UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	)	Lead Case No. 02-C-5893 (Consolidated) <u>CLASS ACTION</u> Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

<u>THE CLASS' OBJECTION TO THE MAGISTRATE JUDGE'S MARCH 5, 2007 ORDER REGARDING AUDIT LETTERS PRODUCED BY KPMG AND ARTHUR ANDERSEN</u>

(REDACTED VERSION)

I. INTRODUCTION

At issue is the March 5, 2007 Order ("March 5 Order") issued by Magistrate Judge Nolan respecting a series of audit letters provided by Household International Inc.'s ("Household") General Counsel, Kenneth Robin, to Household's independent auditors, KPMG LLP ("KPMG") and Arthur Andersen LLP ("Andersen"). As the Court will recall, prior decisions by this Court addressed whether audit letters provided by Household to Andersen constituted attorney work product. Throughout that briefing process, Household did not raise any issue respecting any inadvertent production of audit letters by KPMG nor did it seek recall of all audit letters produced by Andersen. On October 19, 2006, the Magistrate Judge ordered Household to identify all "inadvertently" produced documents within two weeks "even if [it has] got people on it around the clock." October 19, 2006 Hearing Transcript ("October 19 Hearing Tr.") at 110-112. Notwithstanding this, on December 7, 2006, at the deposition of Mr. Robin, Household objected to questioning of Mr. Robin on audit letters produced by KPMG and Andersen. Following correspondence between the parties, principally the Class and KPMG, the Class raised this issue at the January 10, 2007 status conference, where the Class sought a briefing schedule to address the waiver issues. January 10, 2007 Hearing Transcript ("January 10 Hearing Tr.") at 103. The Magistrate Judge declined to set a briefing schedule, but requested that Household identify where the KPMG audit letters and the Andersen audit letters overlapped. On January 24, 2007, the Magistrate Judge found that Household "offered no reasonable explanation for their failure to bring the KPMG documents to the court's attention in a timely manner," but allowed recall of the KPMG and new Andersen audit letters because the Class had not shown any prejudice to it in being deprived of the use of these documents and fairness required the audit letters remained confidential. January 24, 2007 Order ("January 24 Order") at 2. The Class sought reconsideration of the January 24 Order on the grounds that it had not been given the opportunity to argue prejudice prior to the Order. On March 5, 2007, the Court

denied the Class' Motion for Reconsideration.[1] The Class now objects to the March 5 Order as legally and factually unsupportable. This Court should sustain the Class' objection and allow the Class access to the KPMG and new Andersen audit letters and the opportunity to depose Mr. Robin on them.

II. FACTUAL BACKGROUND

In early 2006, there was extensive motion practice before the Magistrate Judge and this Court respecting the inadvertent production by Andersen of audit letters. During that briefing, Household noted that audit letters had also been provided to KPMG, bud did not seek to recall any audit letters "inadvertently" produced by KPMG. Reply at 1 n.1.[2] Further, Household did not seek recall ***all*** of the audit letters produced by Andersen.

During the course of depositions, Household would, at the deposition, object to the use of specific documents as exhibits on the grounds that the documents were "inadvertently produced" privileged documents. To forestall this practice, the Class sought a ruling from the Magistrate Judge to preclude Household from making these last-minute objections. On October 19, 2006, the Magistrate Judge responded to the Class' request and directed Household to identify all "inadvertently" produced documents within two weeks. October 19 Hearing Tr. at 112.

On December 7, 2006, the Class deposed Mr. Robin, the author of the letters at issue. The Class introduced as an exhibit a copy of the January 14, 2002 letter from Mr. Robin to Andersen. Notwithstanding the October 19, 2006 instructions, Household objected to the use of this exhibit and

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[1] "Motion for Reconsideration" or "Motion" refers to the Class' Motion for Reconsideration of the Court's January 24, 2007 Order Finding Waiver of KPMG Documents, But Precluding Disclosure for Failure to Demonstrate Prejudice, filed on February 7, 2007 (Dkt. No. 947).

[2] "Reply" refers to Reply in Support of the Class' Motion for Reconsideration of the Court's January 24, 2007 Order Finding Waiver of KPMG Documents, But Precluding Disclosure for Failure to Demonstrate Prejudice, filed on March 1, 2007 (Dkt. No. 998).

other audit letters as "inadvertently" produced. Subsequent correspondence between the relevant parties ensued over which party would bring the motion.

