants, debt collection firms like Defendant Mel Harris LLC and debt buyers like the LR Credit Defendants are able to generate hundreds of thousands of judgments by default on cases where they could never prevail on the merits because they do not have evidence to make out a prima facie case. Once default judgments are fraudulently obtained, they are used to restrain people's bank accounts, garnish their wages, seize their property, damage their credit reports, and/or pressure them into unaffordable payment plans.

75. Proceeds from the illegal scheme are then used to fund the purchase of new debts, which are then pursued by commencing new actions without the ability to actually prove that a debt is owed, using sewer service, which is followed by the filing of new perjurious affidavits of service and merit, thus securing new default judgments. And, the cycle continues.

C. *Civil Court Procedures*

76. In New York City, actions arising out of a consumer credit transaction, including debt collection actions, are primarily commenced in the Civil Court, which has

jurisdiction over actions seeking to recover monetary damages of $25,000 or less. N.Y. Civ. Ct. Act § 202.

77. A plaintiff must serve the defendant with the summons and complaint in a manner authorized by CPLR 308. This can be done by: (1) "delivering the summons within the state to the person to be served," CPLR 308(1) ("Personal Service"); or (2) "delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served" and mailing the summons and complaint to the person's last known residence or actual place of business, CPLR 308(2) ("Substitute Service").

78. A plaintiff must exercise due diligence to serve the defendant by personal or substitute service. CPLR 308(4). Courts have interpreted the term "due diligence" to mean three attempts on different days at different times of the day. When personal or substitute service "cannot be made with due diligence," a plaintiff may effect service by "affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode" of the person and mailing the summons and complaint to the person's last known residence or actual place of business, CPLR 308(4) ("conspicuous place service" or "nail and mail service").

79. When a defendant fails to appear in the action, the plaintiff may seek a default judgment. CPLR 3215(a).

80. In order to obtain a default judgment, the plaintiff must submit (a) proof of service, in the form of an affidavit by the process server, and (b) proof of "the claim, the default, and the amount due by affidavit made by the party." CPLR 3215(f).

81. In debt collection actions, the plaintiff also must submit an affidavit that additional notice has been given to the defendant at least twenty days prior to the plaintiff's application for a default judgment. This additional notice consists of mailing a copy of the summons to the defendant at (in order of preference) the defendant's residence, place of employment, or last known residence. The additional notice may be mailed simultaneously with service of the summons upon the defendant. CPLR 3215(g)(3).

82. In addition, section 130-1.1-a of the Rules of the Chief Judge of New York requires every pleading, written motion and other paper served or filed with the court to be signed by an attorney. When an attorney signs a paper, he or she "certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (1) the presentation of the paper or the contentions therein are not frivolous . . . and (2) where the paper is an initiating pleading, (i) the matter was not obtained through illegal conduct . . .". 22 NYCRR § 130-1.1-a(b).

83. Under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended by the Servicemembers Civil Relief Act of 2003, codified at 50 U.S.C. App. § 500 *et. seq,* no default judgment in a civil action or proceeding may be entered unless the plaintiff first submits an affidavit "stating whether or not the defendant is in military service and showing necessary facts to support the affidavit." 50 U.S.C. App. § 521(b)(1). The information necessary to complete this affidavit is typically, if not always, obtained via the internet from the Department of Defense Manpower Data Center.

84. In debt collection actions filed in the Civil Court, a plaintiff must provide the clerk with an additional notice of the lawsuit and a stamped envelope addressed to the

defendant "at the address at which process was served." The clerk then mails this additional notice to the defendant. 22 N.Y.C.R.R. 208.6(h).

85. "The clerk, upon submission of the requisite proof, shall enter judgment for the amount demanded in the complaint . . . plus costs and interest." CPLR 3215(a).

86. Once a plaintiff obtains a default judgment against a person, it may enforce the judgment by, among other things, restraining the person's bank account, garnishing the person's wages, or seizing the person's personal property. *See, e.g.*, CPLR 5222, 5231, and 5232. A plaintiff's attorney may institute these proceedings directly "as officers of the court," without any judicial intervention or scrutiny.

D. ***Defendants' Facts***

87. Defendants routinely use the Civil Court to collect debts from consumers.

88. On information and belief, the Leucadia Defendants brought 29,910 debt collection actions in the Civil Court in 2008 alone. The Mel Harris Defendants represented the Leucadia Defendants in all but three of these cases.

89. When the figures for 2006, 2007 and 2008 are combined, the Leucadia Defendants brought 104,341 debt collection actions in the Civil Court, and the Mel Harris Defendants represented the Leucadia Defendants more than 99% of the time.

90. When the Leucadia and Mel Harris Defendants file debt collection lawsuits in the Civil Court, they frequently hire Defendant Samserv to "serve process," or, more accurately stated, to provide an affidavit of service that Defendants know is highly likely to be false. On information and belief, Defendant Samserv is the process service company in the majority of cases filed by the Leucadia and Mel Harris Defendants. On information and belief,

the LR Credit and Mel Harris Defendants will pay Defendant Samserv for completed service, but will make no payment for unsuccessful attempts.

91. On information and belief, Defendant Samserv and its individual process servers frequently engage in sewer service. When this happens, Plaintiffs and putative class members are deprived of due process because they do not receive notice of the lawsuit and therefore do not appear to defend themselves. The Mel Harris and Leucadia Defendants then apply for default judgments against the non-appearing individuals.

92. In order to obtain the default judgments, Defendants file fraudulent affidavits of service with the court. In these affidavits, Defendant Samserv's process servers claim to have served defendants with legal process when they have not, in fact, done so.

93. Furthermore, on information and belief, Defendant Mlotok, Samserv's Chairman and CEO, is personally involved in the fraud, as he notarizes all or most of these false affidavits.

94. On information and belief, the Leucadia and Mel Harris Defendants all know or reasonably should know that most of the affidavits of service are false and that most of the default judgments they obtain are the result of sewer service.

95. On information and belief, although Defendants secure default judgments in tens of thousands of lawsuits every year, service of process in the majority of those lawsuits is allegedly done by only a handful of individual process servers.

96. Before seeking these tens of thousands of default judgments per year, Defendants are required to review each and every affidavit of service and file it with the court. As a small number of individual process servers claim to serve an astoundingly large number of

defendants, simply by undertaking this review, Defendants would have known that all of the alleged service could not possibly have occurred as claimed.

97. On information and belief, Defendant Mel Harris LLC pays Defendant Samserv no more than $20 per completed service, of which the individual process servers are paid only $3 to $6. On information and belief, Defendant Mel Harris LLC is or should be well aware that process servers are paid only $3 to $6.

98. In addition, the MFY report on process server practices found that more than 90% of consumers allegedly served by process servers retained by Defendant Mel Harris LLC did not appear in court, suggesting a high rate of sewer service.

99. In addition to a facially valid affidavit of service, the Mel Harris and Leucadia Defendants are required to submit two additional affidavits in order to obtain a default judgment—a military service affidavit stating that the Civil Court defendant is not in the military and an affidavit setting forth the empirical basis for the unpaid debt claim based on personal knowledge.

100. On information and belief, the Mel Harris Defendants obtain the information necessary for completing the military service affidavit by accessing, over the internet, a database of military personnel maintained by the Department of Defense Manpower Data Center. On information and belief, the Mel Harris Defendants utilize the internet and database to submit specific military status inquiries, and to retrieve military service information for specific individuals from the database.

101. On information and belief, in addition to filing false affidavits of service, the Mel Harris and Leucadia Defendants also submit another kind of false affidavit to the court

when seeking a default judgment. This affidavit is usually titled "Affidavit of Merit."

102. Defendant Todd Fabacher, who claims to be "an authorized and designated custodian of records," is the witness in the vast majority of the affidavits of merit filed by Defendants Mel Harris and LR Credits 1 through 20.

103. On information and belief, Defendant Fabacher signs approximately 40,000 affidavits per year, or an average of 165 affidavits per work day. In these affidavits, Defendant Fabacher claims to be "fully and personally familiar with, and have personal knowledge of, the facts and proceedings relating to the within action."

104. On information and belief, Defendant Fabacher lacks personal knowledge of most of the facts, and all of the key facts, set forth in these affidavits. For example, Defendant Fabacher routinely swears that he has personal knowledge that the defendant had a credit account with a certain company; that the defendant incurred charges on the account; that statements were mailed to the defendant; that the defendant defaulted in payment; and that the amount alleged in the complaint is, in fact, due and owing. On information and belief, however, Defendant Fabacher does not have personal knowledge of these alleged "facts."

105. In these affidavits, Defendant Fabacher further claims to "maintain the daily records and accounts in the regular course of business, including records maintained by and obtained by plaintiff's assignor." He also identifies the Leucadia Defendants as "the assignee and purchaser of" an account owed to a particular creditor.

106. These statements are deceptive and misleading. Defendant Fabacher's affidavits are drafted in such a manner as to suggest that Defendant Fabacher and/or the other Defendants have obtained or could obtain documentation of the debt from the original creditor,

including evidence of an indebtedness between the original creditor and debtor, such as a contract and any subsequent amendments to the contract, account statements, customer service records, or customer dispute records. On information and belief, however, the Mel Harris and Leucadia Defendants have not obtained documentation from the original creditor, nor are they able or intending to obtain such documentation in the vast majority, if not all, cases.

107. On information and belief, the Mel Harris and Leucadia Defendants authorize and/or have knowledge of the deceptive and misleading nature of Defendant Fabacher's affidavits. On information and belief, the affidavits are purposely drafted in this manner in order to give court personnel the impression that the Mel Harris and Leucadia Defendants have met the statutory requirements for obtaining a default judgment, when in fact, Defendants have not and cannot meet those requirements.

108. On information and belief, the Mel Harris and Leucadia Defendants, working in concert, submit fraudulent and deceptive affidavits of merit to the court in order to obtain default judgments to which they are not entitled. Based on these affidavits, the Civil Court issues tens of thousands of default judgments every year in Defendants' favor against Plaintiffs and other similarly situated unsuspecting victims.

109. Plaintiffs and members of the putative class are substantially harmed when Defendants use the default judgments to freeze their bank accounts, garnish their wages, and pressure them into making settlement agreements on debts of dubious merit for which little or no documentation is available. They are also harmed when these judgments appear on their credit reports.

E. ***Individual Plaintiff Facts***

1. ***Monique Sykes***

110. Plaintiff Monique Sykes is 29 years old and lives in the Bronx with her husband and her two young children. Ms. Sykes' husband is the family breadwinner. He works as a union carpenter, but it has been difficult for him to find steady employment in the last year. At the time of the events recounted here, Mr. Sykes was receiving Unemployment Benefits, which was the family's only source of income. Ms. Sykes has no income of her own, as she stays home to care for their children.

111. On or about June 27, 2008, Defendant Mel Harris commenced a lawsuit against Ms. Sykes in Bronx County Civil Court. Defendant LR Credit 18 was the plaintiff in the suit.

112. The suit alleged that Ms. Sykes owed money to LR Credit 18, which claimed that it was the assignee and purchaser of a debt originally owed to an entity identified as "JPMorgan Chase Bank."

113. Ms. Sykes believes that it is possible she owes this debt, but she is not sure, as she does not recognize the amount.

114. Samserv claimed that its employees and/or agents served the summons and complaint upon Ms. Sykes.

115. Ms. Sykes was never served with a summons and complaint, either personally, by substitute service, or by nail and mail service.

116. On or about July 25, 2008, Samserv prepared an affidavit attesting that Ms. Sykes had been served with process in accordance with New York law. The affidavit was purportedly signed by Benjamin Lamb and notarized by William Mlotok.

117. The affidavit of service contains false statements. Specifically:

A. The process server swore that he left the papers with a "Ms. Rolanda" at Ms. Sykes' residence, but no such person resides with Ms. Sykes and her family.

B. The process server swore that he spoke to "Ms. Rolanda" and confirmed that Ms. Sykes was not in the military, but Ms. Sykes does not know "Ms. Rolanda," so this person would be unable to confirm her military status.

C. The process server swore that he went to Ms. Sykes' apartment on July 18, 2008, at 7:15 pm, but Ms. Sykes would have been home at that time, and no process server came to her door. With two children under the age of three, the Sykes family was always home in the evenings.

D. The process server swore that he mailed a copy of the summons and complaint to Ms. Sykes on July 24, 2008, but she never received a copy of the summons and complaint by mail.

118. On or about August 1, 2008, Defendants caused the fraudulent affidavit of service described above to be filed with the court.

119. In or about September or October 2008, Defendants sought a default judgment against Ms. Sykes.

120. As part of its application for a default judgment, Defendant Lutz "affirm[ed] under the penalties of perjury that service of the summons and complaint has been made."

121. Defendant Lutz also affirmed that he sent a copy of the summons and complaint to Ms. Sykes via U.S. mail on August 7, 2008. Ms. Sykes did not receive this mailing.

122. As part of its application for a default judgment, Defendants submitted a nonmilitary affidavit signed by Lillian Mathew stating her belief that Ms. Sykes was not in the military. Ms. Mathew obtained the information necessary to complete this affidavit by accessing, over the internet, the Department of Defense Manpower Data Center. This transaction took place on September 11, 2008, at 12:46:06.

123. As part of its application for a default judgment, Defendants submitted an affidavit of merit which was purportedly signed by Defendant Fabacher and notarized by Defendant Young.

124. In the Affidavit, Defendant Fabacher claims that he is "fully and personally familiar with, and [has] personal knowledge of, the facts and proceedings relating to the within action." On information and belief, this claim is false.

125. In the Affidavit, Defendant Fabacher claims that he maintains "the daily records and accounts in the regular course of business, including records maintained by and obtained from plaintiff's assignor."

126. This claim is misleading, as it suggests that Defendant Fabacher and the other Defendants are in possession of documentation obtained from JPMorgan Chase Bank and that Defendants have evidence that Ms. Sykes owes this debt. Upon information and belief, Defendants have no such evidence and have no information about this debt other than the "media," which is inadmissible in court.

127. On October 7, 2008, the court entered a default judgment against Ms. Sykes. In doing so, the court relied upon the fraudulent affidavit of service and affidavit of merit submitted to the court by Defendants.

128. On or about July 2, 2009, Ms. Sykes learned about the lawsuit for the first time when she received a letter via U.S. mail from a New York City marshal threatening to take her personal property. Defendant Mel Harris LLC caused the marshal to mail this letter to Ms. Sykes.

129. On July 7, 2009, Ms. Sykes filed a motion seeking to vacate the default judgment and dismiss the case due to improper service. The motion was granted on July 31, 2009, and the case was dismissed.

130. Because the dismissal was "without prejudice," however, Ms. Sykes is at risk of being sued and subjected to improper service for a second time.

131. In addition, Ms. Sykes has incurred economic harm because of Defendants' actions. For example, Ms. Sykes had to spend money copying her file and on transportation to and from the courthouse. She had to take a cab on at least one occasion because the MTA had suspended service on her subway line. In addition, her husband had received offers of work, which he had to turn down so that he could stay home with the children while Ms. Sykes went to court.

2. Ruby Colon

132. Plaintiff Ruby Colon is 38 years old and lives in Brooklyn with her daughter, who is in college. Ms. Colon is disabled and subsists on food stamps and Supplemental Security Income (SSI). She has no other sources of income.

133. On or about May 22, 2007, Defendant Mel Harris commenced a lawsuit against Ms. Colon in the Kings County Civil Court. Defendant LR Credit 12, LLC was the plaintiff in the lawsuit.

134. The suit alleged that Ms. Colon owed money to LR Credit 12, which claimed that it was the purchaser and assignee of a debt originally owed to an entity identified as "Chase Manhattan Bank." According to LR Credit 12's complaint, Ms. Colon incurred $2,078.18 in charges on the Chase Manhattan account.

135. Ms. Colon believes that it is possible she incurred charges on this account, but she is not sure, as she does not recognize the amount.

136. Defendants hired Samserv to serve the summons and complaint upon Ms. Colon.

137. Ms. Colon was never served with a summons and complaint, either personally, by substitute service, or by nail and mail service.

138. On or about June 11, 2007, Samserv prepared an affidavit attesting that Ms. Colon had been served with process in accordance with New York law. The affidavit was purportedly signed by Michael Mosquera and notarized by William Mlotok.

139. The affidavit of service contains numerous false statements. Specifically:

A. The process server swore that he left the papers with a "Mr. Hector" at Ms. Colon's residence, but no such person resides with Ms. Colon and her daughter.

B. The process server swore that he spoke to "Mr. Hector" and confirmed that Ms. Colon was not in the military or dependent on anyone in the military, but Ms. Colon does not know "Mr. Hector," so this person would be unable to confirm her military status.

C. The process server swore that "Mr. Hector" was male with black hair and white skin, 36-50 years old, 5'9"-6'0", 161-200 lbs, and balding, but Ms. Colon does

not know anyone who fits this description.

D. The process server swore that he mailed a copy of the summons and complaint to Ms. Colon on June 11, 2007, but she never received a copy of the summons and complaint by mail.

140. On or about June 12, 2007, Defendants caused the fraudulent affidavit of service described above to be filed with the court.

141. In or about July 2007, Defendants sought a default judgment against Ms. Colon.

142. As part of its application for a default judgment, Defendant Lutz "affirm[ed] under the penalties of perjury that service of the summons and complaint had been made."

143. Defendant Lutz also affirmed that he sent a copy of the summons and complaint to Ms. Colon via U.S. mail on June 20, 2007. Ms. Colon did not receive this mailing.

144. As part of its application for a default judgment, Defendants submitted a nonmilitary affidavit signed by Lillian Mathew stating her belief that Ms. Colon was not in the military. Ms. Mathew obtained the information necessary to complete this affidavit by accessing, over the internet, the Department of Defense Manpower Data Center. This transaction took place on July 19, 2007, at 16:13:18.

145. As part of its application for a default judgment, Defendants submitted an affidavit of merit which was purportedly signed by Defendant Fabacher and notarized by Defendant Young.

146. In the Affidavit, Defendant Fabacher claims that he is "fully and

personally familiar with, and [has] personal knowledge of, the facts and proceedings relating to the within action." Upon information and belief, this claim is false.

147. In the Affidavit, Defendant Fabacher claims that he maintains "the daily records and accounts in the regular course of business, including records maintained by and obtained from plaintiff's assignor."

148. This claim is misleading, as it suggests that Defendant Fabacher and the other Defendants are in possession of documentation obtained from Chase Manhattan Bank and that Defendants have evidence that Ms. Colon owes this debt. Upon information and belief, Defendants have no such evidence and have no information about this debt other than the "media," which is inadmissible in court.

149. On July 31, 2007, the court entered a default judgment against Ms. Colon. In doing so, the court relied upon the fraudulent affidavit of service and affidavit of merit submitted to the court by Defendants.

150. In about November 2008, Ms. Colon learned of the lawsuit when she discovered that her bank account had been frozen.

151. On December 3, 2009, Ms. Colon filed a motion seeking to vacate the default judgment and dismiss the case on the grounds that she was not served with process. On December 10, 2009, Defendant Mel Harris consented to vacate the default judgment and dismiss the case without prejudice.

152. However, because the dismissal was "without prejudice," Ms. Colon is at risk of being sued and subjected to improper service for a second time.

153. Ms. Colon has suffered economic harm because of Defendants' actions.

Among other things, Ms. Colon has been unable to use her bank account, and instead has had to rely on a government debit card for her financial transactions and for access to her SSI benefits. The government debit card carries with it many fees and expenses not associated with a regular checking account. For example, Ms. Colon cannot write checks, and therefore has to purchase money orders. She has to pay fees when she withdraws money from an ATM, regardless of which bank she goes to. As a result, Ms. Colon has incurred significant expenses that she could have avoided had she been able to access her bank account.

3. ***Rea Veerabadren***

154. Plaintiff Rea Veerabadren is a 57-year-old immigrant from Mauritius who lives in Queens, New York. Ms. Veerabadren has worked full-time as a nanny for 24 years to support herself and her daughter. During her years of employment, Ms. Veerabadren has steadily set aside a portion of her earnings for her retirement.

155. On or about April 12, 2006, Defendant Mel Harris LLC commenced a lawsuit against Ms. Veerabadren in Queens County Civil Court. Defendant LR Credit 10 was the plaintiff in the suit.

156. The suit alleged that Ms. Veerabadren owed money to LR Credit 10, which claimed that it was the assignee and purchaser of a debt originally owed to an entity identified as "Sears."

157. Samserv claimed that its employees and/or agents served the summons and complaint upon Ms. Veerabadren.

158. Ms. Veerabadren was never served with a summons and complaint, either personally, by substitute service, or by nail and mail service.

159. On or about May 25, 2006, Samserv prepared an affidavit attesting that Ms. Veerabadren had been served with process in accordance with New York law. The affidavit was purportedly signed by Michael Mosquera and notarized by William Mlotok.

160. The affidavit of service contains false statements. Specifically:

A. Defendant Mosquera swore that he left the papers with a "Mr Victor" at Ms. Veerabadren's residence, but no such person resides with Ms. Veerabadren.

B. Defendant Mosquera swore that he spoke to "Mr Victor" and confirmed that Ms. Veerabadren was not in the military, but Ms. Veerabadren does not know "Mr Victor," so this person would be unable to confirm her military status.

