

**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,

- against -

HOUSEHOLD INTERNATIONAL, INC., ET. AL.,

Defendants.

Lead Case No. 02-C-5893
(Consolidated)

CLASS ACTION

Judge Ronald A. Guzman

**DECLARATION OF THOMAS J. KAVALER IN SUPPORT OF THE
HOUSEHOLD DEFENDANTS' MOTION PURSUANT TO LOCAL RULE
16.1 TO REQUIRE PLAINTIFFS TO IDENTIFY THE ALLEGEDLY
FALSE AND MISLEADING STATEMENTS TO BE PROVED AT TRIAL**

I, THOMAS J. KAVALER, declare as follows:

1. I am a member of the bar of the State of New York and a member of the firm Cahill Gordon & Reindel LLP, attorneys for Household International, Inc., Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer, and J.A. Vozar, Defendants in this action. I have been admitted to appear before this Court *pro hac vice*. I submit this declaration to place before the Court certain information and documents referenced in Defendants' Motion Pursuant to Local Rule 16.1 to Require Plaintiffs to Identify the Allegedly False and Misleading Statements to Be Proved at Trial.

2. Attached hereto as Exhibit 1 is a true and correct copy of the November 10, 2008 letter from Luke O. Brooks to Ira J. Dembrow.

3. Attached hereto as Exhibit 2 is a true and correct copy of Plaintiffs' Proposed Verdict Form, served on Defendants on October 31, 2008 by counsel for Plaintiffs.

4. Attached hereto as Exhibit 3 is a true and correct copy of Plaintiffs' Proposed Jury Instructions served on Defendants on October 31, 2008 by counsel for Plaintiffs, excerpted.

5. Attached hereto as Exhibit 4 is a true and correct copy of Plaintiffs' Proposed Statement of Contested Issues of Fact and Law, served on Defendants on October 31, 2008 by counsel for Plaintiffs.

6. Attached hereto as Exhibit 5 is a true and correct copy of the November 7, 2008 letter from Ira J. Dembrow to Luke O. Brooks.

7. Attached hereto as Exhibit 6 is a true and correct copy of the verdict form in *In re Apollo Group Inc. Sec. Litig.* (D. Ariz. 2008).

8. Attached hereto as Exhibit 7 is a true and correct copy of the verdict form in *In re JDS Uniphase Corp. Sec. Litig.* (N.D. Cal. 2007).

9. Attached hereto as Exhibit 8 is a true and correct copy of the verdict form in *In re Clarent Corp.* (N.D. Cal. 2005).

10. Attached hereto as Exhibit 9 is a true and correct copy of the Order re: Phase I Verdict Form in *In re Clarent Corp.* (N.D. Cal. 2005).

11. I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Executed this 11th day of December, 2008, in New York, New York.

/s/ Thomas J. Kavalier
Thomas J. Kavalier

Exhibit 1



SAN DIEGO • SAN FRANCISCO
NEW YORK • BOCA RATON
WASHINGTON, DC • HOUSTON
LOS ANGELES • PHILADELPHIA

Luke O. Brooks
lukebrooks@csgr.com

November 10, 2008

VIA FACSIMILE

Ira J. Dembrow
CAHILL GORDON & REINDEL LLP
Eighty Pine Street
New York, NY 10005-1702

Re: *Lawrence E. Jaffe Pension Plan v. Household International, Inc., et al.*
Case No. 02-CIV-5893 (N.D. Ill)

Dear Ira:

I write in response your three letters sent Friday afternoon. Your accusations of bad faith are, as usual, unfounded and overblown. Plaintiffs have taken great care in selecting their witnesses and testimony. The fact is, the number of diverse issues in the case, the division of Household (a 33,000 employee company) into six segments and the length of the Class Period require this number of witnesses. Preparing the PTO is an iterative process, and defendants have not yet disclosed any information regarding their proposed witnesses or deposition designations. Nor have defendants produced their objections to plaintiffs' witnesses, deposition designations or trial exhibits. Naturally, as this information is provided, plaintiffs will continue to work to refine their witness list and deposition designations. That said, if you really need more than five weeks for your counter-designations, we are available to meet and confer.