Via its status report in advance of the January 10, 2007 status conference, the Class raised this issue with the Court. At the hearing itself, Class counsel sought a briefing schedule to address the various waiver arguments that pertained to these documents. January 10 Hearing Tr. at 103. The Class pointed out that the specific document used at the deposition of Mr. Robin was produced by Andersen (despite having a KPMG bates number). *Id*. at 109. The Court declined to set a briefing schedule and directed Household to identify via letter the extent of the overlap between these new "inadvertently" produced documents and the documents addressed in the prior Andersen motion.

After receiving Household's letter and without briefing on the waiver issues by the Class, the Magistrate Judge issued her January 24 Order. The ruling commenced with the finding that 29 of the audit letters at issue were new and thus, "troublesome [] in that they are merely 'similar in form, purpose and general content to the Arthur Andersen attorney opinion letters that occasioned the Court's July 6 [2006] ruling.'" January 24 Order at 1 (quoting January 12, 2007 letter from P. Farren, Household counsel). The Magistrate Judge went on as follows:

> Defendants have offered no reasonable explanation for their failure to bring the KPMG documents to the court's attention in a timely manner. . . . It is inconceivable that Defendants were unaware that both Arthur Andersen and KPMG served as their outside auditors, and it is not the court's job to guess the scope of its decisions.
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> Nevertheless, Plaintiffs have not demonstrated that they have suffered, or will suffer any prejudice due to Defendants' untimely recall. To the contrary, Plaintiffs have known since July 2006 that this court would likely find such documents privileged, and only recently attempted to use them at a deposition. As noted, moreover, Judge Guzman affirmed the court's ruling in its entirety.
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> . . . Given the magnitude of the document production in this case and the small number of documents at issue here, the court concludes that fairness requires that the KPMG Opinion Letters remain confidential.

Id. at 1-2 (citing *R.J. Reynolds Tobacco Co. v.* Premium *Tobacco Stores, Inc.*, No. 99 C 1174, 2001 WL 1286727, at *6 (N.D. Ill. Oct. 24, 2001)).

The Class sought reconsideration of the January 24 Order on the grounds that 1) the Magistrate Judge needed to allow the Class the opportunity to present arguments in support of waiver, and 2) the Magistrate Judge's January 24 Order relied on a factual showing by the Class of prejudice to determine fairness, which is not required by law and which, if required, the Class could show as it did. To demonstrate the prejudice to the Class, the Class presented the Magistrate Judge with highlighted selections from the Andersen and KPMG audit letters at issue, which numbered ten, and noted, *inter alia*, why the Class needed to question Mr. Robin, their author, to probe the truthfulness of the disclosures to Household's auditors as well as senior management's awareness and knowledge of significant litigation. Motion at 5-6; Reply at 5. (Besides Mr. Robin, other senior management were copied on these letters, specifically Household's Chief Financial Officer (and defendant in this action), David Schoenholz, and Controller, Steven McDonald.)

The Magistrate Judge denied the Class' Motion for Reconsideration on March 5, 2007 on the grounds that the Class had been given the opportunity to brief the issue as part of the Andersen briefing and in any event, the Magistrate Judge had the discretion "to decide further briefing was unnecessary." March 5 Order at 2. With respect to the substance of the Class' Motion for Reconsideration, the March 5 Order held that the statements in the January 24 Order regarding lack of prejudice to the Class were not the basis for its conclusion that fairness requires the letters to remain confidential. *Id.* The March 5 Order also found that the Class had not demonstrated "any undue prejudice," concluding that the Class' showing, which the Magistrate Judge viewed as "identical" to that raised in the prior briefing with respect to the prior Andersen letters, was "not a sufficient basis for finding waiver of the work product privilege as to Household's attorney opinion letters." *Id*.

We discuss why the Magistrate Judge' findings and conclusions as referenced in the March 5 Order was clearly erroneous so as to warrant this Court's granting this objection.

III. LEGAL STANDARD

An objection properly lies where the Magistrate Judge has committed an error of law or has made a clearly erroneous factual finding. *Weeks v. Samsung Heavy Indus. Co., Ltd.*, 126 F.3d 926, 943 (7th Cir. 1997). This standard is met here as the Magistrate Judge should have reconsidered her January 24 Order, which was factually and legally erroneous, and found waiver under the *R.J. Reynolds* factors.