C. Defendant Mosquera swore that he went to Ms. Veerabadren's apartment on May 11, 2006 at 9:23 p.m., but Ms. Veerabadren would have been home at that time, and no process server came to her door.

D. The process server swore that he mailed a copy of the summons and complaint to Ms. Veerabadren on May 18, 2006, but she never received a copy of the summons and complaint by mail.

161. On or about May 25, 2006, Defendants caused the fraudulent affidavit of service described above to be filed with the court.

162. In or about July 2006, Defendants sought a default judgment against Ms. Veerabadren.

163. As part of its application for a default judgment, Defendant Kerry Lutz "affirm[ed] under the penalties of perjury that service of the summons and complaint has been made."

164. Defendant Lutz also affirmed that he sent a copy of the summons and complaint to Ms. Veerabadren via U.S. mail on June 7, 2006. Ms. Veerabadren did not receive this mailing.

165. As part of its application for a default judgment, Defendants submitted a nonmilitary affidavit signed by Lillian Mathew stating her belief that Ms. Veerabadren was not in the military. Ms. Mathew obtained the information necessary to complete this affidavit by accessing, over the internet, the Department of Defense Manpower Data Center. This transaction took place on July 6, 2006, at 9:31:21.

166. As part of its application for a default judgment, Defendants submitted an affidavit of merit which was purportedly signed by Defendant Fabacher and notarized by Defendant Young.

167. In the Affidavit, Defendant Fabacher claims that he is "an authorized and designated custodian of records for the plaintiff's assignor." On information and belief, this claim is false and misleading, as it suggests that Defendant Fabacher is an authorized and designated custodian of records for Sears and that Defendants have evidence that Ms. Veerabadren owes this debt. On information and belief, Defendant Fabacher is not an authorized and designated custodian of records for Sears, and Defendants have no such evidence.

168. In the Affidavit, Defendant Fabacher claims that he is "fully and personally familiar with, and have [sic] personal knowledge of, the facts and proceedings relating to the within action." On information and belief, this claim is false.

169. In the Affidavit, Defendant Fabacher claims that he maintains "the daily records and accounts in the regular course of business, including records maintained by and

obtained from plaintiff's assignor."

170. This claim is misleading, as it suggests that Defendant Fabacher and the other Defendants are in possession of documentation obtained from Sears and that Defendants have evidence that Ms. Veerabadren owes this debt. On information and belief, Defendants have no such evidence and have no information about this debt other than the "media," which is inadmissible in court.

171. On August 8, 2006, the court entered a default judgment against Ms. Veerabadren. In doing so, the court relied upon the fraudulent affidavit of service and affidavit of merit submitted to the court by Defendants.

172. In January 2008, Ms. Veerabadren learned about the lawsuit for the first time when she received a telephone call from an employee of Defendant Mel Harris LLC, who said that they had a judgment against her for a Sears debt and that they would restrain her bank account.

173. Ms. Veerabadren previously owned a Sears account, but remembers that she had to stop making payments on that account in or around 1998 – eight years before Defendants Mel Harris LLC and LR Credit 10 commenced the lawsuit – because she could no longer afford to make payments.

174. Furthermore, though Ms. Veerabadren remembered having had only one Sears account, she had already been sued by another debt buyer on a Sears account. This other debt buyer had also obtained a default judgment against her and seized money from her bank account and filed a satisfaction of judgment. (Ms. Veerabadren subsequently vacated this default judgment and recovered her money from this other debt buyer.)

175. Because Ms. Veerabadren remembered having had only one Sears account, she did not understand how she could have two judgments against her for the same alleged debt. She therefore informed Defendant Mel Harris LLC that another debt buyer had already sued her and seized money from her bank account for the same Sears debt.

176. Defendant Mel Harris LLC told Ms. Veerabadren to send them proof. She therefore obtained a copy of a satisfaction of judgment filed by attorneys for the other debt buyer in the other lawsuit, and faxed a copy to Defendant Mel Harris LLC.

177. Ms. Veerabadren then called Defendant Mel Harris LLC to confirm that they had received her fax. She was told that their judgment might be for a different Sears account, though Ms. Veerabadren remembered having had only one Sears account. Defendant Mel Harris LLC told her to provide the Sears account number sued on in the other lawsuit, and she did. Defendant Mel Harris LLC told her that they would look into the matter.

178. Nevertheless, in or around February 2008, Ms. Veerabadren discovered that her bank account had been restrained by Defendant Mel Harris LLC. Ms. Veerabadren was also charged a $125 legal processing fee by her bank because of the restraint.

179. Ms. Veerabadren called Defendant Mel Harris LLC again to tell them that she did not owe the money that they claimed, but they said that she did owe the money.

180. Defendant Mel Harris LLC then levied upon her bank account, seizing all of its contents.

181. On December 12, 2008, Ms. Veerabadren filed a motion seeking to vacate the default judgment, recover her levied funds, and dismiss the case due to improper service. On December 23, 2008, Ms. Veerabadren and Defendant Mel Harris LLC entered into a stipulation

vacating the default judgment and returning the levied funds to Ms. Veerabadren, though not reimbursing her for her bank's $125 legal processing fee. On December 16, 2009, Ms. Veerabadren and Defendant Mel Harris LLC entered into a stipulation discontinuing the lawsuit.

182. Because the discontinuance was "without prejudice," however, Ms. Veerabadren is at risk of being sued and subjected to improper service for a second time.

183. Ms. Veerabadren has incurred economic harm because of Defendants' actions. For example, Ms. Veerabadren was charged a $125 legal processing fee because of Defendants' restraint upon her bank account; lost the use of her levied funds for nearly one year; had to spend money on transportation to and from the courthouse, as well as to and from her lawyer's office; and had to miss numerous days of work to go to court and to her lawyer's office.

4. *Fatima Graham*

184. Plaintiff Fatima Graham is 30 years old and lives in Manhattan with her infant son. At the time of the events recounted here, Ms. Graham was pregnant and receiving Unemployment Insurance Benefits as her only income. Ms. Graham has since exhausted her unemployment benefits and now subsists entirely on Public Assistance and Food Stamps.

185. On or about July 30, 2008, Defendant Mel Harris LLC commenced a lawsuit against Ms. Graham in New York County Civil Court. Defendant LR Credit 18 was the plaintiff in the suit.

186. The suit alleged that Ms. Graham owed money to LR Credit 18, which claimed that it was the assignee and purchaser of a debt originally owed to an entity identified as "Providian Bank."

187. Ms. Graham believes that it is possible she owes this debt, but she is not

sure, as she does not recognize the amount and the debt is quite old.

188. Samserv claimed that its employees and/or agents served the summons and complaint upon Ms. Graham.

189. Ms. Graham was never properly served with a summons and complaint, either personally, by substitute service, or by nail and mail service.

190. Ms. Graham did receive a copy of the summons and complaint in the mail. On information and belief, this mailing was made by Defendant Mel Harris LLC and not a process server. Although Ms. Graham received the summons and complaint, she did not understand how to respond to it.

191. On or about August 20, 2008, Samserv prepared an affidavit attesting that Ms. Graham had been served with process in accordance with New York law. The affidavit was purportedly signed by Benjamin Lamb and notarized by William Mlotok.

192. The affidavit of service contains false statements. Specifically:

A. The process server swore that he left the papers with a "Ms. Courtney" at Ms. Sykes's residence, but no such person resides with Ms. Graham and her family.

B. The process server swore that he spoke to "Ms. Courtney" and confirmed that Ms. Graham was not in the military, but Ms. Graham does not know "Ms. Courtney," so this person would be unable to confirm her military status.

C. The process server swore that he went to Ms. Graham's apartment on August 7, 2008, at 3:13 pm, but Ms. Graham would have been home at that time, and no process server came to her door. At the time, Ms. Graham was unemployed, pregnant and feeling extremely ill, so she was nearly always home.

D. The process server swore that he mailed a copy of the summons and complaint to Ms. Graham on August 18, 2008, but she never received a copy of the summons and complaint by mail from a process server.

193. On or about August 21, 2008, Defendants caused the fraudulent affidavit of service described above to be filed with the court.

194. In or about September or October 2008, Defendants sought a default judgment against Ms. Graham.

195. As part of its application for a default judgment, Defendant Kerry Lutz "affirm[ed] under the penalties of perjury that service of the summons and complaint has been made."

196. Defendant Lutz also affirmed that he sent a copy of the summons and complaint to Ms. Graham via U.S. mail on August 29, 2008.

197. As part of its application for a default judgment, Defendants submitted a nonmilitary affidavit signed by Lillian Mathew stating her belief that Ms. Graham was not in the military. Ms. Mathew obtained the information necessary to complete this affidavit by accessing, over the internet, the Department of Defense Manpower Data Center. This transaction took place on September 25, 2008, at 17:45:31.

198. As part of its application for a default judgment, Defendants submitted an affidavit of merit which was purportedly signed by Defendant Fabacher and notarized by someone named Chantella Ulmer.

199. In the Affidavit, Defendant Fabacher claims that he is "fully and personally familiar with, and have [sic] personal knowledge of, the facts and proceedings

relating to the within action." On information and belief, this claim is false.

200. In the Affidavit, Defendant Fabacher claims that he maintains "the daily records and accounts in the regular course of business, including records maintained by and obtained from plaintiff's assignor."

201. This claim is misleading, as it suggests that Defendant Fabacher and the other Defendants are in possession of documentation obtained from Providian Bank and that Defendants have evidence that Ms. Graham owes this debt. Upon information and belief, Defendants have no such evidence and have no information about this debt other than the "media," which is inadmissible in court.

202. On October 7, 2008, the court entered a default judgment against Ms. Graham. In doing so, the court relied upon the fraudulent affidavit of service and affidavit of merit submitted to the court by Defendants.

203. In February 2009, Ms. Graham learned about the judgment when her bank account was frozen. Ms. Graham's bank charged her $125 for restraining her account, and Ms. Graham's receipt of her unemployment benefits was delayed.

204. On February 19, 2009, Defendant Mel Harris LLC sent Ms. Graham a letter via U.S. mail advising her of her frozen bank account and inviting her to contact it to resolve her debt.

205. When Ms. Graham's bank account was frozen, she was due to give birth in one week, she had no food in her apartment, and she also needed to pay rent. Ms. Graham had no access to her funds and no family members or friends to help her. In order to meet her basic living expenses, Ms. Graham was forced to borrow money from a private individual, which she

had to repay the next week at 4% interest.

206. When her bank account was frozen, Ms. Graham felt very depressed, helpless, and desperate. Ms. Graham worried about her frozen bank account constantly, had tremendous anxiety, and difficulty sleeping and caring for her newborn baby.

207. Because Ms. Graham lost $125 in bank fees, was delayed in receiving her unemployment checks, and had to repay her loan with interest, she fell behind in her rent. Ms. Graham was never able to catch up. Ultimately, her landlord sued her for nonpayment of rent, and she had to get a grant from the New York City Human Resources Administration to pay off her arrears.

208. Ms. Graham's account remained frozen for the next ten months. During this time, Ms. Graham has had no access to a bank account. She has to pay for everything with money orders, which is expensive.

209. In December 2009, Ms. Graham received a letter via U.S. mail from a New York City marshal threatening to take her personal property. Defendant Mel Harris LLC caused the marshal to mail this letter to Ms. Graham.

210. In December 2009, Ms. Graham obtained counsel and filed a motion seeking to vacate the default judgment and dismiss the case due to improper service. Defendant Mel Harris LLC stipulated to vacate the default judgment on December 8, 2009, and to discontinue the case on December 15, 2009.

211. However, because the dismissal was "without prejudice," Ms. Graham is at risk of being sued and subjected to improper service for a second time.

F. *Class Action Allegations*

212. Plaintiffs bring this case as a class action under three distinct subdivisions of Fed. R. Civ. P. 23(b).

213. First, Plaintiffs seek certification of a Rule 23(b)(1)(A) and/or 23(b)(2) Class consisting 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 been or will be sought.

214. The prosecution of separate actions by individual members of the proposed (b)(1)(A) and (b)(2) class would create the risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for defendants.

215. Defendants have acted, or failed to act, on grounds generally applicable to the Rule (b)(1)(A) and (b)(2) Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

216. On information and belief, the Rule (b)(1)(A) and (b)(2) class includes thousands of members. They are so numerous that joinder of all Class members is impracticable.

217. Second, plaintiffs seek certification of a Rule 23(b)(3) class consisting 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 entered against them.

218. All of the members of the Rule (b)(3) class were injured as a result of defendants' conduct.

219. On information and belief, the Rule (b)(3) class includes tens of thousands

of individuals. They are so numerous that joinder of all Class members is impracticable. There are numerous questions of law and fact common to the class. Chief among them are whether Defendants' actions, as described above, violate the Fair Debt Collection Practices Act, the Racketeer Influenced and Corrupt Organizations Act, and the New York Consumer Protection Act. These common issues predominate over any individual issues.

220. Defendants' conduct towards Plaintiffs and all absent members of the proposed classes has resulted in fraudulently obtained judgments of default being entered, which has, in turn, caused serious harm. The claims and practices alleged in this complaint are common to all members of the class.

221. The violations suffered by the individual plaintiffs are typical of those suffered by the class. The entire class will benefit from the remedial and monetary relief sought in this action.

222. The individual plaintiffs have no conflict of interest with any putative absent class members, and will fairly and adequately protect the interests of the class. Counsel competent and experienced in federal class action and unfair debt collection practice litigation have been retained to represent the class. The Neighborhood Economic Development Advocacy Project (NEDAP) works to promote community economic justice and to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty. Through its Consumer Law Project, NEDAP provides direct legal services to thousands of low income New Yorkers through a legal hotline and clinic, builds the capacity of legal services and community-based organizations to address consumer financial justice issues, and advocates for systemic reform. MFY Legal Services, Inc. ("MFY") provides advice and representation to over 10,000

New Yorkers each year, working in concert with neighborhood social service providers and community advocates, and initiates affirmative litigation that impacts many thousands of people. Through its Consumer Rights Project, MFY provides advice and representation to consumers who are harassed by debt collectors, sued in New York courts, and affected in various ways by consumer issues. Emery Celli Brinckerhoff & Abady LLP is a law firm with offices in New York City with extensive experience in class action lawsuits and civil right litigation that has served or is currently serving as class counsel in: *McBean v. City of New York*, 260 F.R.D. 120 (S.D.N.Y. 2009) (certifying Rule 23(b)(3) class of persons subjected to unlawful misdemeanor pre-trial strip search policy); *Casale v Kelly*, 257 F.R.D. 396 (S.D.N.Y. 2009) (certifying Rule 23(b)(2) and (b)(3) classes of persons arrested for subsections of loitering statute declared unconstitutional); *Coultrip v. Pfizer,* No. 06 Civ. 9952 (AKH) (counsel for thousands of sales representatives in nationwide collective action under the Fair Labor Standards Act); *McBean v. City of New York*, No. 02 Civ. 5426 (GEL), 2007 WL 2947448 (S.D.N.Y. Oct. 05, 2007) (certifying Rule 23(b)(2) class of persons subjected to unlawful misdemeanor pre-trial strip search policy); *Brown v. Kelly*, 244 F.R.D. 222 (S.D.N.Y. 2007) (certifying Rule 23(b)(2) bilateral plaintiff and defendant classes and Rule 23(b)(3) plaintiff class of persons arrested for loitering for the purpose of begging); *In re Nassau County Strip Search Cases*, 461 F.3d 219 (2d Cir. 2006) (reversing and certifying Rule 23(b)(3) class of persons subjected to unlawful misdemeanor pretrial strip search policy); *D.D. v. New York City Dep't of Educ.*, No. 03-CV-2489 (DGT), 2004 WL 633222 (E.D.N.Y., Mar. 30, 2004) (certifying Rule 23(b)(2) class of New York City preschool children seeking to enforce the Individuals with Disabilities Education Act); *Ingles v. Toro,* No. 01 Civ. 8279 (DC), 2003 WL 402565 (S.D.N.Y. Feb. 20, 2003) (certifying

Rule 23(b)(1) and (2) class).

223. This action is superior to any other method for the fair and efficient adjudication of this legal dispute, as joinder of all members of the class is impracticable, and the damages suffered, although substantial, are small in relation to the extraordinary expense and burden of individual litigation and therefore it is highly unlikely that individual actions will be pursued.

224. Managing this case as a class should not present any particular difficulty.

FIRST CAUSE OF ACTION
(FDCPA, 15 U.S.C. § 1692)

225. Plaintiffs hereby restate, reallege, and incorporate by reference all foregoing paragraphs.

226. Congress enacted the Fair Debt Collection Practices Act to stop "the use of abusive, deceptive and unfair debt collection practices by many debt collectors." 15 U.S.C. § 1692(a).

227. A debt collector may not "use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. Such a prohibition includes the false representation of "the character, amount, or legal status of any debt." 15 U.S.C. § 1692e(2)(A). Such a prohibition also includes the "use of any false representation or deceptive means to collect or attempt to collect any debt." 15 U.S.C. § 1692e(10).

228. A debt collector may not "use unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f.

229. Nor may a debt collector "engage in any conduct the natural consequence

of which is to harass, oppress, or abuse any person in connection with the collection of a debt." 15 U.S.C. § 1692d.

230. A process server is exempted from the definition of a debt collector only insofar as the process server is in fact "serving or attempting to serve legal process." 15 U.S.C. § 1692a(6)(D).

231. Defendants violated the FDCPA, 15 U.S.C. §§ 1692d, 1692e, 1692e(2)(A), 1692e(10) and 1692f by making false and misleading representations, and engaging in unfair and abusive practices. Defendants' violations include, but are not limited to:

A. Producing and filing fraudulent affidavits of service that falsely claim that Plaintiffs and class members were served with a summons and complaint when in fact they were not;

B. Producing and filing false attorney affirmations stating that service of the summons and complaint has been made, when it fact it was not;

C. Producing and filing fraudulent affidavits of merit that falsely claim that Defendants have personal knowledge of the facts necessary to obtain a default judgment, when in fact they do not;

D. Misrepresenting that Defendants are in possession of or could obtain documentation evidencing that Plaintiffs and class members owe a debt, when in fact they do not possess and cannot obtain such documentation;

E. Using fraudulent, deceptive, and misleading affidavits and affirmations to obtain default judgments against Plaintiffs and class members under false pretences;

F. Using fraudulently obtained default judgments to extract money from Plaintiffs

and class members.

232. As a direct and proximate result of Defendants' violations of the FDCPA, Plaintiffs have sustained actual damages in an amount to be proved at trial and are also entitled to statutory damages, costs and attorneys' fees.

SECOND CAUSE OF ACTION
(Civil RICO, 28 U.S.C. § 1962(c) & (d))

233. Plaintiffs hereby restate, reallege, and incorporate by reference all foregoing paragraphs.

234. Plaintiffs are natural persons, and as such are "persons" within the meaning of 18 U.S.C. § 1961(3).

235. Defendants are natural persons and corporate entities, and as such are "persons" within the meaning of 18 U.S.C. § 1961(3).

The Enterprise

236. On information and belief, the Mel Harris Defendants, the Leucadia Defendants and the Samserv Defendants comprise three distinct groups of persons that together form an enterprise within the meaning of 18 U.S.C. § 1961(4). Each and every defendant is employed by or associated with the enterprise.

237. On information and belief, each group of defendants, the Mel Harris Defendants, the Leucadia Defendants and the Samserv Defendants, also qualify as separate and distinct enterprises within the meaning of 18 U.S.C. § 1961(4). Each and every Mel Harris Defendant is employed by or associated with the Mel Harris enterprise; each Leucadia defendant is employed by or associated with the Leucadia enterprise; and each Samserv defendant is

employed by or associated with the Samserv enterprise.

238. On information and belief, the individuals and entities that constitute the Mel Harris Defendants, the Leucadia Defendants and the Samserv Defendants taken together are an association-in-fact within the meaning of 18 U.S.C. § 1961(4).

239. The purpose of the enterprise and/or enterprises (collectively "Enterprise") is to secure default judgments through fraudulent means and to use those judgments to extract money from Plaintiffs and putative class members. This is accomplished by the Leucadia Defendants buying debts for collection; the Mel Harris Defendants commencing actions in the Civil Court on behalf of the Leucadia Defendants; the Mel Harris and Leucadia Defendants obtaining default judgments against Plaintiffs and putative class members through fraudulent means; and the Samserv Defendants providing fraudulent affidavits of service in furtherance of the scheme. The relationships between the three defendant groups are longstanding and ongoing.

240. The Enterprise has for many, but no fewer than four, years been engaged in, and continues to be engaged in, activities that affect interstate commerce. Defendants' unlawful Enterprise in violation of RICO has been and remains longstanding, continuous and open ended.

Pattern of Racketeering Activity – Mail and Wire Fraud

241. Defendants, individually and collectively, as an Enterprise, have engaged, directly or indirectly, a pattern of racketeering activity, as described below, in violation of 18 U.S.C. § 1962(c) & (d).