With respect to the nine individuals identified in your first letter, these witnesses have expressed their preference that contact and scheduling related to this case go through us. As I am sure you are aware, these witnesses were formerly sales branch employees at Household during the Class Period. Plaintiffs appropriately notified defendants in 2004 of plaintiffs' belief that such employees were likely to have relevant information in plaintiffs' amended initial disclosures, served on August 20, 2004. These explicitly state:

Plaintiffs believe that there are Regional Sales Managers (RSM), District Sales Managers (DSM), Branch Sales Managers (BSM), Senior Account Executives, Account Executives, Sales Assistants, as well as trainers, collections people, underwriters and other individuals within the Household organization whose identities are not known to plaintiffs at this time, who are likely to have discoverable information relating to one or more of the subjects outlined in the Complaint. (See p.67)



Ira J. Dembrow
November 10, 2008
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Your letter implies that plaintiffs should have previously amended their initial disclosures or interrogatory responses to specifically identify these individuals. However, plaintiffs did not discover that these witnesses had knowledge of defendants' predatory lending practices until after fact discovery closed. Even setting that fact aside, the implication that plaintiffs should have amended their initial disclosures is especially disingenuous given your own stance on amending defendants' initial disclosures. See May 31, 2006 and June 8, 2006 correspondence between Luke Brooks and Ira Dembrow. These individuals are former employees known to the defendants and were identified during the discovery process, specifically "in documents produced in response to Plaintiffs' . . . document requests." See June 8, 2006 Dembrow letter. Thus, by your own standard, even if plaintiffs had discovered these witnesses during the Class Period, amendment would not have been required. As former employees, moreover, they do not fall under the auspices of defendants' interrogatory seeking the identification of "witnesses not **affiliated with Household** believed by Plaintiffs to have knowledge of any alleged predatory lending practices."

Your letter includes a vague reference to taking "appropriate action" if these former Household employees remain on plaintiffs' witness list. Although plaintiffs do not believe any additional action is warranted, we are available this week to discuss the "appropriate action" defendants have in mind.

Your third letter sent Friday complains that plaintiffs have not identified false and misleading statements in their proposed jury instructions and/or verdict form. As you can surmise from their absence, plaintiffs do not believe that in this case it is necessary or appropriate to include each false statement or omission in the jury instructions or verdict form. We would prefer to discuss the jury instructions and verdict form after we receive your edits to our proposals, and not in the piece-meal fashion suggested by your letter. If you would like to begin the discussions early, we welcome your edits to our proposals in advance of December 8. As to your demand that we amend by tomorrow our proposed statement of contested facts and law to include each false statement and the reasons why they are false, we do not understand the statement of contested facts and law to require this level of detail, which is more appropriate for plaintiffs' trial brief, due January 30, 2009. If you are aware of authority to the contrary we will of course consider it.

Very truly yours,

Luke O. Brooks

LOB:cs

Exhibit 2

Section 10(b) Claim

1. Do you find, by a preponderance of the evidence that defendant Household International, Inc. (“Household”) violated Securities Exchange Act of 1934 (“Exchange Act”) §10(b)/Rule 10b-5?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant Household.)

Yes No

2. Do you find, by a preponderance of the evidence that defendant William F. Aldinger violated Exchange Act §10(b)/Rule 10b-5?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant William F. Aldinger.)

Yes No

3. Do you find, by a preponderance of the evidence that defendant David A. Schoenholz violated Exchange Act §10(b)/Rule 10b-5?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant David A. Schoenholz.)

Yes No

4. Do you find, by a preponderance of the evidence that defendant Gary D. Gilmer violated Exchange Act §10(b)/Rule 10b-5?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant Gary D. Gilmer.)

Yes No

5. Do you find, by a preponderance of the evidence that defendant Joseph A. Vozar violated Exchange Act §10(b)/Rule 10b-5?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant Joseph A. Vozar.)

Yes No

6. For purposes of joint and several liability, do you find, by a preponderance of the evidence that defendant Household acted knowingly?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant Household.)

Yes No

7. For purposes of joint and several liability, do you find by a preponderance of the evidence that defendant William F. Aldinger acted knowingly?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant William F. Aldinger.)

Yes No

8. For purposes of joint and several liability, do you find, by a preponderance of the evidence that defendant David A. Schoenholz acted knowingly?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant David A. Schoenholz.)

Yes No

9. For purposes of joint and several liability, do you find, by a preponderance of the evidence that defendant Gary D. Gilmer acted knowingly?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant Gary D. Gilmer.)