Household as the party seeking to avoid waiver here has the burden of demonstrating to the Court that it has not waived the privilege through its various failures. Here, as the Magistrate Judge noted, waiver is determined under *R.J. Reynolds* "by balancing 'the reasonableness of the precautions taken to prevent the disclosure, the time taken to rectify the error, the scope of discovery, the extent of the disclosure, and the overriding issue of fairness.'" March 5 Order at 2 (quoting *R.J. Reynolds*, 2001 WL 1286727, at *6). However, the January 24 Order, which was decided without briefing from the Class, erred legally by requiring the Class to also show prejudice to it as an element of the fairness factor and erred factually by finding no prejudice to the Class. When presented with these issues, the Magistrate Judge should have reconsidered the ruling in light of the *R.J. Reynolds* factors and found waiver under the applicable facts, particularly since the fairness factor when analyzed correctly favors the Class. However, the Magistrate Judge denied the Class' Motion for Reconsideration, which denial was clear error and contrary to the law. The Court should sustain this objection under the "fairness" case law and *R.J. Reynolds*.

IV. THE MAGISTRATE JUDGE ERRED BY NOT RECONSIDERING HER PRIOR JANUARY 24 ORDER

The January 24 Order was issued by the Magistrate Judge without the Class submitting a brief in support of its various waiver arguments. As the Magistrate Judge noted in a different

context in the January 10, 2007 status conference, under the Magistrate Judge/District Judge system, the parties must be allowed to develop a record before the Magistrate Judge in order to present this Court with a basis upon which to decide any subsequent objections. January 10 Hearing Tr. at 73. Indeed, this Court has pointed out to the parties the need to first present to the Magistrate Judge its arguments on a particular point. February 1, 2007 Order at 2 (discussing Household defendants' failure to contest an issue before the Magistrate Judge). The Class was not permitted the opportunity to develop this record prior to the January 24 Order and is entitled to that opportunity, particularly since the Class requested a briefing schedule on this issue during the January 10, 2007 status conference. January 10 Hearing Tr. at 103. Thus, reconsideration was appropriate.

The March 5 Order found to the contrary based on the view that the Class had briefed these issues in the prior Andersen briefing such that no additional briefing was necessary and in any event, the Magistrate Judge had discretion to determine no further briefing was necessary. March 5 Order at 2. However, neither of these rationales hold.

As to the first point, the prior Andersen briefing turned largely on whether the audit letters were privileged as attorney work product. That briefing did not address (and could not have addressed) the issue of waiver in the factual context here, namely after Household's failure to raise the inadvertent production of these audit letters in the prior motion and after the Magistrate Judge herself imposed a two-week deadline to identify all inadvertently produced documents on October 19, 2006. As to the Class' January 8, 2007 status report, that report merely raised the waiver points in conclusory fashion without any supporting analysis, such as application of the *R.J. Reynolds* factors. Precisely for this reason, the Class requested a briefing schedule at the status conference itself.

The Magistrate Judge herself in the January 24 Order acknowledged that the waiver issue respecting these documents was different legally. "The situation presented here is unique, however,

in that it is the first time that Defendants are seeking to recall documents that they should have presented to the court in connection with a previous ruling." January 24 Order at 1.

The situation is also different factually in that most of these letters were not at issue before. As shown in the Class' Motion for Reconsideration, numerous specific passages from these audit letters show that these audit letters contain important evidentiary value. That evidence was not before the Court previously.

As shown in the briefs to the Magistrate Judge, these audit letters contain probative evidence respecting then-pending litigation. For example, the July 17, 2002 audit letter includes the following excerpt regarding the Attorneys General negotiations:

Mehdi Decl., Ex. B at HI KPMG 017299-301.[3] This excerpt differs materially from what was disclosed to the public on that same date.

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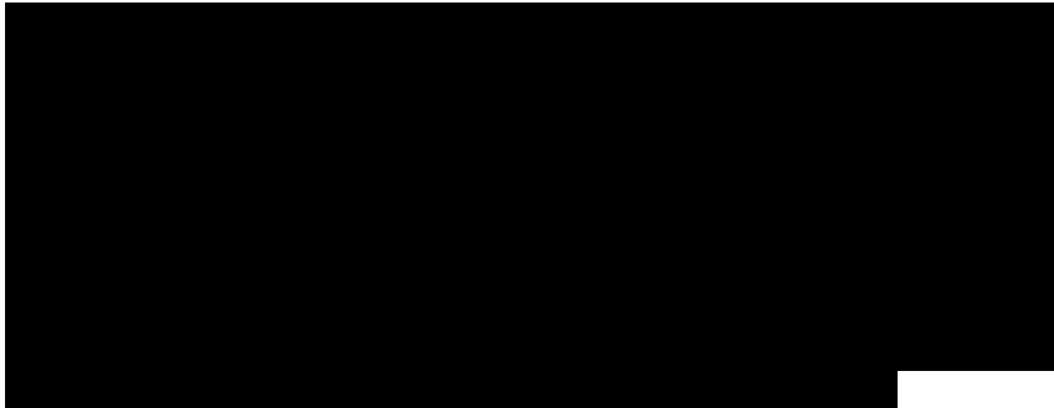
[3] "Mehdi Decl." refers to the Declaration of Azra Z. Mehdi in Support of the Class' Motion for Reconsideration of the Court's January 24, 2007 Order Finding Waiver of KPMG Documents, But Precluding Disclosure for Failure to Demonstrate Prejudice, filed on February 7, 2007 (Dkt. No. 949).