242. Defendants, acting individually and as part of the Enterprise, have devised a scheme to defraud and to obtain money or property by means of false or fraudulent pretenses

and representations. The scheme includes but is not limited to:

A. Producing and filing fraudulent affidavits of service that falsely claim that Plaintiffs and class members were served with a summons and complaint when in fact they were not;

B. Producing and filing false attorney affirmations stating that service of the summons and complaint has been made, when it fact it was not;

C. Producing and filing fraudulent affidavits of merit that falsely claim that Defendants have personal knowledge of the facts necessary to obtain a default judgment, when in fact they do not;

D. Misrepresenting that Defendants are in possession of or could obtain documentation evidencing that Plaintiffs and class members owe a debt, when in fact they do not possess and cannot obtain such documentation;

E. Using fraudulent, deceptive, and misleading affidavits and affirmations to obtain default judgments against Plaintiffs and class members under false pretences;

F. Using fraudulently obtained default judgments to extract money from Plaintiffs and class members.

243. Defendants, acting individually and as part of the Enterprise, have made fraudulent misrepresentations on specific occasions as follows:

A. On May 25, 2006, June 12, 2007, August 1, 2008, and August 21, 2008 Defendants filed fraudulent affidavits of service with the Civil Court falsely stating that service had been made, when it was not.

B. In July 2006, July 2007, and October 2008, Defendants filed false attorney

affirmations with the Civil Court stating that service had been made, when it was not.

C. In July 2006, July 2007, and October 2008, Defendants filed fraudulent affidavits of merit with the Civil Court falsely claiming that Defendants have personal knowledge of the facts necessary to secure a default judgment, when they do not.

244. The fraudulent misrepresentations listed above involving the individual named plaintiffs are described in more detail in paragraphs 110 to 211 of this Amended Complaint.

245. Defendants, acting individually and as part of the Enterprise, have used the mails and wires and have caused the mails and wires to be used, or reasonably knew the mails and wires would be used, in furtherance of their fraudulent scheme. Specifically:

A. In a sworn affidavit, Defendant Mosquera stated that he sent a summons and complaint to Ms. Veerabadren via U.S. mail on May 18, 2006.

B. In a sworn affirmation, Defendant Lutz stated that he sent a summons and complaint to Ms. Colon via U.S. mail on June 7, 2006.

C. On July 6, 2006, at 9:31 a.m., Lillian Mathews, an employee of Defendant Mel Harris LLC, used the interstate wires to access the Department of Defense Manpower Data Center in order to obtain information about Ms. Veerabadren's military status.

D. In a sworn affidavit, Defendant Mosquera stated that he sent a summons and complaint to Ms. Colon via U.S. mail on June 11, 2007.

E. In a sworn affirmation, Defendant Lutz stated that he sent a summons and

complaint to Ms. Colon via U.S. mail on June 20, 2007.

F. On July 19, 2007, at 4:13 pm., Lillian Mathews, an employee of Defendant Mel Harris LLC, used the interstate wires to access the Department of Defense Manpower Data Center in order to obtain information about Ms. Colon's military status.

G. In February 2008, Defendant Mel Harris LLC used the interstate wires to send an information subpoena with restraining notice to Ms. Veerabadren's bank, which resulted in the freezing of her bank account.

H. In a sworn affidavit, Defendant Lamb stated that he sent a summons and complaint to Ms. Sykes via U.S. mail on July 24, 2008.

I. In a sworn affirmation, Defendant Lutz stated that he sent a summons and complaint to Ms. Sykes via U.S. mail on August 7, 2008.

J. In a sworn affidavit, Defendant Lamb stated that he sent a summons and complaint to Ms. Graham via U.S. mail on August 18, 2008.

K. In a sworn affirmation, Defendant Lutz stated that he sent a summons and complaint to Ms. Graham via U.S. mail on August 29, 2008.

L. On September 11, 2008, at 12:46 pm., Lillian Mathews, an employee of Defendant Mel Harris LLC, used the interstate wires to access the Department of Defense Manpower Data Center in order to obtain information about Ms. Sykes' military status.

M. On September 25, 2008, at 17:45 pm., Lillian Mathews, an employee of Defendant Mel Harris LLC, used the interstate wires to access the Department of

Defense Manpower Data Center in order to obtain information about Ms. Graham's military status.

N. In November 2008, Defendant Mel Harris LLC used the interstate wires to send an information subpoena with restraining notice to Ms. Colon's bank, which resulted in the freezing of her bank account.

O. On or about February 2, 2009, Defendant Mel Harris LLC used the interstate wires to send an information subpoena with restraining notice to Ms. Graham's bank, which resulted in the freezing of her bank account.

P. Defendant Mel Harris LLC sent a letter to Ms. Graham via U.S. mail on February 19, 2009, advising her that her bank account was frozen because she owed a debt.

Q. At the direction of Defendant Mel Harris LLC, a New York City Marshal sent a notice of execution to Ms. Sykes via U.S. mail, which she received July 2, 2009.

R. At the direction of Defendant Mel Harris LLC, a New York City Marshal sent a notice of execution to Ms. Graham via U.S. mail, which she received in December 2009.

S. Defendants have used the mails and wires on tens, if not hundreds, of thousands of other occasions that Plaintiffs cannot identify at this time but are known to Defendants.

246. Defendants have used the mails and wires in connection with every default judgment that they have fraudulently obtained, and each use of the mails and wires has furthered the fraudulent scheme and enabled Defendants to take money and property from Plaintiffs and putative class members by means of false pretences and representations.

247. On information and belief, each and every defendant has specific knowledge that the mails and wires are being utilized in furtherance of the overall purpose of executing the scheme to defraud, and/or it was reasonably foreseeable that the mails and wires would be used because the CPLR and other governing statutes make use of the mails and wires mandatory. Indeed, no default judgment can be obtained without approximately half a dozen uses of the mail and wires, and frequently more.

248. Each of the tens, if not hundreds, of thousands of uses of the mails and wires in connection with Defendants' schemes to defraud, spanning a period of no fewer than four years, constitutes a separate instance of mail and/or wire fraud within the meaning of 18 U.S.C. § 1341 and 1343, and thus is also a predicate act, which taken together, constitute "a pattern of racketeering activity" within the meaning of 18 U.S.C. §§ 1961 and 1962.

249. In connection with Defendants' schemes, the acts of racketeering activity have occurred after the effective date of the RICO statute, 18 U.S.C. § 1961 *et seq.*, and on countless occasions over a substantial time period within ten years of each other. The acts of racketeering are an ongoing part of Defendants' regular way of doing business. The predicate acts have been and will be repeated over and over again.

Relationship of Pattern of Racketeering Activity to Enterprise

250. As described, the goal of Defendants' Enterprise is to obtain default judgments through fraudulent means and to use those judgments to extract money and property from Plaintiffs and putative class members.

251. The pattern of racketeering activity described above is integral to Defendants' scheme. Without engaging in mail and wire fraud, Defendants would be unable to

obtain the default judgments they seek.

252. Each Defendant, individually and as a member of the Enterprise, has conducted or participated, directly or indirectly, in the conduct of the Enterprise's affairs through the pattern of racketeering activity described above. Accordingly, each defendant has violated 18 U.S.C. § 1962(c).

253. Moreover, each Defendant, has knowingly agreed and conspired to violate the provisions of 18 U.S.C. § 1962(c), including the numerous predicate acts of mail and wire fraud described above, and has thus violated 18 U.S.C. § 1962(d).

254. As a direct and proximate result of the RICO violations described in this Complaint, Plaintiffs and putative class members have suffered substantial injuries. Plaintiffs and putative class members have been deprived of due process and have had money judgments entered against them on default which have then been used to extract money from them by restraining and levying on their bank accounts, causing them to incur bank fees and miss work days, garnishing their wages, damaging their credit ratings, and/or leveraging these and other means to secure agreements to pay more money to Defendants, thus constituting an injury to Plaintiffs' property within the meaning of 18 U.S.C. § 1964, by the actions of Defendants and their co-conspirators in violation of 18 U.S.C. § 1962(c) & (d).

255. Defendants' misrepresentations to the courts secured the default judgments that caused concrete injury to Plaintiffs' property. As a result, Plaintiffs have suffered damage to their property within the meaning of 18 U.S.C. § 1964, by the actions of defendants and their co-conspirators in violation of 18 U.S.C. § 1962(c) & (d).

256. Defendants' conduct has involved and continues to pose a threat of long

term criminality since it is believed to have commenced as long as a decade ago and has continued to the present. The pattern of racketeering activity has been directed towards hundreds of thousands of persons, including Plaintiffs, and the pattern has spanned many years.

257. For the violations of 18 U.S.C. § 1962 described in this Complaint, Plaintiffs are entitled to recover compensatory and treble damages in an amount to be determined at trial, and to a prospective order directing Defendants to disgorge their ill-gotten gains in order to deter them from engaging in similar conduct in the future.

THIRD CAUSE OF ACTION
(GBL § 349)

258. Plaintiffs hereby restate, reallege, and incorporate by reference all foregoing paragraphs.

259. 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).

260. 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." N.Y. Gen. Bus. Law § 349(h).

261. As enumerated above, Defendants violated § 349 of the New York General Business Law by using deceptive acts and practices in the conduct of their businesses.

262. Defendants' conduct has a broad impact on consumers at large.

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

264. Defendants' wrongful and deceptive acts have caused injury and damages to Plaintiffs and class members and unless enjoined, will cause further irreparable injury.

265. Defendants' violations include, but are not limited to:

A. Producing and filing fraudulent affidavits of service that falsely claim that Plaintiffs and class members were served with a summons and complaint when in fact they were not;

B. Producing and filing false attorney affirmations stating that service of the summons and complaint has been made, when it fact it was not;

C. Producing and filing fraudulent affidavits of merit that falsely claim that Defendants have personal knowledge of the facts necessary to obtain a default judgment, when in fact they do not;

D. Misrepresenting that Defendants are in possession of or could obtain documentation evidencing that Plaintiffs and class members owe a debt, when in fact they do not possess and cannot obtain such documentation;

E. Using fraudulent, deceptive, and misleading affidavits and affirmations to obtain default judgments against Plaintiffs and class members under false pretences;

F. Using fraudulently obtained default judgments to extract money from Plaintiffs and class members.

266. As a direct and proximate result of these violations of § 349 of the General Business Law, Plaintiffs and class members have suffered compensable harm and are entitled to preliminary and permanent injunctive relief, and to recover actual and treble damages, costs and attorney's fees.

WHEREFORE, Plaintiffs and members of the class request the following relief jointly and severally as against all defendants:

1. An order certifying this case as a class action under Fed. R. Civ. P. 23;

2. A judgment declaring that Defendants have committed the violations of law alleged in this action;

3. An order enjoining and directing Defendants to comply with the CPLR in their debt collection activities, including without limitation:

   A. Directing Defendants to cease engaging in debt collection practices that violate the FDCPA, RICO, and NY GBL § 349;

   B. Directing Defendants to locate class members and notify them that a default judgment has been entered against them and that they have the right to file a motion with the court to re-open their case, and to provide each class member with a copy of the affidavit of service filed in their action;

   C. Directing that Defendants serve process in compliance with the law in any and all future actions;

   D. Directing Defendants to produce and file affidavits of merit in future actions that truthfully and accurately reflect their personal knowledge of the facts, or lack thereof;

4. Actual and/or compensatory damages against all Defendants in an amount to be proven at trial;

5. Treble damages pursuant to RICO;

6. Statutory damages pursuant to the FDCPA;

7. An order awarding disbursements, costs, and attorneys' fees pursuant to the FDCPA, RICO, and NY GBL § 349; and

8. Such other and further relief that may be just and proper.

Dated: December 28, 2009
New York, New York

NEIGHBORHOOD ECONOMIC
DEVELOPMENT ADVOCACY PROJECT
(NEDAP)

By: _____
Claudia Wilner (CW 1995)

176 Grand Street, Suite 300
New York, NY 10013
212-680-5100

MFY LEGAL SERVICES, INC.

By: _____
Carolyn E. Coffey (CC 6741)
Andrew Goldberg (AG 1530)
Anamaria Segura (AS 4847)

Of Counsel to Christopher D. Lamb, Esq.
299 Broadway, 4th Floor
New York, New York 10007
212-417-3701

EMERY CELLI BRINCKERHOFF
& ABADY LLP

By: _____
Matthew D. Brinckerhoff (3552)

75 Rockefeller Plaza, 20th Floor
New York, New York 10019
(212) 763-5000

Attorneys for Plaintiffs

EXHIBIT B

The New York Times

Suit Claims Fraud by New York Debt Collectors

Ray Rivera
December 30, 2009

The first notice that a debt judgment had been entered against her came in July, said Monique Sykes. Big red letters were splashed across the top: “Marshal’s Notice of Execution.”

Chester Higgins Jr./The New York Times

Facing a court judgment, Monique Sykes said a process server falsely claimed that he had notified her of a court action against her.

“I was in a panic,” recalled Ms. Sykes, 29, of the Bronx. “For like 5 or 10 minutes all my eyes could focus on were those words, ‘Marshal’s Notice,’ and ‘lien on property.’ ”

Ms. Sykes is among thousands of New Yorkers who, according to a class-action lawsuit, are victims of a network of debt collectors who used fraudulent documents to surreptitiously win court judgments — all without the debtors’ knowledge.

The lawsuit, filed in Federal District Court in Manhattan this week, takes aim at a decades-old practice known in legal circles as “sewer service.” This is when a debt collector fails to serve a notice of complaint and then files a false affidavit claiming the notice has been properly served. When the debtor doesn’t show up in court, the collector can then apply for, and almost always wins, a default judgment.

The first a victim often learns about the judgment is when a bank account is seized or a lien is threatened. The judgments can also ruin a person’s credit report.

Consumer advocates say the practice has grown in recent years, fueled by the recessionary rise in consumer debt actions and the emergence over the last decade of companies that buy up charged-off debt for pennies on the dollar, then seek to recover the full debt, along with interest, for themselves.

The economic collapse has put new scrutiny on the scheme as more and more people have found themselves in debt-related legal actions. In April, Attorney General Andrew M. Cuomo arrested the owner of a Long Island process-serving company, American Legal Process, for engaging in the practice.

The investigation suggested that on hundreds of occasions, servers claimed to be in several places at once, often over distances impossible to cover in a day. The attorney general's office is seeking to vacate more than 101,000 court judgments statewide obtained by debt collection law firms that used American Legal, and has expanded its inquiry into other firms.

Valerie Hayes, corporate counsel for A.C.A. International, a trade association of credit-collection companies, said they rely on process servers to provide honest service. She said she did not believe that fraudulent filings were widespread. "The problem is with a few disreputable process servers," she said, "and I don't think it's limited to the debt-collection industry."

But a 2008 report by MFY Legal Services, a nonprofit law firm in New York, found that defendants in consumer debt cases showed up in court less than 10 percent of the time, raising questions about whether they were ever properly served and about the prevalence of sewer service in the industry.

The class-action lawsuit filed on Monday goes after an entire debt collection chain, starting with the debt-buying companies, the law firm they hired to collect the debt, and the process-serving firm used to notify debtors. The suit names five debt-buyer firms with variations of the names L-Credit and LR Credit. All are subsidiaries of Leucadia National, a $6 billion publicly traded holding company engaged in various businesses, including timber and manufacturing. The company, which is also named as a defendant, declined comment on the suit.

Mel S. Harris & Associates, the law firm named in the suit, did not return phone calls seeking comment. The process-serving company, Samserv Inc., out of Brooklyn, denied allegations that it filed false affidavits of service.

"Absolutely not, absolutely not," said William Mlotok, Samserv's owner. Mr. Mlotok said he could not comment on the specifics of the lawsuit because he had not seen it.

The lawsuit was filed by MFY, the Neighborhood Economic Development Advocacy Project and the law firm of Emery Celli Brinckerhoff & Abady. It claims it could represent more than 100,000 victims of judgments won through the actions of the companies in New York civil courts since 2006. A central claim of the action is that most debt-buying firms do not get enough information in the volume data they buy to meet the burden of proof to win a debt case. They therefore seek default judgments.

When Ms. Sykes got her marshal's notice, she learned that a judgment had been won against her nine months earlier, but this was the first she had heard of it. A process server claimed in an affidavit that he served notice to her Bronx apartment on July 18, 2008, at 7:15 p.m., giving the summons to a "Ms. Rolanda."

A parent of two young children, Ms. Sykes said that either she or her husband, a union carpenter who was looking for work at the time, would certainly have been home then. Further, she said, she had never heard of Ms. Rolanda, nor had any of her neighbors.

Ms. Sykes did have an old Chase credit card that had a small balance when she was laid off a few years earlier that she had hoped to repay, but nowhere near the $2,500 judgment won against her.

With the help of the advocacy project, she went to court and insisted on a hearing to prove that she had never been served. A lawyer with Mel S. Harris instead offered to settle for $800, then to drop it altogether. She refused, insisting on a hearing. A judge finally dismissed the case, but without prejudice, meaning the company can go after her again.

EXHIBIT C

At a Special Term of the Supreme Court, held in and for the County of Erie at the Erie County Courthouse, in the City of Buffalo, New York, on the 21 day of July 2009.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE
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In the Matter of the petition of HONORABLE ANN PFAU, Chief Administrative Judge of the New York State Unified Court System,

Petitioner,

Index No. I2009-8236

-against-

ORDER TO SHOW CAUSE

FORSTER & GARBUS; SHARINN & LIPSHIE, P.C.; KIRSCHENBAUN & PHILLIPS, P.C.; SOLOMON AND SOLOMON, P.C.; GOLDMAN & WARSHAW, P.C.; ELTMAN ELTMAN & COOPER; ERIC M. BERMAN, P.C.; STEPHEN EINSTEIN & ASSOCIATES, P.C.; FABIANO & ASSOCIATES, P.C.; JONES, JONES, LARKIN & O'CONNELL, LLP; PANTERIS & PANTERIS, LLP; ZWICKER & ASSOCIATES P.C.; RELIN, GOLDSTEIN & CRANE LLP; WOODS OVIATT GILMAN LLP; LESCHACK & GRODENSKY, P.C.; HAYT, HAYT & LANDAU LLP; PRESSLER and PRESSLER, LLP; JAFFE & ASHER LLP; MULLEN & IANNARONE, P.C.; ARNOLD A. ARPINO & ASSOCIATES PC; HOUSLANGER & ASSOCIATES, PLLC; MANN BRACKEN, LLP; SMITH, CARROAD, LEVY & FINKEL; MCNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.; THOMAS LAW OFFICES, PLLC; FLECK, FLECK & FLECK; WOLPOFF & ABRAMSON, LLP; ERIC W. OSTRAGER; COHEN & SLAMOWITZ, LLP ; CULLEN and DYKMAN LLP; WINSTON and WINSTON, P.C.; COOPER ERVING & SAVAGE LLP; ROBERT P. ROTHMAN, PC; GERALD D. DE SANTIS; GREATER NIAGARA HOLDINGS, LLC; RODNEY A. GIOVE; ADVANCED LITIGATION SERVICES, LLC; and JASON J. CAFARELLA;

Respondents.
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Upon reading and filing the annexed verified petition of the Honorable Ann Pfau, Chief Administrative Judge of the New York State Unified Court System, verified on July 9, 2009, and the affirmation of James M. Morrissey, Assistant Attorney General of the New York State Attorney General ("OAG"), affirmed to on July 17, 2009; the affidavits of Aric Andrejko,

JMM
216-NF-OH

Associate Internal Auditor for the Internal Audit Unit of the New York State Unified Court System ("UCS"), sworn to on July 6, 2009; Bradely J. Bartram, Intelligence Analyst with the Investigations Division of the OAG, sworn to on June 30, 2009; George Danyluk, Audit Manager for the Internal Audit Unit of the UCS, sworn to on July 15, 2009; Brian Jasinski, Internal Auditor for the Internal Audit Unit of the UCS, sworn to on July 6 , 2009; Sylvia Mahoney, Senior Court Office Assistant with the Buffalo City Court, sworn to on June 30, 2009; Sandra J. Migja, Investigator with the OAG, sworn to on June 29, 2009; OAG Investigator Kathleen Coppersmith, sworn to on June 24, 2009; OAG Investigator Ralph Dorismond, sworn to on June 24, 2009; OAG Senior Investigator Brian Ford, sworn to on June 24, 2009; OAG Investigator Jeffrey D. Haber, sworn to on June 24, 2009; OAG Investigator Andrea Hughes, sworn to on June 24, 2009; OAG Investigator Cynthia Kane, sworn to on June 23, 2009; OAG Investigator Joseph T. Kelly, sworn to on June 24, 2009; OAG Senior Investigator Judith L. Koerber, sworn to on June 25, 2009; OAG Investigator William L. Lightbody, sworn to on June 24 and July 8, 2009; OAG Investigator Douglas Lindamen, sworn to on June 24, 2009; OAG Investigator Frank Lingeza, sworn to on June 24, 2009; OAG Investigator Gerald J. Matheson, sworn to on June 24, 2009; OAG Investigator Paul Matthews, sworn to on June 26, 2009; Investigator John G. Phillips, sworn to on June 24, 2009; OAG Senior Investigator Peter Schwindeller, sworn to on June 24, 2009; OAG Investigator Chad A. Shelmidine, sworn to on June 25, 2009; OAG Senior Investigator Salvatore J. Ventola, sworn to on June 30, 2009; OAG Investigator Jon K. Wescott, sworn to on June 25, 2009, and the exhibits thereto, and upon the motion of ANDREW M. CUOMO, Attorney General of the State of New York, attorney for the petitioner, it is

ORDERED that the respondents in the above-entitled action show cause before Part 8 of this Court, at a Special Term thereof, to be held at the Erie County Courthouse, 25 Delaware Avenue, Buffalo, New York on the 25 day of August/September, 2009, at ~~9:30~~ 2:00 pm

o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, why an order should not be made pursuant to CPLR § 5015(c) and (d):

1. Ordering respondents to identify those actions and proceedings commenced in the judicial districts of New York State (i) in which they appeared, as a party and/or counsel, and (ii) for which American Legal Process, served the summons and complaint, or the notice of petition or order to show cause and petition, and (iii) for which a default judgment was taken, or for which an application for a default judgment is pending (referred to herein as "identified actions and proceedings");

2. Ordering respondents to notify the parties to the identified actions and proceedings ("interested parties") by first class mail to the last known residence, or actual place of business, using the notice form annexed as Exhibit N to the motion papers, of the pendency of this special proceeding, and of their right to be heard;

3. Requiring that respondents file with the Court a schedule of interested parties to which they sent the notice, including (i) the date each notice was sent, (ii) the name and address to which the notice was sent, (iii) the amount of the default judgment, (iv) the amount paid by the judgment-debtor after the default judgment was entered, if any;

4. Providing interested parties with an opportunity to be heard herein;

5. Vacating and setting aside default judgments taken in the identified actions and proceedings upon such terms as may be just, or denying a pending motion for a default judgment, unless the party seeking to obtain or enforce a default judgment establishes at the hearing, without reference to an American Legal Process affidavit of service, that service was effected properly pursuant to CPLR Article 3;

6. With respect to those default judgments that are vacated and set aside, directing restitution in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal;

7. Enjoining the respondents from seeking to obtain a default judgment against any individual defendant as to whom the respondent used American Legal Process to serve the summons and complaint, or the notice of petition or order to show cause and petition, until such time as the respondents can show evidence of service other than an affidavit of service provided by American Legal Process; and

8. For such other and further relief as the court deems just and proper; and it is further

ORDERED that the petitioner shall file with the Erie County Clerk and the Court an electronic copy of the exhibits, and a paper copy of Exhibits C-P, and shall serve upon the respondents herein an electronic copy of the exhibits; and it is further

ORDERED that the Erie County Clerk shall seal Exhibits A and B, electronic databases containing personally identifiable information of New York State residents, and may not show Exhibits A and B to anyone other than a party, or by Order of the Court, but that such exhibits shall be provided to the respondents; and it is further

ORDERED that Pursuant to C.P.L.R. § 403(b), answering papers, if any, are required to be served at least two days before the return date of this special proceeding. If, however, this order to show cause is served at least twelve days before the return date, answering papers, if any, are required to be served at least seven days before the return date.

SUFFICIENT CAUSE to me appearing therefore,

LET service of one copy of this order and supporting papers on respondents by delivery of the same to their actual places of business by July 31, 2009 be deemed due and sufficient service hereof.

GRANTED

JUL 21 2009

HON. TIMOTHY J. DRURY, J.S.C.

BY CAROL M. WILLIAMS
COURT CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE
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In the Matter of the petition of HONORABLE ANN PFAU, Chief Administrative Judge of the New York State Unified Court System,

Petitioner,

Index No.

-against-

FORSTER & GARBUS; SHARINN & LIPSHIE, P.C.; KIRSCHENBAUN & PHILLIPS, P.C.; SOLOMON AND SOLOMON, P.C.; GOLDMAN & WARSHAW, P.C.; ELTMAN ELTMAN & COOPER; ERIC M. BERMAN, P.C.; STEPHEN EINSTEIN & ASSOCIATES, P.C.; FABIANO & ASSOCIATES, P.C.; JONES, JONES, LARKIN & O'CONNELL, LLP; PANTERIS & PANTERIS, LLP; ZWICKER & ASSOCIATES P.C.; RELIN, GOLDSTEIN & CRANE LLP; WOODS OVIATT GILMAN LLP; LESCHACK & GRODENSKY, P.C.; HAYT, HAYT & LANDAU LLP; PRESSLER and PRESSLER, LLP; JAFFE & ASHER LLP; MULLEN & IANNARONE, P.C.; ARNOLD A. ARPINO & ASSOCIATES PC; HOUSLANGER & ASSOCIATES, PLLC; MANN BRACKEN, LLP; SMITH, CARROAD, LEVY & FINKEL; MCNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.; THOMAS LAW OFFICE, PLLC; FLECK, FLECK & FLECK; WOLPOFF & ABRAMSON, LLP; ERIC W. OSTRAGER; COHEN & SLAMOWITZ, LLP ; CULLEN and DYKMAN LLP; WINSTON and WINSTON, P.C.; COOPER ERVING & SAVAGE LLP; ROBERT P. ROTHMAN, PC; GERALD D. DE SANTIS; GREATER NIAGARA HOLDINGS, LLC; RODNEY A. GIOVE; ADVANCED LITIGATION SERVICES, LLC; and JASON J. CAFARELLA;

VERIFIED PETITION

Respondents.
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Petitioner, the Honorable Ann Pfau, alleges upon information and belief:

JURISDICTION AND PARTIES

1. This is a special proceeding to vacate default judgments in all of the judicial districts of New York State, upon such terms as may be just, and for restitution where the underlying summons and complaint, or notice of petition or order to show cause and petition, were served by ZMOD Process Corp. DBA as American Legal Process ("American

Legal Process"). For purposes of this action, serving a summons and complaint, or a notice of petition or an order to show cause and a petition, is referred to as serving process.

2. Petitioner brings this special proceeding pursuant to N.Y. Civil Practice Law and Rules (CPLR) § 5015(c) and (d).

3. CPLR § 5015(c) provides:

> An administrative judge, upon a showing that default judgments were obtained by fraud, misrepresentation, illegality, unconscionability, lack of due service, violations of law, or other illegalities or where such default judgments were obtained in cases in which those defendants would be uniformly entitled to interpose a defense predicated upon but not limited to the foregoing defenses, and where such default judgments have been obtained in a number deemed sufficient by him to justify such action as set forth herein, and upon appropriate notice to counsel for the respective parties, or to the parties themselves, may bring a proceeding to relieve a party or parties from them upon such terms as may be just. The disposition of any proceeding so instituted shall be determined by a judge other than the administrative judge.

4. CPLR § 5015(d) provides: "Where a judgment or order is set aside or vacated, the court may direct and enforce restitution in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal."

5. Petitioner is the Chief Administrative Judge for the New York State Unified Court System, appointed by the Chief Judge of the Court of Appeals pursuant to Article 6, § 28(a) of the New York State Constitution and Judiciary Law § 210(3) to supervise on behalf of the Chief Judge the administration and operation of the Unified Court System. Article 6, § 28(b) and Judiciary Law § 210(3). Chief Administrative Judge Pfau possesses the authority to do all things necessary and convenient to carry out her functions, powers and duties, and both designates the administrative judges for any and all of the courts of the Unified Court System, and delegates to those administrative judges administrative functions, powers and duties possessed by her which she, in her sole discretion, deems appropriate.

6. Respondents, except as noted below, are law firms and lawyers who

used American Legal Process to serve process, and who obtained default judgments in New York State with respect to actions and proceedings for which American Legal Process served process.

7. Respondent Mann Bracken L.L.C. is the successor by merger to Wolpoff & Abramson L.L.P., and Eskanos & Adler P.C., and is named in its own capacity and as the successor by merger to Wolpoff & Abramson L.L.P., and Eskanos & Adler P.C.

8. Respondent Greater Niagara Holdings, LLC is engaged in the business of debt collection and used American Legal Process to serve process on its behalf, and obtained default judgments in New York State with respect to actions and proceedings for which American Legal Process served process.

9. Respondent Rodney A. Giove represents plaintiffs in debt collection actions and proceedings, including Greater Niagara Holdings, LLC, and used American Legal Process to serve process, and obtained default judgments in New York State with respect to actions and proceedings for which American Legal Process served process.

10. Respondent Advanced Litigation Services, LLC is engaged in the business of debt collection and used American Legal Process to serve process on its behalf, and obtained default judgments in New York State with respect to actions and proceedings for which American Legal Process served process.

11. Respondent Jason J. Cafarella serves or served as corporate counsel to Advanced Litigation Services, LLC and used American Legal Process to serve process, and obtained default judgments in New York State with respect to actions and proceedings for which American Legal Process served process.

12. From 2004 to date, respondents each have used American Legal Process to serve process on at least 100 occasions.

13. Petitioner seeks an order and judgment, *inter alia*, ordering respondents

to identify those actions and proceedings for which they obtained default judgments on behalf of their clients where American Legal Process served process, and vacating those default judgments upon such terms as may be just unless respondents establish at the hearing, without reference to an American Legal Process affidavit of service, that service was effected properly pursuant to CPLR Article 3.

STATUTORY BACKGROUND

14. In New York State, an action is commenced by the filing of a summons and complaint with the court or county clerk. A proceeding is commenced by the filing of a notice of petition or order to show cause and petition. As used herein, the term summons and complaint includes notices of petitions and orders to show cause and petitions. The term action includes proceedings as well.

15. The plaintiff must serve the summons and complaint upon the defendant in the manner prescribed by the New York Civil Practice Law and Rules ("CPLR") Article 3.

16. The plaintiff may serve a natural person by delivery of the summons and complaint within the state to the defendant. CPLR § 308(1). This method is referred to herein as "actual service."

17. The plaintiff may also serve a natural person other than the defendant "by delivery of the summons [and complaint] within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served" and mailing the summons and complaint by first class mail to the person's last known residence or actual place of abode. CPLR § 308(2). This method of service is referred to herein as "substitute service."

18. Where the service cannot be made with due diligence by actual service, or substitute service, the plaintiff may affix the summons and complaint "to the door of either the actual place of business, dwelling place or usual place of abode within the state of the

person to be served" and mail the summons and complaint by first class mail to the person's last known residence or actual place of abode. CPLR § 308(4). This method of service is referred to herein as "nail-and-mail service."

19. While CPLR § 308(4) does not define the term "due diligence," typically courts have required three prior attempts at service made on separate days, at various times during the day, before a plaintiff may resort to nail-and-mail service.

FACTS

20. Since 2004, respondents used American Legal Process to serve process upon New York residents statewide on well over 150,000 occasions. For example, from January 1, 2007 through October 8, 2008 alone, American Legal Process served process on 102,126 occasions of which more than 101,000 were served at the request of respondents.

21. The venues for these actions and proceedings, which almost always involved suits against consumers for an alleged debt, were located in every county and all of the judicial districts located in New York State.

22. Respondents' process server, American Legal Process, prepared affidavits of service in which it, or its servers, detailed how they claimed to effect service of process, and provided the affidavits of service to the appropriate county clerk or court clerk, or to respondents, for filing.

23. In the great majority of actions for which American Legal Process served process, the defendant did not answer, and the respondents sought and obtained a default judgment pursuant to CPLR § 3215 on behalf of their clients.

24. To obtain such default judgments, the respondents filed, or had filed, American Legal Process affidavits of service that the defendant was properly served with process.

25. American Legal Process, or its individual servers, however, repeatedly

and persistently falsified its affidavits of service, and/or improperly and illegally notarized the affidavits of service.

26. Respondents' process server, American Legal Process, and its individual servers, repeatedly and persistently lied on affidavits of service that they had attempted, without success, to serve the defendant in the action on three occasions before resorting to nail-and-mail service.

27. Respondents' process server, American Legal Process, and its individual servers, repeatedly and persistently lied on affidavits of service that they had confirmed that the address to which they affixed the summons and complaint was the actual address of the defendant in the action.

28. Respondents' process server, American Legal Process, and its individual servers, repeatedly and persistently lied on affidavits of service that they had confirmed that the defendant in the action was not in active military service.

29. Respondents' process server, American Legal Process, and its individual servers, repeatedly and persistently lied on affidavits of service that the servers had mailed a copy of the summons and complaint to the defendant in the underlying action within twenty days after they served the summons and complaint by substitute or nail-and-mail service.

30. Respondents' process server, American Legal Process, and its individual servers, when using nail-and-mail service, repeatedly and persistently affixed the summons and complaint to an address that was not the address of the defendant in the action.

31. William Singler, the owner of American Legal Process, on a repeated and persistent basis, notarized the signatures of process servers who were not present at the time that he notarized the signature.

32. Respondents' or respondents' process server, American Legal Process, acting on their behalf, provided the falsified and/or illegally executed affidavits to county clerk or

court clerks.

33. Relying on these falsified and/or illegally executed affidavits of service which claimed that defendants had been properly served, courts in the all of the judicial districts granted thousands of default judgments which otherwise would not have been granted.

HARM CAUSED BY USING FALSIFIED AFFIDAVITS OF SERVICE

34. The harm to civil defendants subjected to default judgments where they have not been properly served , and to the courts that processed the defaults, is near incalculable.

35. Affidavits of service swear to the truthfulness of the information contained therein. Persons who are sued and the courts rely on the presumption that the affidavits are truthful. They all must be able to rely on the truthfulness of the affidavits for the courts to render decisions in those disputes, leaving no question as to the validity and fairness of those decisions. The integrity of the court system depends upon the confidence of the litigants and public that courts provide justice, and there can be no such confidence when there is doubt whether parties received proper notice to appear in court to be heard in the underlying case.

36. When false affidavits of service are relied upon to form the basis of a default judgment, a defendant is deprived of his or her opportunity to appear to answer the summons and complaint, and to prevent a wrongful default judgment. The harm to such defendants is substantial, becoming subject to judgments to which they had no opportunity to be heard and to present any cognizable defense, and suffering the significant collateral consequences of having judgments entered against them. And the courts will be burdened by service litigation as the parties dispute the validity of the service in contesting the legality of default judgment.

CAUSE OF ACTION

37. By reason of the foregoing, respondents have obtained thousands of

default judgments from courts in the judicial districts of New York State on behalf of their clients by fraud, misrepresentation, illegality, unconscionability, lack of due service, violations of law or other illegalities or where such default judgments were obtained in cases in which those defendants or respondents would be uniformly entitled to interpose a defense predicated upon but not limited to the foregoing defenses.

RELIEF REQUESTED

WHEREFORE, petitioner demands an order and judgment against respondents as follows:

A. Ordering respondents to identify those actions and proceedings commenced in the judicial districts of New York State (i) in which they appeared, as a party and/or counsel, and (ii) for which American Legal Process served the summons and complaint, or the notice of petition or order to show cause and petition, and (iii) for which a default judgment was taken, or for which an application for a default judgment is pending (referred to herein as "identified actions and proceedings");

B. Ordering respondents to notify the parties to the identified actions and proceedings ("interested parties") by first class mail to the last known residence, or actual place of business, using the notice form annexed as Exhibit N to petitioner's motion papers, of the pendency of this special proceeding, and of their right to be heard;

C. Requiring that respondents file with the Court a schedule of interested parties to which they sent the notice, including (i) the date each notice was sent, (ii) the name and address to which the notice was sent, (iii) the amount of the default judgment, (iv) the amount paid by the judgment-debtor after the default judgment was entered, if any;

D. Providing interested parties with an opportunity to be heard herein;

E. Vacating and setting aside default judgments taken in the identified actions and proceedings upon such terms as may be just, or denying a pending motion for a

default judgment, unless the party seeking to obtain or enforce a default judgment establishes at the hearing, without reference to an American Legal Process affidavit of service, that service was effected properly pursuant to CPLR Article 3;

F. With respect to those default judgments that are vacated and set aside, directing restitution in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal;

G. Enjoining the respondents from seeking to obtain a default judgment against any individual defendant as to whom the respondent used American Legal Process to serve the summons and complaint, or the notice of petition or order to show cause and petition, until such time as the respondents can show evidence of service other than an affidavit of service provided by American Legal Process; and

H. For such other and further relief as the court deems just and proper; and it is further

Dated: New York, New York
July 9, 2009

ANN PFAU
CHIEF ADMINISTRATIVE JUDGE
NEW YORK STATE UNIFIED COURT SYSTEM

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ANN PFAU, being duly sworn, deposes and says: She is the Chief Administrative Judge of the New York State Unified Court System. She has read the foregoing petition and knows the contents thereof, and the same is true to her own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters she believes them to be true.

ANN PFAU

Sworn to before me this
9th day of July, 2009.

Notary Public

HAYDEE MARRERO
NOTARY PUBLIC, State of New York
No. 01MA5067882
Qualified in Bronx County
Commission Expires 4-1-2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

----------X

In the Matter of the petition of HONORABLE ANN PFAU, Chief Administrative Judge of the New York State Unified Court System,

Petitioner,

-against-

FORSTER & GARBUS, ET AL.,

Respondents.

----------X

Index No. 2009-8236

ATTORNEY AFFIRMATION

JAMES M. MORRISSEY, an attorney admitted to practice law before the courts of New York State, hereby affirms under penalties of perjury that:

1. I am an Assistant Attorney General in the office of Andrew M. Cuomo, Attorney General of the State of New York "(OAG"). I am responsible for the prosecution of this case and am fully familiar with the facts and circumstances thereof. I submit this affirmation in support of petitioners' order to show cause and verified petition. In the course of my duties I have conducted an investigation of the above-captioned matter. Unless otherwise indicated, I make this affirmation upon information and belief, based upon my investigation, a review of documents and other evidence on file with the Department of Law.

2. Petitioner brings this action to vacate default judgments taken statewide – usually against consumers alleged to owe a debt – that were obtained by fraud, misrepresentation, illegality and lack of proper service. The number of default judgments respondent seeks to vacate is likely in excess of 100,000.

3. ZMOD Process Corp., which was incorporated in June 2004, is a domestic corporation with its principal place of business located at 381 Sunrise Highway R5, Lynbrook, New York 11563. ZMOD Process Corp. does business as "American Legal Process" (referred to herein as "American Legal Process"). Respondents herein used American Legal

Process to serve process statewide.

4. On April 15, 2009, the OAG brought a special proceeding against American Legal Process in Erie County Supreme Court as a result of its deceptive, fraudulent and illegal business practices. The special proceeding is pending. William Singler, the owner of American Legal Process, was arrested by the OAG on a felony complaint on that same day effectively closing down American Legal Process.

5. American Legal Process maintained an electronic database using ProcessCase.com on which it kept track of the services it provided. The raw database is annexed hereto on a DVD as Exhibit A.

6. The Internal Audit Unit of the Unified Court System ("Internal Audit Unit) eliminated repetitive records and analyzed the data base with respect to the service of process in cases involving New York State courts from January 1, 2007 through October 8, 2008, about a 17-month period of the 57 months that American Legal Process was actively serving process. Thus, the numbers and statistics presented herein, while very dramatic, represent an analysis of less than one-third of the life of the company. The database analyzed by the Internal Audit Unit is referred to herein as the ProcessCase database, and is annexed hereto on a DVD as Exhibit B.

7. Annexed hereto as Exhibit C are copies of sample records of payments made by American Legal Process to servers. Exhibit C was obtained from American Legal Process.

8. Annexed hereto as Exhibit E are copies of sample worksheets prepared by American Legal Process servers from which American Legal Process prepared affidavits of service. Exhibit E was obtained from American Legal Process.

9. Annexed hereto as Exhibit J are copies of sample affidavits of service

prepared by American Legal Process. Exhibit D was obtained from American Legal Process.

10. Annexed hereto as Exhibit M are copies of selected corporate records with respect to American Legal Process.

11. Annexed hereto as Exhibit O are copies of sworn hand written statements of American Legal Process employees and/or servers Emily Katt, dated April 3, 2009, Mary Hughes, dated April 2, 2009, Megan Montreuil, dated April 2, 2009 and Linda Hand, dated April 2, 2009. The statements were taken by the OAG and are transcribed for the convenience of the Court.

12. Annexed hereto as Exhibit P are selected email messages to or from American Legal Process. Exhibit P was obtained from Google.

13. Respondents are attorneys and law firms, and two debt collectors who used American Legal Process to serve process.

14. American Legal Process served summonses and complaints, or a notice of petition or order to show cause and a petition ("summons and complaint") as follows: (a) a respondent provided American Legal Process with the summons and complaint to be served; (b) American Legal Process mailed the summons and complaint, with a copy of each, to the appropriate county clerk or court clerk with a check for the purchase of the index number; and (c) the clerk assigned and affixed the index number to the original summons and complaint and the copy, filed the original summons and complaint, and returned the copy to respondent. Affidavit of Sylvia Mahoney, Senior Court Office Assistant with the Buffalo City Court, sworn to on June 30, 2009 ("Mahoney Aff."), ¶¶ 2-3. On occasion, American Legal Process may have mailed the summons and complaint, with a copy of each, directly to the process server, with the check, and the process server delivered the pleadings to the clerk and purchased the index number.

15. American Legal Process then sent the summons and complaint out to one of its servers for service. American Legal Process used process servers across New York State, each responsible for certain territories. See Exhibit L-3 for a list of the top twenty servers and the judicial districts in which they operated. These top twenty served 84.83% of the 102,126 documents served by American Legal Process from January 1, 2007 through October 8, 2008. American Legal Process usually paid its servers only $4.00 to $8.00 on a per service basis. See Exhibit C for sample payment records.

16. After serving the summons and complaint, the server provided American Legal Process with a worksheet on which the server detailed how he or she claimed to have effected service. The worksheet requested no information with respect to mailing the summons and complaint where nail-and-mail or substitute service was used. Sample worksheets annexed hereto as Exhibit E.