Similarly, the January 14, 2002 audit letter references a Minnesota state investigation.



Mehdi Decl., Ex. A at HI KPMG 007022.[4] Again, the Class compares this entry to what was disclosed publicly. In its briefs below, the Class identified numerous other entries regarding other predatory lending litigation and investigations. *See* Reply at 3 (citing Class Actions in California, Illinois, and Washington).

Not only do these entries provide probative evidence of what defendants (including individual defendant Schoenholz) knew versus what they disclosed publicly, these entries are also significant for what they don't disclose. Failure to fully apprise the auditors of material litigation risks not only undercuts the reliability of the resulting audit opinion, but also shows scienter as to the deception worked on the auditor by concealing and omitting key facts about the litigation risks. For example, the *Luna* litigation in Washington state came after [redacted], which revealed the truth of the issues raised in *Luna*. This [redacted] was not revealed to the auditors. *See* Mehdi Decl., Ex. C at 2 (discussing *Luna* and related cases and asserting [redacted] [redacted]); *see also* Mehdi Decl., Ex. D at 3 (August 26, 2002

[4] This is a different copy of the Andersen document the Class attempted to use at Mr. Robin's deposition.

audit letter entry re *Luna* containing only a reference [REDACTED] [REDACTED]).

Similarly, it was inaccurate for Mr. Robin to identify as "new" the Washington state investigation in August of 2002. *See* Mehdi Decl., Ex. B at 3. Defendants were aware of that investigation prior to the April 2002 audit letter. This Washington state investigation is relevant not only by itself, but also as to the merits of the then-pending *Luna* case and the Attorneys General negotiations. Indeed, in the October 16, 2002 audit letter, Mr. Robin acknowledges [REDACTED] [REDACTED]. Mehdi Decl., Ex. E at 1.

In these circumstances, the Magistrate Judge's criticism that the Class has simply recycled its prior "falsity, scienter, and materiality" arguments is both unfair and not persuasive. These elements of securities fraud predominate in this case (as in most such cases) and thus, the parties' arguments respecting relevance have tended to highlight these elements as support for their arguments.

As to the second point, the case law, including that cited by the Magistrate Judge, does not support her conclusion that the Class was not entitled to brief the waiver issues pertaining to these documents. In the first case that the Magistrate Judge cites, *Weeks v. Samsung*, the Seventh Circuit merely stated that the district court exercises discretion in controlling discovery. 126 F.3d at 943. That case does not hold that a magistrate judge may proceed to decision without briefing by the parties. And in the second, *Fairley v. Andrews,* this Court addressed the question of whether a judge was biased against a party when, *inter alia,* he imposed a requirement that any response to a discovery motion had to be filed within 48 hours. 423 F. Supp. 2d 800, 805 (N.D. Ill. 2006). In rejecting that argument, the Court noted that this requirement applied to both parties and was, thus, fair. In dicta, the Court went on to note that the district court "need not allow briefing on discovery motions." *Id*.

There is an important distinction between a magistrate judge and a district court judge on this point. Pursuant to Fed. R. Civ. P. 72, this Court must have the ability to review the Magistrate Judge's rulings, an ability that is inhibited, if not outright precluded, when there is no record upon which to assess the validity of an objection. The case law cited by the Magistrate Judge, thus, is inapposite in that it discusses this Court's discretion and not that of the Magistrate Judge.

The Magistrate Judge erred as a matter of law in not permitting the Class to brief the waiver issues prior to ruling and should have reconsidered her January 24 Order. As discussed below, the Magistrate Judge further erred in not changing her ruling to find waiver based on the *R.J. Reynolds* factors.