17. American Legal Process prepared the actual affidavits of service from the worksheets provided to it by the servers. Among other things, the affidavits of service set forth the manner of service, and, where nail-and-mail service was used, (i) the attempted service dates, and (ii) details of a conversation with the defendant's neighbor confirming the defendant's address, and the fact that the defendant was not active in the military service. Even though there was no information on the worksheet with respect to mailing the summons and complaint, the affidavit set forth the date that the process server purportedly mailed the summons and complaint to the defendant. See Exhibit J for sample affidavits of service.

18. American Legal Process provided the affidavits of service to the appropriate county clerk or court clerk. Mahoney Aff., ¶ 4. In some cases, the server filed them directly with the clerks.

19. Where American Legal Process served a summons and complaint by so-

called "nail and mail" service, defendants defaulted 75.8% of the time. The OAG reviewed 235 cases in which respondents used American Legal Process to serve process and obtained default judgments. Affidavit of George Danyluk, Internal Audit Manager of the Unified Court System Internal Audit Unit, sworn to on July 15, 2009 ("Danyluk Aff.") ¶ 6. Almost all of the actions and proceedings were against consumers who were alleged to owe a debt, and the average default judgment was for $5,475.

AMERICAN LEGAL PROCESS FALSIFIED AFFIDAVITS OF SERVICE

American Legal Process' Policy to Attempt Service Only Once

20. American Legal Process' policy and practice, communicated to its servers, was to attempt service once, affix the summons and complaint to the door if no one answered the door, and fabricate two earlier attempts. This policy and practice is shown by the sworn handwritten statements from American Legal Process employees and/or servers annexed hereto as Exhibit O, and the Unified Court System Internal Audit Unit analysis of the ProcessCase database. This policy may have changed after Annette Forte, an American Legal Process server, was arrested in April 2008 for filing false documents.

American Legal Process Servers at Two Places at the Same Time

21. The ProcessCase database shows that, on 3,512 occasions, American Legal Process servers served, or attempted to serve, documents on (i) different defendants (ii) at two different locations (iii) on the same date and (iv) at the same time. Danyluk Aff. ¶ 6. This, of course, is physically impossible. For ease of reference, petitioners refer to the service of process and the attempted service of process as "service attempts" or "attempted service". A table of the top twenty servers, who served 85% of the documents, appears below. The table is derived from the Danyluk Aff. ¶ 7(a)-(t).

Name	Instances at 2 locations or more at same time	Instances at 3 or more locations (included in the previous total)
Raymond Bennett	407	39 times at 3 locations at same time, 3 times at 4 locations at the same time, and once at 5 locations at same time
Dunham Toby Tyler	839	39 times at 3 locations at same time, and once at 4 locations at same time
Gene Gagliardi	450	18 times at 3 locations at same time, and twice at 4 locations at same time
Drefel Grimmett	388	9 times at 3 locations at same time
Bill Matzel	199	15 times at 3 locations at same time
John Hughes	184	4 times at 3 locations at same time
Andrea D'Ambra	168	6 times at 3 locations at same time
Greg Tereshko	165	3 times at 3 locations at same time
Diana Lentz	134	2 times at 3 locations at same time
Herb Katz	125	9 times at 3 locations at same time
Bernard Holder	81	1 time at 3 locations at same time
Adnan Omar	69	1 time at 3 locations at same time
Annette Forte	68	2 times at 3 locations at same time
Issam Omar	51	1 time at 3 locations at same time
Dan Beck	49	
Beth Eubank	42	1 time at 3 locations at same time
Michelle Miller	42	4 times at 3 locations at same time
Harry Marinelli	33	1 time at 3 locations at same time
Michael Pszczola	10	
Courtney Goldstein	8	

American Legal Process Servers at Two Places When Physically Impossible

22. The ProcessCase database shows that American Legal Process servers,

repeatedly and persistently, claimed to be at different locations at different times when it was physically impossible to do so, given the time difference and the physical distance between the locations. Danyluk Aff., ¶ 9.

23. Examples from eleven American Legal Process servers, derived from the Danyluk Aff., ¶¶ 9-29, are given below. These servers served more than 49,300 documents from January 1, 2007 through October 8, 2008. Danyluk Aff., ¶ 30. For purposes of the table the terms "serves" includes attempts at service.

Name	**Service Attempts**	**Times Serving Process**	**Miles Required for Attempts/ Time Required**	**Examples**
Isaam Omar	77 on 6/16/08	6:09 am - 10:19 pm	8,194 6 days, 4 hrs, 34 minutes	Eleven round trips b/t Kings & Cattaraugus Counties (400 miles apart); serves in Olean at 10:17 a.m. and 2 minutes later in Brooklyn
Isaam Omar	69 6/17/08 (the next day)	6:05 am - 8:28 pm	10,771 7 days, 19 hrs, 58 minutes	Thirteen round trips b/t Kings & Chautauqua Counties (400 miles apart); serves in Brooklyn at 8:19 a.m. and 1 minute later in Jamestown
Drefel Grimmett	85 on 9/1/07	6:00 am - 9:29 pm	3,373 3 days, 2 hrs, 14 minutes	Serves in Cohoes at 8:02 p.m. and Wappinger Falls 7 minutes later (94 miles away)
Drefel Grimmett	81 on 9/3/07	6:07 am - 9:39 pm	3,199 3 days, 22 minutes	Serves in Albany at 7:07 a.m. and Ellenville 4 minutes later (84 miles away)
Annette Forte	73 on 11/13/07	6:06 am - 9:33 pm	3,859 3 days, 13 hrs, 8 minutes	Four round trips b/t Wayne & Chautauqua Country (150 miles apart); serves in Newark at 6:56 am and Bemus Point 6 minutes later (171 miles apart)
Annette Forte	94 on 2/12/08	6:01 am - 10:01 pm	2,036 2 days, 1 hr, 3 minutes	Serves in Lindley at 9:05 a.m. and Tonawanda 6 minutes later (146 miles apart)

Name	Service Attempts	Times Serving Process	Miles Required for Attempts/ Time Required	Examples
Gene Gagliardi	88 on 8/15/07	6:02 am - 9:51 pm	3,079 2 days, 21 hrs, 41 minutes	Serves in Richmond County at 4:02 p.m. and Putnam County 4 minutes later (82 miles apart)
Gene Gagliardi	91 on 8/16/07	6:02 am - 9:46 pm	2,640 2 days, 12 hours, 38 minutes	Serves in Orange County at 7:58 am and Richmond County one minute later (84 miles away)
Dan Beck	92 on 3/7/08	6:06 am- 9:24 pm	2,068 2 days, 8 hrs	Serves in Canajoharie at 3:37 pm and Saratoga Springs 2 minutes later (87 miles apart)
Dunham Toby Tyler	86 on 9/24/07	6:28 am - 7:27 pm	1,662 1 day, 18 hrs, 15 minutes	Serves in Baldwinsville at 3:01 pm and Dexter 6 minutes later (77 miles apart)
Raymond Bennett	74 on 4/19/08	6:04 am - 9:10 pm	1,313 1 day, 9 hours, 13 minutes	Serves in Cahoes at 6:14 am and Cairo 3 minutes later (55 miles apart)
Raymond Bennett	69 4/21/08	6:04 am - 9:20 pm	1,368 1 day, 11 hours, 18 minutes	Serves in Averill Park at 8:42 pm and Cairo 1 minute later (54 miles apart)
Bill Matzel	72 9/24/07	8:03 am - 8:56 pm	1,184 1 day, 9 hours, 35 minutes	Serves in Blossvale at 8:38 am and Little Falls 1 minute later (62 miles apart)
Bill Matzel	67 2/21/08	8:01 am - 10:26 pm	1,419 1 day, 15 hours, 47 minutes	Serves in West Winfield at 6:39 pm and Camden 4 minutes later (57 miles apart)
Harry Marinelli	50 9/1/07	6:13 am - 4:41 pm	1,662 1 day, 16 hours, 58 minutes	Serves in Saranac Lake at 7:16 am and Massena 2 minutes later (80 miles apart)
Harry Marinelli	43 4/10/08	6:12 am - 8:51 pm	1,194 1 day, 4 hours, 33 minutes	Serves in Parishville at 7:44 am and Cadyville 4 minutes later (89 miles apart)

Name	Service Attempts	Times Serving Process	Miles Required for Attempts/ Time Required	Examples
Michele Miller	49 5/9/08	7:25 am - 9:10 pm	1,697 1 day, 17 hours, 37 minutes	Serves in Watertown at 8:22 pm and Brusher Falls one minute later (83 miles apart)
Michele Miller	50 5/13/08	7:38 am - 9:00 pm	1,187 1 day, 7 hours, 33 minutes	Serves in Adams at 12:05 pm and Waddington 7 minutes later (94 miles apart)
Diana Lentz	100 9/17/07	6:33 am - 8:15 pm	1,172 1 day, 2 hours, 13 minutes	Serves in Depew at 7:26 am and Rochester 4 minutes later (69 milies apart)
Diana Lentz	100 10/30/07	6:09 am - 10:12 pm	1,848 1 day, 18 hours, 44 minutes	Serves in Rochester at 6:46 am and Niagara Falls 3 minutes later (95 miles apart)

American Legal Process Servers Attempt Service Before Documents Received

24. The ProcessCase database shows that on 13,040 occasions, fifty-five of American Legal Process servers (including all of the top twenty) attempted to serve a document on a defendant before the document was transmitted from respondents to American Legal Process. This, of course, is physically impossible. Danyluk Aff., ¶ 31.

25. This is also shown by the email messages annexed hereto as Exhibit P, and the American Legal Process reports annexed hereto as Exhibit F.

American Legal Process Servers Attempt Service Before Index Number Purchased

26. The American Legal Process ProcessCase database shows that on 516 occasions, twenty-two of its servers attempted to serve a summons and complaint on a defendant before the plaintiff had purchased an index number and filed the summons and complaint with the appropriate clerk. Danyluk Aff., ¶ 32. It is physically impossible to serve a

summons and complaint, with an index number affixed to it, before the index number is purchased from the clerk.

27. This is also shown by the American Legal Process report and memos annexed hereto as Exhibit F.

William Singler Falsely Claimed to Have Notarized Signatures

28. The American Legal Process ProcessCase database shows that, from January 1, 2007 to October 8, 2008, William Singler, the owner of American Legal Process, claims to have notarized the signatures of process servers from across New York State on 73,395 occasions for an average of over 3,300 affidavits per month. Danyluk Aff., ¶ 39.

29. The analysis of the UCS Internal Audit Unit shows that Singler notarized the signatures of servers on dates when, according to American Legal Process ProcessCase database, it was physically impossible for him to do, or the claim is so highly improbable that it should not be credited.

30. The Internal Audit Unit looked at November 26-28, 2007, and examined 4 process servers for whom ProcessCase shows served process and had their signatures notarized by Singler. A summary of the results where both are claimed, created from the Danyluk Aff., ¶¶ 40-51, appears below.

Name	**Activities Shown in Processcase database**
Annette Forte	The ProcessCase database shows that Annette Forte served process for more than 15 hours on November 26, 2007 and made a 14 hour round trip to Lynbrook to have her signature notarized. She served for more than 14 hours on November 27 and made the same round trip. Forte served for just under 16 hours on November 28 and made a third consecutive trip to Lynbrook. It was not physically possible for Forte to do both on any of these three days.

Name	Activities Shown in Processcase database
Beth Eubank	While it was physically possible for Beth Eubank to serve process for 10.5 hours on November 27, 2007, and make the 14.5 hour round trip to Lynbrook to have her signature notarized by Singler, she would have had to work for 25 ½ hours continuously to do so (from 8:00 p.m. on 11/26 until 9:35 on 11/27).
Raymond Bennett	While it was physically possible for Raymond Bennett to serve process and drive to Lynbrook on November 26, 27 and 28, 2007to have his signature notarized, he would have had to work an 18-hour, 19-hour and 15-hour workday respectively to do so.
Bethel Debman	While it was physically possible for Bethel Debman to serve process and drive to Lynbrook on November 27 and 28, 2007to have his signature notarized, he would have had to work and 17-hour and 18-hour workday respectively to do so.

31. The UCS Internal Audit Unit also looked at ProcessCase for days that servers were especially active in serving process, and had their signatures notarized on the same day. A summary of the results, created from the Danyluk Aff., ¶¶ 52-66, appears below.

Name	Date	Activities Shown in ProcessCase Database
Diana Lentz	10/29/07	It was not possible for Lentz to serve process for more than 13 hours, and drive to Lynbrook to have her signature notarized.
Diana Lentz	1/30/07	It was not possible for Lentz to serve process for more than 16 hours, and drive to Lynbrook to have her signature notarized.
Annette Forte	2/11/08	It was not possible for Forte to serve process for just under 16 hours, and drive to Lynbrook to have her signature notarized.
Annette Forte	2/12/08	It was not possible for Forte to serve process for 16 hours, and drive to Lynbrook to have her signature notarized.
Dan Beck	1/3/08	To both serve for just over 15 hours and have his signature notarized 25 times would have required a 21.5-hour work day.

Name	Date	Activities Shown in ProcessCase Database
Dan Beck	1/4/08	To both serve for just over 13 hours and have his signature notarized 24 times would have required a second consecutive 21.5-hour work day.
Bill Matzel	9/24/07	To both serve for just under 13 hours and have his signature notarized 26 times would have required a 23-hour work day.
Bill Matzel	9/25/07	To both serve for just under 13 hours and have his signature notarized would have required a second consecutive 23-hour work day.
Issam Omar	6/23/08	To both serve for just over 15 hours and have his signature notarized 60 times would have required a 19-hour work day.
Issam Omar	6/24/08	To both serve for just over 11 hours and have his signature notarized 36 times would have required a 15.5-hour work day, after his previous 19-hour work day.
Raymond Bennett	2/26/08	To both serve for just over 15 hours and have his signature notarized would have required a 21-hour work day.
Raymond Bennett	2/27/08	To both serve for just over 15 hours and have his signature notarized would have required a second consecutive 21-hour work day.
Raymond Bennett	2/28/08	To both serve for 15 hours and have his signature notarized 76 times would have required a third consecutive 21-hour work day.

32. The evidence that Singler falsely claimed to have notarized his server's signatures also includes the handwritten sworn statements of American Legal Process employees and/or servers Emily Katt, Mary Hughes, Megan Montreuil and Linda Hand, annexed hereto as Exhibit O and an email annexed hereto as Exhibit P, page 2.

American Legal Process Servers Lied about Confirming Addresses and Military Status

33. American Legal Process, or its servers, prepared affidavits of service representing that, when the servers used nail-and-mail service, the server confirmed with a

neighbor of the address to which the process was affixed that: (i) the address was in fact the address of the named defendant, and (ii) the named defendant was not in military service (referred to herein as "confirming conversation"). The affidavits of service set forth the neighbor's address and the date of the confirming conversation. See Exhibit J for sample affidavits of service.

34. The evidence shows that, on a repeated and persistent basis, American Legal Process servers lied about having the confirming conversation, since the address of the neighbor set forth in the affidavit simply does not exist. The evidence includes an analysis of the addresses of neighbors with whom American Legal Process servers claimed to have the confirming conversation, Danyluk Aff., ¶¶ 34-36, an email annexed hereto as Exhibit P, page 1 and Exhibit K.

American Legal Process Servers Affix Summons and Complaint to the Wrong Address

35. The evidence shows that American Legal Process servers, on a repeated and persistent basis, affixed the summons and complaint to an address that was not the address of the defendant named in the underlying action when they used nail-and-mail service. The evidence includes the analysis of the OAG and the UCS, Danyluk Aff., ¶¶ 37-38, email annexed hereto as Exhibit P, pages 6, 8, 10, 11, and Exhibit D.

American Legal Process Affidavits of Service Falsely State That the Server Mailed the Summons and Complaint after Claiming to Effect Service by Nail-and-Mail or Substitute Service

36. American Legal Process affidavits of service falsely state that the individual server mailed the summons and complaint after claiming to effect service by nail-and-mail or substitute service.

37. This is shown by the handwritten sworn statements of American Legal Process servers and/or employees Emily Katt and Mary Hughes annexed hereto as Exhibit M, pages 1, 3, 5 and 7.

CONCLUSION

38. The Court should grant the petition in all respects.

Dated: Buffalo, New York
July 17, 2009

JAMES M. MORRISSEY
Assistant Attorney General

EXHIBIT D

UNIFUND CCR PARTNERS
PURCHASE AND SALE AGREEMENT

February 2005 Bankcard Accounts

This Purchase and Sale Agreement (the "Agreement") is made as of February 28, 2005, between Citibank (South Dakota), N.A. (the "Bank"), a national banking association organized under the laws of the United States, located at 701 East 60th Street North, Sioux Falls, South Dakota 57117 and Unifund CCR Partners ("Buyer"), with its headquarters/principal place of business at 10625 Techwoods Circle, Cincinnati, OH 45242.

WHEREAS, the Bank desires to sell and Buyer desires to purchase certain of the Bank's credit card accounts on the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the mutual promises herein, Buyer and Bank agree as follows:

1. DEFINITIONS

1.1 "Account Document" means, with respect to any account, any application, agreement, billing statement, notice, correspondence or other information in the Bank's possession that relates to an Account. An Account Document may include, without limitation, original documents or copies thereof, whether by photocopy, microfiche, microfilm or other reproduction process. Excluded from the definition of Account Document is any correspondence, report, information, internal analyses, sensitive attorney-client privileged documents, internal memoranda, documents, credit information, regulatory reports, and/or internal assessments of valuation of such Account, or any other documents relating to an Account that may be, but are not necessarily, missing or excluded (whether intentionally or unintentionally).

1.2 "Accounts" means the Bank's Visa and MasterCard accounts and receivables listed on the Asset Schedule (attached hereto as Exhibit 1) the balances of which the Bank has written off for accounting purposes, subject to adjustment of the Cut-Off Date (as defined below) in accordance with Section 2.2.

1.3 "Cardholder" means the person in whose name an Account was established.

1.4 "Closing Date" means February 25, 2005, or such other date mutually agreed to by Buyer and the Bank.

1.5 "Cut-Off Date" means February 21, 2005.

1.6 "Purchase Price" means $29,586,416.15 (5.339% of sale balances totaling $554,156,511.60) subject to Pre-Closing Adjustment pursuant to Section 2.2.

1.7 "Adjustment Amount" means the portion of the Purchase Price allocated to the balance of any Account that is: (a) increased or decreased as described in Section 2.2(a); (b) retained by Bank and not transferred to Buyer pursuant to Section 2.2(b); or (c) repurchased by Bank pursuant to Sections 3.4 or 8.1. The Adjustment Amount shall be equal to the portion of the Purchase Price (prior to adjustment) attributable to the balance of the Account. This amount shall be determined by multiplying the balance by the percentage of the Purchase Price relative to the aggregate balance of Accounts associated with the unadjusted Purchase Price.

2. PURCHASE AND SALE OF ACCOUNTS

2.1 Purchase and Sale. On the basis of, and subject to, the representations, warranties and covenants in this Agreement, the Bank agrees to sell, assign and transfer to Buyer, and Buyer agrees to purchase from the Bank on the Closing Date all right, title and interest of Bank in the Accounts. Buyer has made an independent investigation as it deems necessary as to the nature, validity, collectibility, enforceability and value of the Accounts, and as to all other facts that Buyer deems material to Buyer's purchase. Buyer enters into this Agreement solely on the basis of that investigation and Buyer's own judgment. Buyer has made an independent determination that the Purchase Price represents the Accounts' fair and reasonable value. The sale and assignment are without recourse to the Bank, and without warranty of any kind (including, without limitation, warranties pertaining to validity, collectibility, accuracy or sufficiency of information), except as stated in Article 3 below. Buyer acknowledges and understands that Bank has not provided the date of first delinquency of the Accounts for FCRA reporting purposes, and that it is Buyer's responsibility to obtain that information from credit reporting agencies or other sources. Buyer may request date of first delinquency information from a single consumer reporting agency (CRA) and Buyer and Bank shall each pay one-half (50%) of any reasonable charges assessed by the CRA to provide the date of first delinquency data. However, Bank makes no representations about or warranties as to the accuracy of any information that Buyer receives from a consumer reporting agency in response to Buyer's request for date of first delinquency information. Buyer also understands that the account balances purchased include finance charges assessed up to the date the account was charged off by Bank. Buyer is not acting in reliance on any representation by the Bank, except as set forth in Article 3 below.

2.2 Pre-Closing Adjustment. The Purchase Price amount stated in Section 1.6 shall be adjusted to reflect any changes in the status of the Accounts as of the Cut-Off Date, as follows:

(a) a change in the balance of any Account from the balance shown on the due diligence tape provided to Buyer; and

(b) retention by the Bank of any Account that on the Cut-Off Date (i) to the Bank's knowledge, fail to meet the representations set forth in Section 3.3; or (ii) the Bank determines that there is a pending or threatened suit, arbitration, bankruptcy proceeding or other legal proceeding or investigation relating to an Account or a Cardholder, and naming the Bank or otherwise involving the Bank's interest therein in a manner unacceptable to the Bank, or the

Bank otherwise determines (in its sole discretion) that such matter cannot be resolved and/or that the Bank's interest therein cannot be adequately protected without the Bank owning such Account.

The Purchase Price will be adjusted by the Adjustment Amount associated with any balance or Account described above. The Bank will notify the Buyer of the adjusted Purchase Price prior to the Closing Date.

2.3 Payment. Buyer shall pay the balance of the Purchase Price on or before 12:00 p.m. (noon) Central Time on the Closing Date. Buyer shall withhold from the amount paid hereunder 10% of the Purchase Price ("Withheld Amount") subject to the provisions of Section 3.4(c) below. The Bank will transfer the Accounts to Buyer in accordance with Section 2.4 below.

2.4 Transfer. On the Closing Date, subject to satisfaction or waiver of the conditions precedent set forth in Article 5 of this Agreement, the Bank and Buyer will execute and deliver to each other a Bill of Sale, Assignment and Assumption Agreement substantially in the form of Exhibit 2, and other mutually agreed upon closing documents. The Bank will provide to Buyer, on the Closing Date or at such other time as is mutually agreed to by the Buyer and Bank, a computer printout or magnetic tape listing the Accounts as of the Cut-Off Date that were purchased by the Buyer. On the Closing Date, Bank will transfer all Bank's right, title and interest in the Accounts and Buyer will assume, with respect to each Account, all of Bank's rights, responsibilities, and obligations that arise as a result of Buyer's purchase of the Accounts. If the Bank receives any payments of principal and/or interest by or on behalf of any Cardholder with respect to an Account between the Cut-off Date and the Closing Date, Bank shall promptly forward such amounts to Buyer (without interest thereon) and Buyer shall promptly credit such amounts to the Cardholder's Account. If payments are received by the Bank from a cardholder on or after Closing Date, the Bank shall forward such payments (without interest thereon) to Buyer within 30 days from date of receipt. Bank shall charge Buyer the lesser fee of fifteen percent (15%) of the payment amount, or fifteen dollars ($15.00) to process any Account payment received by Bank more than one (1) year after the Closing Date. Bank may, at its discretion, deduct the processing fee when remitting the payments to Buyer.

2.5 Sales, Use or Transfer Taxes. If any sales, use or transfer tax is assessed or otherwise payable as a result of the transactions contemplated hereby, Buyer and Bank shall assume the obligation to pay such tax that is its responsibility to pay, to the extent such taxes relate to, or accrue on or after the Closing Date.

3. REPRESENTATIONS AND WARRANTIES OF THE BANK

The Bank makes the following representations and warranties:

3.1 Due Organization; Authorization. The Bank is duly organized, existing and in good standing as a national banking association, and the Bank's execution, delivery, and performance of this Agreement are within the Bank's corporate powers and have been duly authorized by all necessary corporate action.

3.2 Servicing. After the Cut-Off Date, the Bank shall not compromise, settle (for less than full value) or otherwise release a Cardholder on any Account without Buyer's consent. The Bank will undertake only those servicing activities necessary to preserve and maintain the integrity and enforceability of the Accounts.

3.3 Representations Concerning Accounts. With respect to each Account, the Bank represents that to the best of its knowledge as of the Cut-Off Date:

(a) the debt represented by such Account has not been satisfied and/or the stated balance on such Account has not been paid;

(b) each Account is a legal, valid and binding obligation of the Cardholder;

(c) no final judgment has been entered by a court of competent jurisdiction with respect to the debt represented by the Account;

(d) the Cardholder has not been released from liability on the Account;

(e) the Account is not involved in an open bankruptcy case and has not been discharged in bankruptcy;

(f) the Cardholder is not deceased;

(g) the Bank has good and marketable title to the Account, is the sole owner thereof and has full right to transfer and sell the Account free and clear of any encumbrance, equity, lien, pledge, charge, claim, security interest, obligation to third party collection agencies or attorneys previously retained by the Bank;

(h) there is no dispute, claim, action, suit or proceeding pending or threatened with respect to any Account;

(i) the current balance on the Account is $100 or more;

(j) each Account is closed and there is no requirement for future advances of credit or other performance by Bank; and

(k) each Account has been maintained and serviced by Bank in full compliance with applicable state and federal laws including where applicable, without limitation, the Truth in Lending Act, the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and the Fair Credit Billing Act.

The Bank makes no other representations or warranties, express or implied, with respect to any of the Accounts other than as specifically set forth in this Section 3.3.

3.4 Remedies for Breach of Representations Concerning Accounts.

(a) Time Period. Buyer's sole remedy against Bank for a breach of any of the representations listed in Section 3.3 shall be to notify the Bank of the breach no later than 180 days from the Closing Date provided, however, this time limitation shall not apply to a breach pursuant to Section 3.3 (g) and (k). Bank shall then have, at its option, the right to (A) cure such breach referred to in the notice of Claim, in all material respects, (B) reimburse to Buyer an amount (the "Purchase Price Adjustment") equal to the reduction in value of the affected Accounts based upon the breach, or (C) repurchase the affected Accounts by paying Buyer the Purchase Price Percentage multiplied by the stated Account balance. A Notice of Claim under this Section 3.4 must be delivered by the Buyer to the Bank in writing and accompanied by the documentation required under Section 3.4(b). Notwithstanding Section 12.10, the Buyer's failure to provide a Notice of Claim with respect to any claimed breach of Bank as provided in this Section 3.4 shall terminate and waive any rights Buyer may have to any remedy for such breach under Section 3.3 of this Agreement.

(b) Form of Notice Required. Buyer shall notify Bank in writing of each Account of which Buyer seeks to have Bank repurchase. All notices shall contain the customer's name and Bank's account number and will be accompanied with the following applicable documentary evidence satisfactory to the Bank:

Bankruptcies:	Credit Bureau with non-dismissed bankruptcies, or Attorney name, case number, and date of filing, or Copy of actual court papers, or approved third party service (Banko, Inc.; Experian; Trans Union; or Equifax)
Deceased:	Copy of death certificate, or Credit bureau indicating date of death, or Executor or attorney letter with date of death, or approved third party service (Banko, Inc.; Experian; Trans Union; or Equifax)
Settled or Paid in Full:	Copy of Bank or bank agent letter verifying action Copy of the canceled, final check (front and back)
Fraud:	Letter from or to Citibank or Citibank agent Complaint in writing explaining event

Bank shall make a determination within forty five (45) business days after receipt of Buyer's Request, unless Bank's delay in responding is caused by or related to Buyer's failure to provide Bank with necessary information and documentation required under this Section 3.4.

(c) Repurchase Price. If the Bank elects to either repurchase the Accounts or reimburse the Buyer in the amount of the Purchase Price Adjustment, the Bank shall not be obligated to make payment on an Account by Account basis, but may elect to provide such adjustment in a single amount as an offset against the Withheld Amount within 30 days of notification, at Bank's option. Should the amount of the Repurchase Price exceed the Withheld Amount, the Bank shall make payment of the excess amount with the 30 day period set forth in this Section. If, at the end of the 180 day period set forth in Section 3.4(a) above, the Withheld Amount exceeds the amount of the Repurchase Price, Buyer shall, within 14 days, pay such excess to Bank. The Bank makes no representation as to the number of Accounts that may be subject to repurchase pursuant to this section

4. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer makes the following representations and warranties:

4.1 Due Organization; Authorization. Buyer is duly organized, existing and in good standing as a general partnership under the laws of the State of New York. Buyer has full authority to execute, deliver and perform this Agreement according to its terms, and Buyer's execution, delivery and performance of this Agreement have been duly authorized, and are not in conflict with any law or regulation applicable to Buyer or the terms of Buyer's partnership documents or articles of incorporation, charter or bylaws, as applicable, or of any indenture, agreement or undertaking to which Buyer is a party or by which it or any of its assets is bound.

4.2 No Conflict. Buyer's review of Account and Cardholder information will not represent a conflict of interest on the part of Buyer or Buyer's officers or employees, and that neither Buyer nor any of Buyer's affiliated companies is presently a party to any litigation, or involved in any litigation, with any Cardholder or with the Bank.

The execution and delivery of this Agreement by Buyer and the performance of its obligations hereunder will not (i) conflict with or violate (A) the organizational documents of Buyer, or (B) any provision of any law or regulation to which Buyer is subject, or (ii) conflict with or result in a breach of or constitute a default (or any event which, with notice or lapse of time, or both, would constitute a default) under any of the terms, conditions or provisions of any agreement or instrument to which Buyer is a party or by which it is bound or any order or decree applicable to Buyer or result in the creation or imposition of any lien on any of its assets or property. Buyer has obtained all consents, approvals, authorizations or orders of any court or governmental agency or body, if any, required for the execution, delivery and performance by Buyer of this Agreement.

4.3 Investigation of Accounts. Buyer is a sophisticated investor and its bid and decision to purchase the Accounts are based upon its own independent expert evaluations of the nature, validity, collectibility, enforceability and value of the Accounts. The Buyer has had sufficient opportunity to complete the independent investigation and examination into the Accounts that Buyer deems necessary. Buyer enters into this Agreement solely on the basis of that investigation

and Buyer's own judgment. Buyer has made an independent determination that the Purchase Price represents the Accounts' fair and reasonable value. Buyer is not acting in reliance on any representation by the Bank, except those listed in Section 3.3.

4.4 Accounts Sold As Is. Buyer acknowledges and agrees that except for warranties and representations set forth in Section 3.3 of this Agreement, Bank has not and does not represent, warrant or covenant the nature, accuracy, completeness, enforceability or validity of any of the Accounts and supporting documentation provided by Bank to Buyer, and, subject to the terms of this Agreement, all documentation, information, analysis and/or correspondence, if any, which is or may be sold, transferred, assigned and conveyed to Buyer with respect to any and all Accounts is sold, transferred, assigned and conveyed to Buyer on an "AS IS, WHERE IS" basis, WITH ALL FAULTS.

4.5 No Finders. Buyer has not utilized any investment banker or finder in connection with the transaction contemplated hereby who might be entitled to a fee or commission upon consummation of the transactions contemplated in this Agreement.

5. CONDITIONS PRECEDENT TO PURCHASE AND SALE OF ACCOUNTS

5.1 Representations and Warranties. The representations and warranties of the Bank and Buyer in this Agreement will be true and correct as of the Closing Date.

5.2 Compliance with Covenants and Agreements. Buyer and the Bank will have complied in all material respects with each of their respective covenants and agreements in this Agreement on or before the Closing Date.

5.3 No Violation of Law. Consummation by Buyer and the Bank of the transactions contemplated by this Agreement and performance of this Agreement will not violate any order of any court or governmental body having competent jurisdiction or any law or regulation that applies to Buyer or the Bank.

5.4 Reassignment and Removal from Trusts. As of the Closing Date (i) any outstanding Account receivables owned as of the Closing Date by Bank are not securitized or will have been reassigned to the Bank, and (ii) all conditions precedent for removal of such receivables from Standard Credit Card Master Trust will have been satisfied. In the event that this condition cannot be satisfied prior to the Closing Date, this Agreement shall terminate, Buyer's deposit shall be returned to Buyer and the Bank shall have no further obligation to Buyer hereunder.

5.5 Approvals and Notices. All required approvals, consents and other actions by, and notices to and filings with, any governmental authority or any other person or entity will have been obtained or made. If Buyer is a corporation, Buyer will have delivered to the Bank a certificate from Buyer's corporate secretary (or other documentation satisfactory to the Bank and its counsel) certifying that Buyer's board of directors has resolved or consented to Buyer entering into this Agreement and consummating the transactions contemplated hereby.

5.6 UCC Financing Statements. Buyer will prepare on or after the Closing Date, as the parties hereto shall agree, such UCC Financing Statements for filing in such jurisdictions as the Buyer may deem necessary or appropriate. The UCC Financing Statements shall be for notice purposes only and shall expressly indicate that UCC Financing Statements are for notice purposes only and creates no security interest in the assets, property or interests of the Bank.

6. RIGHTS AND OBLIGATIONS OF THE BANK AND BUYER AFTER THE CLOSING DATE

6.1 Notice to Cardholders. After the Closing Date, the Bank may, but will not be obligated to, give any Cardholder written or oral notice of the transfer of the Cardholder's Account to Buyer at the Cardholder's last known address. At Buyer's reasonable request, the Bank will provide a form letter that Buyer may send to a Cardholder to confirm that the Bank sold the Cardholder's Account to Buyer. The Bank shall have the right to review and approve, which approval will not be unreasonably withheld, all written notices sent by the Buyer to the Cardholder informing the Cardholder of the transfer of the Cardholder's Account to the Buyer. The Buyer shall not discredit or impugn the reputation of the Bank in any correspondence sent to the Cardholder in connection with the Accounts purchased by the Buyer.

6.2 Retrieval of Account Documents. After the Closing Date, the Bank will furnish Buyer at no charge with Account Documents that Buyer reasonably requests within 365 days of the Closing Date, up to a maximum number of Account Documents equal to 10% of the Accounts purchased. The Bank will charge $ 10.00 for each Account Document furnished on Accounts in excess of the 10% threshold, or requested after 365 days of the Closing Date, but prior to three years after the Closing Date. Except in instances of litigation unrelated to collection activity or accounts that are within the statute of limitation at the time requested, the Bank will have no obligation to provide Buyer with Account Documents after three years after the Closing Date. Documents will be furnished within 60 days of the date of the request. Buyer's request for an Account Document must be presented to Bank on a form provided by Bank and must be made with sufficient specificity to enable the Bank to locate the Account Document. The Bank will use reasonable diligence to provide the Account Document. The failure of the Bank to provide an Account Document requested by Buyer will not be a breach of this Agreement. If the Bank cannot reasonably provide an Account Document that the Buyer requests, the Bank will inform Buyer accordingly, and at Buyer's request, provide an Affidavit in the form shown in Exhibit 3, as a substitute Account Document in accordance with the terms of this paragraph, provided that the parties will mutually agree to a timeframe within which affidavits given in lieu of Documents will be produced.

Buyer may, in addition to its request for Account Documents, request an Affidavit from Bank, in the form shown in Exhibit 3, indicating the date the Account was opened, the Account number and the balance existing as of a specified date. The Bank will provide a total number of affidavits equal to two percent (2%) of the total accounts purchased. The Buyer shall be limited to one request for affidavits per week with a maximum of 200 accounts per request. Bank shall

have three (3) weeks to complete the affidavits requested. Requests shall contain sufficient information about the relevant accounts to allow Citibank representatives to locate the Account information to complete the affidavits. The Buyer shall pay Bank $ 10.00 per affidavit requested and provided. Payment shall be due at the time the affidavit is provided.

6.3 Credit Bureau Reporting. The Bank shall promptly request that the major credit reporting agencies (including, without limitation, Experian, CBI and Trans Union) delete the Accounts from their records. The Buyer may report its ownership of the Accounts to credit reporting agencies provided that the Buyer agrees to comply with the Fair Credit Reporting Act (FCRA) and any other laws or regulations governing credit agency reporting.

6.4 Compliance with Law. With respect to any Account, Buyer or Buyer's agent will at all times: (a) comply with all state and federal laws applicable to debt collection, including, without limitation, the Consumer Credit Protection Act, the Fair Credit Reporting Act and the Fair Debt Collection Practices Act, and (b) for any Account where the statute of limitations has run, not falsely represent that a lawsuit will be filed if the Cardholder does not pay.

6.5 Post Closing Account Review. Prior to initiating any contact, whether verbal, written or electronic, with the Cardholder, Buyer shall review the portfolio through a competent third party vendor (e.g., Banko, Inc.) or other process to discover whether any Accounts included are involved in an open bankruptcy case or have not been discharged in bankruptcy (the "Post Sale Scrub") or have indicators, notes or flags that demonstrate that the Cardholder claims to be a victim of identity theft. The Buyer shall immediately notify Bank of any Accounts that have flags or indicators of identity theft and Buyer shall sell the Accounts back to Bank prior to Buyer contacting Cardholders. Furthermore, Buyer shall immediately cease any collection efforts upon receiving notice (whether from the Cardholder, the Bank, or a third party on behalf of the Cardholder) that a Cardholder has discharged the debt in bankruptcy, and shall not re-commence collection activity until Buyer has conducted a reasonable investigation into the Cardholder's claim and determined, based upon reasonable evidence, that the Cardholder's claim is unfounded.

6.6 Notice of Claims. Buyer will notify the Bank immediately of any claim or threatened claim against the Bank, or any claim or threatened claim that may affect the Bank, that is discovered by Buyer. The Bank will not provide notice to Buyer of any notice of bankruptcy filing it may receive after the Closing Date.

6.7 Bank As Witness. If Buyer, upon reasonable written notice to Bank, requests or subpoenas an officer or employee of Bank to appear at a trial, hearing or deposition concerning an Account to testify about the Account, Bank shall ensure the requested employee appears at such hearing or deposition and will be available for consultation with Buyer. Buyer will pay Bank for the officer's or employee's time in traveling to, attending and testifying at the trial, hearing or deposition, whether or not the officer or employee is called as a witness, at the hourly rate equivalent of such officer or employee. Buyer will also reimburse Bank for the officer's or employee's reasonable out-of-pocket, travel-related expenses.

6.8 Collection Agencies. Bank represents and warrants that all of the Accounts have been recalled from any third party collectors and/or attorneys and such Accounts have been returned by said third parties without any further liability or obligation to the third party collector and/or attorney.

7. USE OF BANK'S NAME

7.1 Use of Names. The Buyer will not use or refer to the name "Citibank," "Citibank Classic," "Citicorp," "Citigroup", "Associates Capital Bank, Inc.", "Associates Credit Card Services, Inc.", "Associates Commerce Solutions", "Associates National Bank", "Universal Card Services Corp." or any similar name or successor corporation, except to reference "Citibank" for purposes of identifying an Account in communications with the Account's Cardholder, in collecting amounts outstanding on the Account, and in conducting litigation or participating in a bankruptcy proceeding with respect to the Account. Buyer shall not represent that there is an affiliation or agency relationship between Buyer and the Bank, nor shall Buyer state or represent in any way that it is acting for or on behalf of the Bank. Buyer shall not misrepresent, mislead or otherwise fail adequately to disclose its ownership of the Accounts.

7.2 Breach. Buyer and the Bank acknowledge that Buyer's breach of this Article 7 will result in actual and substantial damages to the Bank, the amount of which will be difficult to ascertain with precision. Therefore, if Buyer breaches this Article 7, Buyer will pay the Bank the sum of $10,000.00 for each breach (each breach being the single use of the above names, communicated to a third party as described above) as liquidated damages and in preventing Buyer's further breach of this provision.

8. THE BANK'S RIGHT TO REPURCHASE ACCOUNTS

8.1 Accounts Affected. The Bank shall have the right to repurchase any Account that has not been paid in full, released or compromised by Buyer, if the Bank determines that there is a pending or threatened suit, arbitration, bankruptcy proceeding or other legal proceeding or investigation relating to an Account or a Cardholder, and naming the Bank or otherwise involving the Bank's interest therein in a manner unacceptable to the Bank, or the Bank otherwise determines (in its sole discretion) that such matter cannot be resolved and/or that the Bank's interest therein cannot be adequately protected without the Bank owning such Account.

8.2 Right to Repurchase.

(a) Upon notice to Buyer, the Bank may repurchase any Account described in Section 8.1 by repaying to Buyer the Adjustment Amount associated with the repurchased Account.

(b) Upon delivering to the Bank a full accounting of the Account, Buyer may retain any money or value that Buyer collected or received on the Account before Buyer's receipt of the

Bank's notice electing to repurchase the Account; provided that, after Buyer has received the Bank's notice, Buyer will immediately cease releasing or compromising the Account.

9. RIGHT OF RESALE

9.1 Sale or Transfer to a Third Party. Buyer may resell or transfer the ownership of any Account to a third party, including the transfer of Cardholder information (such as names and addresses) to any third party, (each referred to as "Third Party Buyer"); provided, however, that Buyer must conduct commercially reasonable and prudent due diligence of the Third Party Buyer. Buyer shall defend, indemnify and hold harmless Bank from any and all causes of action, claims, expenses or judgments incurred by Bank for which Buyer's Third Party Buyer or any buyer of Third Party Buyer (collectively referred to herein as "Downstream Buyer") is solely or partially responsible. Buyer shall require all Downstream Buyers to agree to be bound to all of the Buyer's obligations and limitations or remedies, and to acknowledge all of Bank's rights set forth in this Agreement including, without limitation, the Sections in Articles 6, 7, 8, and 9. All Downstream Buyers' requests for documentation pursuant to Section 6.2 must be made to Bank through Buyer, unless Bank otherwise agrees in writing. Nothing in this Section 9.1 shall modify the indemnification provisions between Bank and Buyer as set forth in Article 10 of this Agreement.

Furthermore, Buyer shall not resell, transfer, convey or assign the ownership of any Account to Providian Financial Corporation, First Select Corporation (a Providian Financial Company) or Capital One Financial Corporation, for a period of one (1) year from the Closing Date.

9.2 Exceptions. Section 9.1 shall not apply to Buyer's sale, pledge or transfer of Accounts to one or more of its wholly owned subsidiaries or affiliates or to a trust or other special purpose vehicle which is wholly owned by such subsidiary for the sole purpose of obtaining financing and/or issuing asset-backed securities secured by such Accounts, provided that Buyer shall give Bank prior notice of the sale, pledge, or transfer under this Section 9.2.