V. THE MAGISTRATE JUDGE ERRED WITH RESPECT TO THE DETERMINATION OF FAIRNESS

The March 5 Order recognizes that *R.J. Reynolds* requires a balancing test, yet the Magistrate Judge failed to apply that test correctly. Indeed, the Magistrate Judge's conclusion that "'[g]iven the magnitude of the document production in this case and the small number of documents at issue here, [the court concludes that] fairness requires that the KPMG Opinion Letters remain confidential'" reflects a fundamental misunderstanding and misapplication of *R.J. Reynolds* and the other cases on this issue. March 5 Order at 1 (citing February 24 Order). The magnitude of the production and the number of documents at issue are separate factors under *R.J. Reynolds* and thus, irrelevant to the issue of fairness. Application of the correct factors based on the record before the Magistrate Judge, which is devoid of any showing by Household defendants on the *R.J. Reynolds* factors, demonstrates that the finding of no waiver, including the fairness finding, was clear error. This Court should sustain this objection.

The March 5 Order reiterated the "court's clear conclusion that, based on the application of [*R.J. Reynolds*], '*fairness* requires that the KPMG Opinion letters remain confidential.'" March 5

Order at 2 (emphasis in original). However, the Magistrate Judge did not apply *R.J. Reynolds* correctly in determining "fairness."

In the Class' Motion for Reconsideration, the Class cited *Wunderlich-Malec Sys., Inc. v. Eisenmann Corp.*, No. 05C04343, 2006 U.S. Dist. LEXIS 84889, at *22-*23 (N.D. Ill. Nov. 17, 2006). Motion at 4. This case is on all fours with the present situation. In *Wunderlich-Malec,* the Court also dealt with the situation where a party had failed to identify all of the documents at issue in a prior motion. The Court found waiver of the asserted privileges under the *R.J. Reynolds* factors.[5] In determining fairness, the *Wunderlich-Malec* Court put the onus on the party seeking to maintain the document as privileged despite production to show "'actual prejudice beyond what is naturally felt by a party who loses a privilege.'" Motion at 3. Significantly, although Household bears the burden on this issue, there is no evidence in the record as to what, if any, prejudice Household believes it would suffer based on waiver.

Further, while the March 5 Order asserts that the Magistrate Judge did not rely upon her prejudice finding with respect to waiver, *see* March 5 Order at 2 (court did not "impose any such [prejudice] requirement"), there is substantial evidentiary value in the highlighted passages of the audit letters as shown above. The Class intends to use these passages at trial (and deposition) to establish precisely what Household's General Counsel told the outside auditors respecting relevant litigation in calendar year 2002 and what he omitted, which will be important in determining the extent to which Household can rely upon those audit opinions. Motion at 7; Reply at 5. These highlighted passages also establish senior management's awareness of significant predatory lending

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[5] Although the *Wunderlich-Malec* Court cited *Harmony Gold U.S.A., Inc. v. FASA Corp.*, 169 F.R.D. 113 (N.D. Ill. 1996), as opposed to *R.J. Reynolds* as the support for the balancing test, the factors applied by the *Wunderlich-Malec* Court under *Harmony Gold* are identical to those factors considered in *R.J. Reynolds. See Wunderlich-Malec*, 2006 U.S. Dist. LEXIS 84889, at *19 (quoting *Harmony Gold,* 169 F.R.D. at 117).

litigation. *See* Motion at 5-6. As the Class noted, other courts have found similar letters to be relevant to the central issue of scienter. *Id*. at 7 (citing *Bairnco Corp. Sec. Litig. v. Keene Corp.*, 148 F.R.D. 91, 100 (S.D.N.Y. 1993)).

The Magistrate Judge apparently considered this showing to be insufficient to effectuate waiver of the attorney work product doctrine. March 5 Order at 2. However, here the Magistrate Judge mistakenly imposed the good cause standard used to overcome the work product doctrine, which is not applicable to the determination of waiver due to "inadvertent production." This mistake is apparent from the Magistrate Judge's citation of her earlier Andersen opinion. March 5 Order at 2 (citing *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, 237 F.R.D. 176 (N.D. Ill 2006)). That prior order did not scrutinize the evidentiary value of the audit letters in terms of the waiver-by-production issue, but did do so in the context of whether the evidentiary value was sufficient to overcome the work product privilege. *Lawrence E. Jaffe Pension Plan*, 237 F.R.D. at 183 n.2.