10. INDEMNIFICATION

10.1 Indemnification by Buyer. Buyer hereby agrees to indemnify, defend, and hold harmless the Bank, its parents, subsidiaries and affiliates, and their officers, directors and employees from and against any and all claims, damages, losses, costs or expenses (including any and all reasonable attorneys' and experts' fees), asserted by a third party that Bank might suffer, incur or be subjected to by reason of any legal action, proceeding, arbitration or other claim, whether commenced or threatened, whether or not well grounded and by whomsoever concerned, based upon any breach of this Agreement, or any other act or omission by Buyer, its officers, directors, agents, employees, representatives or any Downstream Buyers with respect to any Account or any party obligated on an Account after the Closing Date; provided, however, that, (i) the Bank notifies Buyer within a reasonable time of any such claim or action, (ii) such claims, damages, losses, costs or expenses are not solely attributable to any negligent act or omission by the Bank,

its parent, affiliates, subsidiaries or any of their employees or agents and (iii) the Bank provides Buyer with information that is available to the Bank and is reasonably necessary for Buyer to prosecute its defense of the action.

Buyer shall bear all expenses in connection with the defense and/or settlement of any such claim or suit. The Bank shall have the right, at its own expense, to participate in the defense of any claim against which it is indemnified and which has been assumed by the obligation or indemnity hereunder; Buyer, in the defense of any such claim, except with the written consent of the Bank, shall not consent to entry of any judgment or enter into any settlement that either: (a) does not include, as an unconditional term, the grant by the claimant to the Bank of a release of all liabilities in respect of such claims, or (b) otherwise adversely affects the rights of the Bank.

10.2 Indemnification by Bank. Bank hereby agrees to indemnify, defend, and hold harmless the Buyer, its parents, subsidiaries and affiliates, and their officers, directors and employees from and against any and all claims, damages, losses costs or expenses (including any and all reasonable attorneys' and experts' fees) asserted by a third party that Buyer might suffer, incur or be subjected to by reason of any legal action, proceeding, arbitration or other claim, whether commenced or threatened, whether or not well grounded and by whomsoever concerned, based upon any breach of this Agreement, or any other act or omission by Bank, its officers, directors, agents, employees, or representatives with respect to any Account or any party obligated on an Account prior to the Closing Date, provided, however, that (i) the Buyer notifies Bank within a reasonable time of any such claim or action, (ii) such claims, damages, losses, costs or expenses are not solely attributable to any negligent act or omission by the Buyer, its parent, affiliates, subsidiaries, transferees, contractors, agents or any of their employees or agent and (iii) the Buyer provides Bank with information that is available to the Buyer and is reasonably necessary for Bank to prosecute its defense of the action.

Bank shall bear all expenses in connection with the defense and/or settlement of any such claim or suit. The Buyer shall have the right, at its own expense, to participate in the defense of any claim against which it is indemnified and the defense of which has been assumed by the Bank's obligation or indemnity hereunder. Bank, in the defense of any such claim, except with the written consent of the Buyer, shall not consent to entry of any judgment or enter into any settlement that either, (a) does not include, as an unconditional term, the grant by the claimant to the Buyer of a release of all liabilities in respect of such claims, or (b) otherwise adversely affects the rights of the Buyer.

10.3 Survival. The provisions of this Article 10 shall survive the termination or expiration of this Agreement.

11. CONFIDENTIALITY

11.1 Confidential Information. From and after the execution of this Agreement, Buyer hereto shall keep confidential, and shall use reasonable efforts to cause their respective officers, directors, employees and agents to keep confidential, any and all information obtained from the

Bank concerning the assets, properties and business of the Bank, and shall not use such confidential information for any purpose other than those contemplated by this Agreement; *provided, however*, that Buyer shall not be subject to the obligations set forth in the preceding sentence with respect to any such information provided to it by the Bank which either (i) was in Buyer's possession at the time of the Bank's disclosure, (ii) was in the public domain at the time of the Bank's disclosure, or subsequently enters the public domain through no act or failure to act on the part of the Bank, or (iii) is lawfully obtained by Buyer from a third party. Nothing in this Agreement shall be construed to limit Buyer's obligations under the confidentiality agreement entered into between Buyer and the Bank.

11.2 Public Announcement. Neither Buyer nor the Bank shall make any public announcement of this Agreement or provide any information concerning this Agreement or the subject matter hereof to any representative of the news media without the prior written approval of the other party. The parties will not respond to any inquiry from public, governmental, or administrative authorities concerning this Agreement without prior consultation and coordination with each other.

11.3 Exceptions. Notwithstanding anything contained in this Article 11 to the contrary, Buyer, or any purchaser from Buyer, shall have the right to (i) issue a press release relating to the purchase of Accounts (provided that any press release must be approved, in advance and in writing, by Bank. Bank shall have the unfettered right, at its sole discretion, to withhold its approval, for reason or no reason at all, provided, however, if the press release is for purposes of complying with securities laws, rules, or regulations, such approval shall not be unreasonably withheld and shall be reasonably provided within necessary time frames), (ii) provide confidential information to any bank, investor, or financing source relating to the Accounts, provided that such bank, investor, or financing source is subject to the terms of a confidentiality agreement consistent with the obligations of confidentiality contained herein (iii) file any required filings with governmental authorities, including but not limited to SEC filings, and (iv) provide information to any Downstream Buyer.

11.4 Survival. The provisions of this Article 11 shall survive the termination of this Agreement.

12. GENERAL PROVISIONS

12.1 Applicable Law. The laws of the State of South Dakota shall govern the enforcement and interpretation of this Agreement and the rights, duties and obligations of the parties hereto.

12.2 WAIVER OF JURY TRIAL. NOTWITHSTANDING ANYTHING STATED HEREIN, IF EITHER PARTY BRINGS ANY ACTION AGAINST THE OTHER PARTY, WHETHER AT LAW OR EQUITY, REGARDING THE OTHER PARTY'S PERFORMANCE UNDER THIS AGREEMENT OR BRINGS ANY ACTION CONNECTED IN ANY WAY WITH THIS AGREEMENT, THE PARTIES AGREE TO WAIVE TRIAL BY JURY.

12.3 Notices. All notices or other documents required to be given pursuant to this Agreement shall be effective when received and shall be sufficient if given in writing, hand delivered, sent by overnight air courier or certified United States mail, return receipt requested, addressed as follows:

If to Bank:	Citibank (South Dakota), N.A. Attn: General Counsel 701 East 60th Street North Sioux Falls, SD 57117
With a Copy to:	Citicorp Credit Services, Inc. (USA) Attn: Rob Strub 7920 NW 110th Street Kansas City, MO 64153
If to Buyer:	Unifund CCR Partners 10625 Techwoods Circle Cincinnati, OH 45242 Attn: General Counsel
With a copy to:	Dinsmore & Shohl, LLP 225 East Fifth Street Suite 1900 Cincinnati, OH 45202 Attn: A. Scott Fruechtemeyer, Esq.

The parties hereto may at any time change the name and addresses of persons to whom must be sent all notices or other documents required to be given under this Agreement by giving written notice to the other party.

12.4 Binding Nature of Agreement. This Agreement is and shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and permitted assigns.

12.5 Assignment. Neither party may assign this Agreement or any of its rights in this Agreement without the other's prior written consent, except as provided in Article 9 above. Notwithstanding the foregoing sentence, Bank may assign its rights and obligations under this Agreement to any of its affiliates, subsidiaries, or parent corporations without obtaining Buyer's permission or consent.

12.6 Expenses. Except as otherwise expressly provided in this Agreement, Buyer and the Bank will each bear its own out-of-pocket expenses in connection with the transaction contemplated by this Agreement.

12.7 Entire Agreement. This Agreement and the Exhibits hereto embody the entire agreement and understanding between the parties with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. The parties make no representations or warranties to each other, except as contained in this Agreement or in the accompanying Exhibit or the certificates or other closing documents delivered in accordance with this Agreement. All prior representations and statements made by any party or its representatives, whether orally or in writing, are deemed to have been merged into this Agreement, except as otherwise stated in this Agreement.

12.8 Amendment. Neither this Agreement nor any of its provisions may be changed, waived, discharged or terminated orally. Any change, waiver, discharge or termination may be effected only by a writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

12.9 Severability. If any one or more of the provisions of this Agreement, for any reason, is held to be invalid, illegal or unenforceability, the invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed without the invalid, illegal or unenforceable provision.

12.10 Waiver. Except as required under Section 3.4, no failure of any party to take any action or assert any right hereunder shall be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

12.11 Headings. Headings are for reference only, and will not affect the interpretation or meaning of any provision of this Agreement.

12.12 Counterparts. This Agreement may be signed in one or more counterparts, all of which taken together will be deemed one original.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the date first written above.

Citibank (South Dakota), N.A.

By:_____
(Signature)

Name:_____

Title:_____

Unifund CCR Partners

By:_____
(Signature)

Name: David Rosenberg

Title: General Partner

EXHIBIT 1
ASSET SCHEDULE

LOT #	# OF ACCOUNTS	CURRENT BALANCE
2	293,117	$554,156,511.60

EXHIBIT 2

BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT is dated as of _____ between _____, National Association, a national banking association organized under the laws of the United States, located at 701 East 60th Street North, Sioux Falls, SD 57117 (the "Bank") and _____, a _____ corporation, located at _____ ("Buyer").

For value received and subject to the terms and conditions of the Purchase and Sale Agreement dated _____, between Buyer and the Bank (the "Agreement"), the Bank does hereby transfer, sell, assign, convey, grant, bargain, set over and deliver to Buyer, and to Buyer's successors and assigns, good and marketable title to the Accounts described in Section 1.2 of the Agreement, free and clear of all encumbrances, equity, lien, pledge, charge, claim, or security interest.

This Bill of Sale, Assignment and Assumption Agreement is executed without recourse and without representations or warranties including, without limitation, warranties as to collectibility.

_____	_____
Bank	Buyer
By: _____	By: _____
(Signature)	(Signature)
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT 3

AFFIDAVIT

State of _____

County of _____

Name: Account No:
Social Security No:

_____, being sworn, deposes and says that the affiant making this affidavit is an employee of Citicorp Credit Services, Inc. (USA), (the "Company"), which is located at 7920 NW 110th Street, Kansas City, MO 64153. The affiant is authorized to make the statements and representations herein. The Company's business records show that as of _____, there was due and payable from Account # _____ the amount of $_____. The Company's business records show that this Account was opened or acquired on _____. The affiant states that to the best of affiant's knowledge, information and belief there are no uncredited payments against the said debt.

Dated this _____day of _____,_____

_____
The Company

By:_____
Printed Name: _____

Subscribed to and sworn to before me this _____day of _____, _____by _____, _____of the Company.
(Title)

_____
Notary Public

EXHIBIT E

ACCOUNT SALE AGREEMENT

This Account Sale Agreement ("**Agreement**"), dated as of December 8, 2005, is between Capital One Bank, a Virginia banking corporation ("**Seller**") and Centurion Capital Corporation, a Maryland corporation ("**Buyer**").

RECITALS

A. Seller owns certain charged-off consumer loan and credit card accounts.

B. Seller desires to sell, and Buyer desires to purchase, such accounts.

The parties agree as follows:

AGREEMENT

1. **Definitions.**

"**Account(s)**" means the charged-off consumer accounts identified on the Sale File.

"**Adjustment Amount**" with respect to an Account means the Unit Price multiplied by the Unpaid Balance of such Account as of the date on which such Adjustment Amount is determined.

"**Borrower(s)**" means the obligor(s) on the Accounts.

"**Closing**" means the consummation of the transactions contemplated by this Agreement.

"**Closing Date**" means December 8, 2005, or such other date as may be agreed by the parties.

"**Cutoff Date**" means December 6, 2005.

"**Prior Agreements**" means the agreements under which Seller originally acquired the Accounts.

"**Prior Owners**" means the prior owners or originators of the Accounts.

"**Purchase Price**" means the amount specified in Section 2.2 below.

"**Sale File**" means the electronic file attached as **Exhibit 1** prepared by Seller setting forth at least the following information with respect to each Account, but only to the extent the same is available to Seller: original creditor's account number, the name, address (including state and zip code), social security number and available telephone numbers of the Borrower, the date of charge-off, the date of first delinquency, the last payment date, and the Unpaid Balance.

"**Unit Price**" means [redacted]

"**Unpaid Balance**" means, as to any Account, the unpaid balance as of the Cut-off Date in United States Dollars for such Account as reflected on Seller's records. Buyer acknowledges that the figure provided as the Unpaid Balance for any Account may include interest, costs, fees and expenses. This figure may also reflect payments made by or on behalf of any Borrower which have been deposited and credited to the Unpaid Balance for any Account, but that may subsequently be returned to Seller due to insufficient funds to cover such payments. The Unpaid Balance does not include any interest, fees, or other finance charges that were accrued after the date the Account was acquired by Seller. Buyer acknowledges that Seller shall have no liability beyond the Adjustment Amount for errors in calculation of the Unpaid Balance and that the amount listed on **Exhibit 1** is correct to Seller's knowledge. The aggregate Unpaid Balance of the Accounts as of the Cutoff Date is approximately [redacted]

2. **Purchase and Sale of Accounts.**

2.1 **Purchase and Sale.** Subject to all the terms and conditions of this Agreement, on the Closing Date Seller will sell and Buyer will purchase the Accounts, free and clear of any and all liens, claims, charges and encumbrances. Except for the representations, warranties and covenants set forth in this Agreement, the sale of the Accounts is "without recourse" to Seller, "**AS-IS**" with all faults, and without warranty of any kind, express or implied.

2.2 **Purchase Price; Payment.** The purchase price for the Accounts is [redacted] representing an amount equal to the Unit Price multiplied by the aggregate Unpaid Balance as of the Cutoff Date. The Purchase Price is payable by Buyer to Seller by wire-transfer or other immediately available funds.

2.3 **Bill of Sale.** At Closing, Seller will execute and deliver a Bill of Sale to evidence the conveyance and transfer to Buyer of all of Seller's right, title and interest in and to the Accounts. Seller will also deliver to Buyer on or before the Closing Date a Sale File, in Seller's customary format, of the Accounts showing each Account's Unpaid Balance as of the Cutoff Date. The Bill of Sale will be substantially in the form attached as **Exhibit 2.**

2.4 **Updated List of Accounts and Account Status.** Seller will promptly, and in any event within ten (10) business days following the Closing Date, provide Buyer with a Sale File (in Seller's customary format) of Accounts showing all information as of the Closing Date, to the extent such an update is required to update the list provided pursuant to Section 2.3. If Seller receives any payments to any Account prior to the Closing Date that is not reflected in the list of Unpaid Balances provided pursuant to Section 2.3, Seller agrees to forward such payments to Buyer within forty-five (45) days of receipt of such payment by Seller.

2.5 **Not a Sale of Securities.** Buyer and Seller agree and acknowledge that the sale of Accounts documented by this Agreement is not a sale of securities.

3. **Representations and Warranties of Seller.** Seller represents and warrants to Buyer that as of the date of this Agreement and as of the Closing Date:

3.1 **Due Incorporation; Authorization; No Conflict.**

(a) Seller is duly incorporated and validly existing as a Virginia banking corporation.

(b) Seller has the corporate power and authority and all licenses and permits, if any, required by any governmental body or regulatory authority to sell the Accounts to Buyer and to perform Seller's other duties under this Agreement.

(c) Seller's execution, delivery and performance of this Agreement are within Seller's corporate or legal powers, have been duly authorized by all necessary corporate action on the part of Seller, and are not in conflict with the charter or by-laws of Seller or any law or regulation applicable to Seller.

3.2 **Account Information.** The information contained in the Sale Files provided by Seller to Buyer pursuant to Sections 2.3 and 2.4 is an accurate copy of such information as reflected in Seller's electronic account database as of the Cut-Off Date.

3.3 **Accounts.**

(a) On the Closing Date, to the best of Seller's knowledge, Seller will have good and marketable title to the Accounts, free and clear of all liens, charges, encumbrances or rights of others (other than Buyer);

(b) To the best of Seller's knowledge, Seller has not initiated collection litigation or other legal proceedings against any Borrower with respect to any Account;

(c) To the best of Seller's knowledge, Seller has not received written notice that a final judgment has been entered with respect to any Account;

(d) To the best of Seller's knowledge, no Account has been discharged in bankruptcy, and no Borrower has filed for, or is the subject of, any currently pending bankruptcy proceeding,

(e) To the best of Seller's knowledge, no Borrower is deceased;

(f) To the best of Seller's knowledge, no Account has been validly settled;

(g) To the best of Seller's knowledge, no Account was fraudulently originated or used; and

(h) To the best of Seller's knowledge, no Borrower is represented by counsel with respect to an Account.

To the extent that any representation or warranty set forth in this Section 3.3 proves to be false, Buyer's sole and exclusive remedy shall be to obtain a refund of the Adjustment Amount for such Account in accordance with Section 9.2 below.

3.4 **No Brokers.** Seller has not entered into any agreement obligating Buyer to pay any commission or other compensation to any broker, investment broker, agent or other person as a result of Buyer's purchase of the Accounts under this Agreement.

4. **Representations and Warranties of Buyer.** Buyer represents and warrants to Seller that as of the date of this Agreement and as of the Closing Date:

4.1 **Due Organization; Authorization; No Conflict.**

(a) Buyer is duly organized, existing and in good standing as a Maryland corporation.

(b) Buyer has the corporate power and authority and all licenses and permits, if any, required by any governmental body or regulatory authority to purchase the Accounts from Seller and to perform Buyer's other duties under this Agreement.

(c) Buyer's execution, delivery and performance of this Agreement are within Buyer's corporate or legal powers, have been duly authorized by all necessary corporate action on the part of Buyer, and are not in conflict with the charter or by-laws of Buyer or any law or regulation applicable to Buyer.

4.2 **Sophisticated Buyer; Due Diligence.** Buyer is a sophisticated, informed buyer and has the knowledge and experience in financial and business matters, including without limitation the purchase and collection of charged-off receivables and accounts that are or may be the subject of a currently or formerly pending litigation, disputes, or bankruptcy proceedings, that enable it to evaluate the merits and risks of the transaction contemplated by this Agreement. Buyer acknowledges that Seller, except as specifically set forth in this Agreement, does not represent, warrant or insure the accuracy or completeness of any information provided to Buyer or in the Sale File or any other Account files. Buyer has made such independent investigations as it deems to be warranted into the nature, validity, enforceability, collectibility, and value of the Accounts, and all other facts it deems material to its purchase. Buyer is entering into this transaction solely on the basis of that investigation, Buyer's own judgment, and Seller's express representations and covenants specifically set forth in this Agreement. Buyer is not acting in reliance on any representation made or information furnished by the Seller, its employees, agents, representatives or independent contractors, other than the express representations and warranties of Seller contained in this Agreement. Without limiting the generality of the foregoing, Buyer expressly acknowledges that (1) some of the Accounts are subject to a currently or formerly pending dispute, lawsuit, or case under the Bankruptcy Code, (2) with respect to Accounts in bankruptcy, Seller has not filed a proof of claim with respect to such Accounts, and (3) the statutory period in which actions may be brought to enforce the Accounts may have expired with

respect to certain Accounts and Buyer will not be permitted to file or maintain legal actions with respect to such Accounts.

4.3 **Financial Capacity**. Buyer is solvent and has sufficient financial capacity to undertake and properly perform all of the obligations to be performed by it under this Agreement on and after the Closing Date.

5. **Closing Conditions.**

5.1 **Closing Conditions**. The obligation of Seller to sell, and Buyer to purchase, the Accounts on the Closing Date shall be subject to each of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of the parties will be materially true and correct as of the Closing Date.

(b) **Covenants**. All other terms and conditions of the Agreement which are required to be performed on or prior to the Closing Date by either party shall have been materially complied with or performed.

(c) **No Violation**. Consummation by Buyer and Seller of the transactions contemplated by this Agreement and performance of this Agreement will not violate any order of any court or governmental body having competent jurisdiction or any law or regulation that applies to Buyer or Seller.

(d) **Approvals, Consents and Notices.** All required approvals, consents, and other actions by, and notices to and filings with, any governmental authority, and any other person or entity (including without limitation any consents required from Prior Owners of the Accounts) will have been obtained or made.

5.2 **Reasonable Efforts; Waiver; Termination**. Each party shall use its commercially reasonable efforts to cause all conditions to Closing to be satisfied on or before the Closing Date. Satisfaction of a condition to Closing may be waived by the party entitled to the benefit of such condition. Either party may terminate this Agreement if the Closing has not occurred on or before ninety (90) days after the originally scheduled Closing Date.

6. **Covenants; Conduct of Business Following Closing.**

6.1 **Notice to Borrower**. Buyer agrees to notify each Borrower of Buyer's purchase of the Borrower's Account within thirty (30) days after Closing. In addition, after the Closing Date Seller may, but will not be obligated to, give any Borrower written or oral notice of the transfer of the Borrower's Account to Buyer.

6.2 **Notice to Credit Reporting Agencies**. Promptly and in no event later than sixty (60) days following the Closing Date, Seller will report to the appropriate credit reporting agencies any Account that was previously reported as being owned by Seller as either transferred to Buyer, charge-off transferred to Buyer, sold to Buyer, or charge-off sold to Buyer. Except as

required by law, Seller will make no other reports to credit reporting agencies with respect to the Accounts after the Closing Date.

6.3 **Account Payments Received by Seller.** Seller will forward to Buyer any payments with respect to an Account that are received by Seller on or after the Cutoff Date and on or before the date that is one-hundred eighty (180) days after the Closing Date. All payments with respect to an Account that are received by Seller after such date shall be returned to the person making the payment.

6.4 **No Media Requests.** Buyer expressly understands that Seller will not provide Buyer with any documentation relating to any Account, including without limitation any application, agreement, billing statement, notice, correspondence, documents supporting a deficiency balance, or consumer information which relates to an Account, regardless of whether such documents are in Seller's possession or could be obtained from a third party. Buyer has taken such absence of documents into account in determining whether, and at what price, to purchase the Accounts.

6.5 **Use of Seller's or Prior Owner's Name.** Buyer will not use or refer to the name of Seller or any Prior Owner for any mass advertising regarding the Accounts and will not portray itself as Seller's or any Prior Owner's agent, partner or joint venturer with respect to the Accounts. However, Buyer may use the name of Seller or a Prior Owner for purposes of identifying an Account (a) in communications with the Account's Borrowers in order to collect amounts outstanding on the Account, or (b) in connection with filing suit upon the Account. In addition, subject to obtaining Seller's prior written consent, Buyer may use the name of Seller (x) in connection with a securitization transaction for the Accounts, (y) in connection with any sale of the Accounts, and (z) in offering materials relating to the Accounts. In contacting a Borrower, filing suit, or selling Accounts, Buyer will not state or represent in any way that Buyer is contacting the Borrower, filing suit or selling Accounts for or on behalf of Seller or a Prior Owner. Buyer expressly acknowledges that a breach of this Section 6.5 may also constitute a breach of an Underlying Agreement for which Seller would be obligated to pay liquidated damages to a Prior Owner, and that any such liquidated damages would be indemnifiable under Section 10.2.

6.6 **Insurance.** Buyer shall maintain (i) a general liability insurance policy with minimum coverage of two million dollars ($2,000,000) in the aggregate and one million dollars ($1,000,000) per occurrence and (ii) professional liability for errors and omissions with a limit of at least one million dollars ($1,000,000) until the first to occur of (i) the date on which all of Buyer's activities with respect to the Accounts have ceased, and (ii) December 31, 2011.

6.7 **Compliance With Law.** With respect to the Accounts, Buyer will, and will cause any agent, contractor, or permitted successor owner of the Accounts to, at all times following the Closing Date comply with all applicable state and federal laws, including without limitation the Consumer Credit Protection Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Gramm-Leach-Bliley Act. Buyer will not collect or attempt to collect any Account in any jurisdiction in which Buyer does not have all required licenses for such activity.

Buyer agrees that it will not violate any laws relating to unfair credit collection practices, to the extent, if any, that they may apply to Buyer, in connection with any of the Accounts transferred to Buyer pursuant to this Agreement. Buyer also agrees not to take any enforcement action against any Borrower that would be commercially unreasonable.

6.8 **Notice of Claims**. Buyer will notify Seller promptly of any written claim or written threatened claim against Seller or any Prior Owner, or any written claim or written threatened claim that Buyer reasonably believes may affect Seller or any Prior Owner, that is discovered by Buyer and relates to the Accounts.

7. Issuers and Prior Account Owners.

7.1 **No Contact With Prior Owners**. Buyer agrees that Buyer shall not contact any Prior Owner for any purpose relating to any Account, unless required to do so by law. Buyer will, from and after the Closing Date, handle and respond to any Borrower inquiries, requests or communications concerning or relating to any Accounts sold under this Agreement directly with the Borrower or the Borrower's representatives. Buyer must not refer, for any reason, any Borrower with an inquiry or any other Account issues to Seller or a Prior Owner.

7.2 **Enforcement / No Legal Action With Respect to Certain Accounts**. Seller has identified certain Accounts as "Non-Litigation Accounts." Buyer agrees and represents that Buyer shall not institute any enforcement or legal action or proceeding against any Borrower or guarantor on any Non-Litigation Account. Buyer further agrees that it shall not make reference to Seller or any prior Account owner in any correspondence to or discussion with any Borrower or guarantor on a Non-Litigation Account regarding enforcement or collection of the Non-Litigation Account except to identify the origination of such Account. Buyer shall not misrepresent, mislead, deceive, or otherwise fail to adequately disclose to any particular Borrower or guarantor the identity of Buyer as the owner of the Accounts. Seller shall have, in addition to all other legal rights and remedies, the right to seek the entry of an order by a court of competent jurisdiction enjoining any violation of this Section 7.2.

8. Limitations on Resale / Assumption of Liabilities.

8.1 **Limited Resale**. Buyer may not sell, assign, or otherwise transfer any of the Accounts, other than such Accounts as are identified in the Sale File as "transferable without consent". Any sale, assignment, or other transfer of the Accounts shall not release Buyer from its liabilities and obligations under this Agreement.

8.2 **Assumption of Liabilities.**

(a) Buyer acknowledges that following the Closing Date Seller will continue to be obligated to Prior Owners under the Prior Agreements and Buyer agrees to assume such obligations to the extent they are consistent with Buyer's obligations to Seller under Sections 6 and 7 of this Agreement. In addition, Buyer agrees to assume all obligations of Seller with respect to the Accounts under the Prior Agreements identified on Section 1 of **Exhibit 3**, except

for obligations related to losses, damages, liabilities, costs and expenses incurred as a result of any third party claim with respect to Seller's violation of any state or federal statute, regulation or common law or any claim by any Borrower regarding collection, enforcement, servicing or administration of the Accounts by Seller prior to the Closing Date.

(b) In addition, Buyer agrees to assume all obligations of Seller set forth in Section 2 of **Exhibit 3**.

9. **Seller's Right to Repurchase Accounts / Purchase Price Adjustments.**

9.1 **Recall of Accounts.**

(a) Seller may repurchase, at any time, any Account (a "**Recall Account**"), other than an Account for which a current arrangement has been made for payment or settlement or that has in fact been settled, that Seller in good faith determines (i) is or becomes subject to a pending or threatened lawsuit, bankruptcy proceeding, or other legal proceeding or investigation relating to the Account or Borrower and naming Seller or otherwise involving Seller's interest therein in a manner unacceptable to Seller or in which Seller determines (in its sole discretion) that such matter cannot be resolved and/or that Seller's interests cannot be protected without Seller owning such Account, (ii) may form the basis of a claim against an affiliate, officer, director, employee, or agent of Seller, (iii) a representation or warranty with respect to such Account by Seller was false when made, or (iv) is the subject of a valid recall request received by Seller in connection with any obligation to a Prior Owner of such Account.

(b) If Seller elects to repurchase a Recall Account, then Seller shall promptly notify Buyer of the circumstances giving rise to such repurchase request and Buyer shall promptly stop releasing, collecting or compromising any such Recall Account.

(c) Seller shall promptly refund to Buyer the Adjustment Amount with respect to such Recall Account. Within five (5) business days after receipt of the Adjustment Amount for a Recall Account, Buyer shall endorse and/or re-assign to Seller, without representations or warranties other than as to title and Buyer's compliance with applicable law with respect to the Recall Account, each Recall Account repurchased pursuant to this Section 9.

(d) Any payments on Recall Accounts received by Buyer prior to Buyer's receipt of the Adjustment Amount from Seller shall belong to Buyer. Any payments or collections on Recall Accounts that are received by Buyer or Seller after a recall shall belong to Buyer.

9.2 **Purchase Price Adjustments.** Seller agrees to refund an amount equal to the Adjustment Amount for any Account to the extent that Buyer provides Seller, within thirty (30) days after the Closing Date, with commercially reasonable written documentation that a representation or warranty under Section 3.3 of this Agreement with respect to such Account was false when made (determined, for purposes of this Section 9.2 only, without regard to any knowledge qualification to such representation or warranty). Documentation that is deemed

commercially reasonable shall include without limitation credit bureau reports, attorney correspondence, and correspondence or forms from the issuer, prior owner, or prior agency on an Account. Such requests by Buyer shall be made only once, on or before thirty (30) days after the Closing Date. Seller shall pay the Adjustment Amount to Buyer not later than forty-five (45) days after Buyer has provided the documentation required in the prior sentence. The provisions of this Section 9.2 constitute Buyer's sole and exclusive remedy for a breach of representation or warranty in Section 3.3, and Seller shall have no liability for the breach or inaccuracy of any representation or warranty under Section 3.3 for which it does not receive the required documentation from Buyer within thirty (30) days after the date of this Agreement.

9.3 **Obligations Regarding Repurchased or Refunded Accounts**. Following a repurchase of an Account by Seller pursuant to Section 9.1, or a refund of the Adjustment Amount pursuant to Section 9.2, Buyer shall have no right to use any information related to such Account, including without limitation any "nonpublic personal information" (as such term is defined in the Gramm-Leach-Bliley Act) concerning the Borrower, for any purpose. Without limiting the foregoing, Buyer shall immediately cease any collection activities with respect to an Account for which a refund is made pursuant to Section 9.2. Buyer may retain a copy of such information solely to the extent necessary for internal audit and control purposes, and shall protect and keep any such retained information confidential.

10. **Indemnification.**

10.1 **Seller's Indemnification**. From and after the date of this Agreement, Seller shall indemnify, hold harmless and, to the extent provided in Section 10.3, defend Buyer, its affiliates, officers, directors, employees, agents, successors and assigns (collectively, the "**Buyer's Indemnified Persons**") from and against, and reimburse each of the Buyer's Indemnified Persons with respect to, any and all losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees and costs, including without limitation fees and costs incurred in discovery, at trial, and in any post-trial or appellate proceeding (collectively, "**Damages**") incurred by any of the Buyer's Indemnified Persons as a result of any third party claim with respect to, arising out of, or in connection with (i) the inaccuracy of any of Seller's representations or warranties in this Agreement, other than a representation or warranty set forth in Section 3.3 above, or (ii) the failure to perform any of Seller's covenants in this Agreement, which failure has not been cured within fifteen (15) days of Seller's receipt of a notice of such failure from Buyer. "Damages" shall not include lost profits and indirect or consequential damages except to the extent such amounts are part of a settlement or judgment paid to a third party.

10.2 **Buyer's Indemnification**. From and after the date of this Agreement, Buyer shall indemnify, hold harmless and, to the extent provided in Section 10.3, defend Seller, its affiliates, officers, directors, employees, agents, successors and assigns (collectively, the "**Seller's Indemnified Persons**") from and against, and reimburse each of the Seller's Indemnified Persons with respect to, any and all Damages incurred by any of the Seller's Indemnified Persons as a result of any third party claim with respect to, arising out of, or in connection with (i) the inaccuracy of any of Buyer's representations or warranties in this Agreement, (ii) the failure to

perform any of Buyer's covenants in this Agreement, which failure has not been cured within fifteen (15) days of Buyer's receipt of a notice of such failure from Seller, (iii) the violation of any statute, regulation or common law, whether state or federal, by Buyer, Buyer's agents or successors, or by any third party purchaser of the Accounts, with respect to an Account, or (iv) any claim by any Borrower regarding collection, enforcement, servicing or administration of the Accounts by Buyer or its agents or successors.

10.3 **Procedure For Indemnification.**

(a) If any third party shall notify a party entitled to indemnification under this Section 10 (an "**Indemnified Party**") with respect to any matter (a "**Claim**") that may give rise to a claim for indemnification under this Agreement, then the Indemnified Party shall promptly notify the party obligated to provide indemnification under this Section 10 (the "**Indemnifying Party**") in writing; provided that the failure to so notify shall not excuse the indemnification obligation of the Indemnifying Party except to the extent the Indemnifying Party suffers actual prejudice as a result of such failure.

(b) The Indemnifying Party shall have the right to assume and thereafter conduct the defense of the Claim with counsel of its choice reasonably satisfactory to the Indemnified Party, if it has first acknowledged in writing its obligation to indemnify under this Agreement with respect to the Claim and has provided assurance reasonably satisfactory to the Indemnified Party that it has and will have the resources to satisfy such indemnification obligation. The Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld) unless the judgment or proposed settlement involves only the payment of money damages and does not impose an injunction or other equitable relief upon the Indemnified Party or otherwise prejudice the Indemnified Party as to similar claims in the future.

(c) The Indemnifying Party shall keep the Indemnified Party fully informed as to all material developments in connection with the Claim. Unless and until the Indemnifying Party assumes the defense of the Claim as provided above, the Indemnified Party may defend against the Claim in any manner it may deem appropriate. If the Indemnified Party reasonably concludes in its sole discretion that the Indemnifying Party is failing to actively and diligently defend against the Claim as provided above, then, notwithstanding anything to the contrary in this Agreement, the Indemnified Party may defend against the Claim in any manner it may deem appropriate, including the settlement of such Claim, and shall be entitled to reimbursement of the expenses of such defense and settlement from the Indemnifying Party.

(d) The parties to this Agreement shall make available to the other, from time to time upon request, any books, records, or other documents within their control relating to the Accounts that are necessary or appropriate for the defense of any Claim.

10.4 **Limitations of Liability**. Notwithstanding the foregoing, the liability of Seller and Buyer under this Agreement shall be subject to the following limitations:

(a) Except for a party's indemnification obligations contained in Section 10.1 or Section 10.2, under no circumstances will either party be liable to the other party, with respect to the subject matter of this Agreement, for indirect, incidental, consequential, special, punitive or exemplary damages, including without limitation lost profits, arising from or relating to any provision of, or a party's performance of, this Agreement.

(b) No claim by Buyer for indemnity for a breach of representation or warranty under this Agreement will be effective if it is not received by Seller on or before twelve months after the Closing Date; for the sake of clarity, it is acknowledged that this limitation does not apply to a breach or default by Seller of any covenant to be performed after the Closing Date.

(c) No claim by Seller for indemnity for a breach of representation or warranty under this Agreement will be effective if it is not received by Buyer on or before twelve months after the Closing Date; for the sake of clarity, it is acknowledged that this limitation does not apply to a breach or default by Buyer of any covenant to be performed after the Closing Date, including without limitation those covenants set forth in Sections 6, 7 or 8 of this Agreement.

(d) The maximum liability of Seller with respect to a breach of a representation or warranty in Section 3 with respect to an Account shall be the Adjustment Amount applicable to such Account.

(e) Neither party shall have any indemnification obligation with respect to the first $181,382.76 of Damages of the other party's Indemnified Persons as a group.

(f) The maximum aggregate liability of Seller under this Agreement or otherwise in connection with the Accounts shall be an amount equal to the Purchase Price paid by Buyer.

10.5 **Survival**. All representations and warranties set forth in this Agreement, and the indemnity obligations under this Section 10, shall survive the Closing or any termination of this Agreement.

11. **Confidentiality**. From and after the execution of this Agreement, each party (a "receiving party") shall keep confidential, and shall use reasonable efforts to cause their respective officers, directors, employees and agents to keep confidential, any and all proprietary or trade secret information obtained from the other party (a "disclosing party") concerning the assets and business of the disclosing party, and shall not use such confidential information for any purpose other than to exercise its rights and carry out its obligations under this Agreement; *provided, however*, that a receiving party shall not be subject to the obligations set forth in the preceding sentence with respect to any such information provided to it by a disclosing party which either (i) was in the receiving party's possession at the time of disclosure, (ii) was in the public domain at the time of disclosure, or subsequently enters the public domain through no act or failure to act on the part of the receiving party, (iii) is lawfully obtained by the receiving party from a third party, or (iv) is required to be disclosed by a court or other governmental agency or competent jurisdiction.

12. **Miscellaneous Terms**

12.1 **Notices**. All notices and other communications between the parties will be in writing and will be deemed given when delivered personally, including by facsimile, or one business day after deposit with a nationally-recognized overnight courier service, to a party at its address set forth below, or to any other address as a party may designate in writing:

To Buyer:

Centurion Capital Corporation
700 King Farm Blvd., Suite 503
Rockville, MD 20850
Attention: Brian K. Childs
Facsimile: (240) 386-3882

To Seller:

Capital One Bank
1680 Capital One Drive
McLean, VA 22102
Attention: Tom Thurmond
Facsimile: (208) 472-5414

With a copy to:

Capital One Bank
1680 Capital One Drive
McLean, VA 22102
Attention: Associate General Counsel
Facsimile: (703) 720-2221

12.2 **Successors and Assigns**. This Agreement will bind and inure to the benefit of Buyer and Seller and their respective permitted successors and assigns.

12.3 **Severability**. If any provisions of this Agreement are found to be unenforceable, the remaining provisions shall nevertheless be enforceable and shall be construed as if the unenforceable provisions were deleted.

12.4 **Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees or other costs incurred in connection with such action or proceeding and in any petition for appeal or appeal therefrom, in addition to any other relief to which it or they may be entitled.

12.5 **Governing Law**. The parties intend that this contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts made and wholly performed within Virginia by persons domiciled in Virginia, without regard to choice of law rules.

12.6 **Waiver of Jury Trial. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY**

JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

12.7 **Legal Drafting and Construction.** The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

12.8 **No Partnership or Joint Venture.** The relationship between the parties created by this Agreement is that of buyer and seller only. This Agreement does not create a partnership or joint venture between Buyer and Seller, and neither Buyer nor Seller is the agent of the other party as a result of this Agreement or has any authority hereunder to act on behalf of or bind the other party in any manner.

12.9 **Counterpart and Facsimile Signatures.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts shall be deemed a single original of this Agreement. A facsimile transmission by one party to another party of an executed signature page of this Agreement shall be deemed to be equivalent to delivery of an original signature page, and the transmitting party shall forward the original signature page upon request of the receiving party.

12.10 **Entire Agreement.** This Agreement and the agreements referred to herein contain the entire understanding of, and supersedes all prior or contemporaneous agreements among, the parties with respect to the subject matter hereof.

12.11 **Waiver; Amendment.** Neither this Agreement nor any of its provisions may be changed, waived, discharged or terminated orally. Any change, waiver, discharge or termination may be effected only by a writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CENTURION CAPITAL CORPORATION,
a Maryland corporation

By: _____

Name: Ronald M. Abramson

Title: General Counsel

CAPITAL ONE BANK,
a Virginia banking corporation

By: _____

Name: Jory Alan Berson

Title: SVP, Card Operations

Exhibit 1
SALE FILE
(Tape or other means of electronic transfer may be provided in lieu of a list)

Exhibit 2
BILL OF SALE

Capital One Bank ("**Seller**"), for valuable consideration, the receipt of which is hereby acknowledged, hereby sells, assigns and transfers to Centurion Capital Corporation ("**Buyer**"), all of Seller's right, title and interest in and to the Accounts as identified on **Exhibit 1** attached hereto.

CAPITAL ONE BANK,
a Virginia banking corporation

By: _____
Name: Jerry Alan Berson
Title: SVP, Card Operations

Exhibit 3
ASSUMED CONTRACTS and OBLIGATIONS

Section 1.

1. Purchase and Sale Agreement, dated June 14, 2004, between Capital One Bank and Sherman Acquisition LLC (Capital One control #1707).

2. Purchase and Sale Agreement, dated July 31, 2002, between Providian National Bank and Providian Bank, as sellers, and Capital One Bank, as buyer (Capital One control #1623).

3. Purchase and Sale Agreement, dated July 31, 2002, between Providian National Bank and Providian Bank, as sellers, and Capital One Bank, as buyer (Capital One control #1624).

Section 2.

1. Buyer agrees not to attempt to collect on any Account acquired by Seller under that certain Receivables Purchase Agreement, dated April 3, 2000, between Capital One Bank and Hurley State Bank (Capital One control #145) with respect to which the Obligor is deceased.

BILL OF SALE

Capital One Bank ("**Seller**"), for valuable consideration, the receipt of which is hereby acknowledged, hereby sells, assigns and transfers to Centurion Capital Corporation ("**Buyer**"), all of Seller's right, title and interest in and to the Accounts as identified on **Exhibit 1** attached hereto.

CAPITAL ONE BANK,
a Virginia banking corporation

By: _____

Name: Jony Alan Berson

Title: SVP, Card Operations

300062 Money Transfer Detail
- - 1 Approvers Dec 08, 2005 01:17 PM

Sender's Debit Information

Originating Party Name: Centurion Capital Corp
Originating Party Account: [redacted]
amount: [redacted]
currency: USD - US Dollar

Beneficiary's Information

account: 71000 - CAPITAL ONE BANK
amount: [redacted]
currency: USD - US Dollar

Additional Information

send date: Dec 08, 2005
value date: Dec 08, 2005

Bank Routing Information

beneficiary bank: CAP ONE RICH - CAPITAL ONE BANK
routing #: 051405515
payment method: FED

Originator-to-Beneficiary Information

line 1: ATTN: CRS Camie Laney (Pool B Bank)

Bank-to-Bank Information

none

Control Information

bank trace no: 2005342000365
customer trace no: 007287
entry cust/user: 300062 - CBJ
entry date/time: Dec 08, 2005 - 08:54:07 AM
approver 1 cust/user: 300062 - DPA1004
approver 1 date/time: Dec 08, 2005 - 01:01:51 PM
approver 2 cust/user: -
approver 2 date/time: -
status: Confirmed
report created: Dec 08, 2005 - 01:17:32 PM

Confirmation Information

line 1: IMAD: 1208F1QCZ68C002908 Ref: 2005120800007629