By contrast, the *Wunderlich-Malec* Court imposed no burden on the party arguing waiver in terms of establishing the evidentiary value of the documents at issue. Moreover, it is worth comparing the document at issue in *R.J. Reynolds* and the documents at issue here. In *R.J. Reynolds,* the Magistrate Judge was faced with a single page of handwritten notes relating to a meeting with an attorney. 2001 WL 1286727, at *1. The opinion notes that "CC [the party arguing in favor of waiver] has not demonstrated that the [document], which no witness other than Mr. Buckler could identify, has any importance in this case except for whatever value it may have to CC to put before the finder of fact confidential legal advice from RJR's legal department." *Id*. at *9. Here, the Class has demonstrated the importance of putting before the jury what Household's General Counsel told (or did not tell) Household's auditors.

Finally, the Magistrate Judge erred by considering the magnitude of the document production and the number of documents at issue as factors relevant to the fairness determination. *See* January

24 Order at 2. The March 5 Order reaffirmed this error. *See* March 5 Order at 2 (referencing the prior "clear conclusion" as to fairness). However, the magnitude of the document production and the number of documents at issue are addressed by other factors within the *R.J. Reynolds* balancing test and thus, the Magistrate Judge erred in relying upon them in reaching her fairness conclusion. (We note below that further to the point, there was no record evidence before the Magistrate Judge with respect to the number of documents produced by KPMG nor the efforts made by Household to prevent production of privileged documents by KPMG, its current auditors so as to undercut her factual conclusions as well.)

In sum, the evidentiary record before the Magistrate Judge compelled a determination that fairness favored the Class and waiver. As noted above, defendants made no showing of any undue prejudice to them from waiver and the audit letters have significant probative value. Further, the other *R.J. Reynolds* factors also support a finding of waiver.

Indeed, the Magistrate Judge specifically found Household had no reasonable explanation for its failure to raise the alleged inadvertent production in a timely manner. As noted in *Wunderlich-Malec*, "[t]his factor weighs heavily in favor of a finding that [Household's] actions constitute a waiver." 2006 U.S. Dist. LEXIS 84889, at *21-*22 (noting failure to timely recall "all mistakenly produced documents"). Moreover, there was complete disclosure of the audit letters at issue.[6]

This Court cannot place reliance upon the Magistrate Judge's statements concerning the magnitude of the production and number of documents at issue. The Magistrate Judge had no record evidence regarding total number of documents in the KPMG production nor the extent to which this production consisted of audit letters. *Compare, Lawrence E. Jaffe Pension Plan*, 237 F.R.D. at 183

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[6] The Protective Order in this case does not contain any provision to the effect that inadvertent production cannot be a basis for waiver. *Compare Urban Outfitters, Inc. v. DPIC Cos.*, 203 F.R.D. 376, 380 (N.D. Ill. 2001).

(noting that Andersen production involved "some tens of thousands of pages"). Additionally, Household did not provide (and the Magistrate Judge did not consider) any evidence as to the steps taken by Household to prevent inadvertent production in the first instance. Significantly, as the Magistrate Judge is aware, Household has held up numerous third-party productions in order to review documents for privilege prior to production, including productions by HSBC, Goldman Sachs, Wells Fargo, and Morgan Stanley. The Class believes that Household conducted a similar pre-production review here as KPMG, unlike Andersen, currently audits Household and is subject to its control.

In sum, the *R.J. Reynolds* factors, including the overriding issue of fairness, mandate a finding of waiver. The Magistrate Judge's contrary conclusion was based on a misreading of the applicable law and was without factual support in the record.

VI. CONCLUSION

For the foregoing reasons, this Court should sustain the Class' objection to the March 5 Order. The Class should have been permitted the opportunity to brief the new waiver issues posed by these documents, including through referencing the specific passages of relevance. Further, the Magistrate Judge erred as a matter of law in determining fairness based on irrelevant considerations, such as prejudice to the Class and the number of documents produced. To the contrary, the record evidence before the Magistrate Judge warranted a finding of waiver.

DATED: March 19, 2007

Respectfully submitted,

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DECLARATION OF SERVICE BY EMAIL AND BY U.S. MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on March 19, 2007, declarant served by electronic mail and by U.S. Mail to the parties: **THE CLASS' OBJECTION TO THE MAGISTRATE JUDGE'S MARCH 5, 2007 ORDER REGARDING AUDIT LETTERS PRODUCED BY KPMG AND ARTHUR ANDERSEN (Redacted Version)**. The parties' email addresses are as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of March, 2007, at San Francisco, California.

s/Monina O. Gamboa

MONINA O. GAMBOA