Yes No

10. For purposes of joint and several liability, do you find, by a preponderance of the evidence that defendant Joseph A. Vozar acted knowingly?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant Joseph A. Vozar.)

Yes No

Section 20(a) claim:

11. Do you find by a preponderance of the evidence that defendant Household violated §20(a) of the Exchange Act?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant Household.)

Yes No

12. Do you find by a preponderance of the evidence that defendant William F. Aldinger violated §20(a) of the Exchange Act?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant William F. Aldinger.)

Yes No

13. Do you find by a preponderance of the evidence that defendant David A. Schoenholz violated §20(a) of the Exchange Act?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant David A. Schoenholz.)

Yes No

14. Do you find by a preponderance of the evidence that defendant Gary D. Gilmer violated §20(a) of the Exchange Act?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant Gary D. Gilmer.)

Yes No

15. Do you find by a preponderance of the evidence that defendant Joseph A. Vozar violated §20(a) of the Exchange Act?

(A “yes” is a finding in favor of the plaintiff class. A “no” is a finding in favor of defendant Joseph A. Vozar.)

Yes No

16. Please specify the total amount of damages per share each day of the Class Period to be awarded to the plaintiff class, if any, caused by the conduct of defendants (and all other persons who you find by a preponderance of the evidence to also have caused the plaintiff class damages) through violations of the securities laws alleged.

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07/30/99	\$_____ per share
08/02/99	\$_____ per share
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17. What is the percentage responsibility for the plaintiffs' loss that you assign to each defendant whom you found in answers to Questions 1-5 and 11-15 to have violated the securities laws. The total must add up to 100%. In determining the percentage of responsibility for each such defendant, you must consider: (1) the nature of the conduct of each defendant found to have caused or contributed to the loss incurred by the plaintiffs; and (2) the nature and extent of the causal relationship between the conduct of each defendant and the damages incurred by the plaintiffs.

	<u>Percentage</u>
Household	_____
William F. Aldinger	_____
David A. Schoenholz	_____
Gary D. Gilmer	_____
Joseph A. Vozar	_____
	= 100% Total

18. Do you find that plaintiffs are entitled to prejudgment interest?

Yes No

Sign and return this form.

(Presiding juror)

(Date)

Exhibit 3

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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

PLAINTIFFS' PROPOSED JURY INSTRUCTIONS (WITH AUTHORITY)

SECTION FRAUD: SECTION 10(b) INSTRUCTIONS

JURY INSTRUCTION NO. 46.

Securities – Definition of Recurring Terms

Congress has enacted securities laws designed to protect the integrity of financial markets. The plaintiff claims to have suffered a loss caused by the defendants' violation of certain of these laws.

There are terms concerning securities laws that have a specific legal meaning. The following definitions apply throughout these instructions, unless noted otherwise.

A security is an investment of money in a commercial, financial or other business enterprise, with the expectation of profit or other gain produced by the efforts of others. Some common types of securities are stocks, bonds, debentures, warrants, and investment contracts. the security at issue here is common stock.

The buying and selling of securities is controlled by the Securities Laws. Many of these laws are administered by the United States Securities and Exchange Commission.

A "10b-5 Claim" is a claim brought under a federal statute, §10(b) of the Exchange Act, which in essence prohibits acts of deception in connection with the purchase or sale of a security and in violation of rules and regulations that the SEC has the duty and power to issue. A corresponding SEC rule, Rule 10b-5, prohibits the misrepresentation of material facts and the omission of material facts in connection with the purchase or sale of securities. A person or business entity who violates the securities laws, including Rule 10b-5, may be liable for damages caused by the violation.

A misrepresentation is a statement of material fact that is false or misleading when it is made. A statement may be misleading even if it is literally true if the context in which the statement was made caused the listener or reader to remain unaware of the actual state of affairs.

An omission is a failure to disclose a material fact that had to be disclosed to prevent other statements that were made from being misleading.

A controlling person is [an individual who] [company that] possesses the power to direct the management or policies of a business enterprise or of another person involved in the management or policy-making of the enterprise.

In connection with means that there was some nexus or relationship between the allegedly fraudulent conduct and the purchase of the securities.

An instrumentality of interstate commerce includes the postal mails, e-mails, telephone, telegraph, telefax, interstate highway system, internet and similar methods of communication and travel from one state to another within the United States.

Authority: Model Civ. Jury Instr. 9th Cir. 18.0 (2007) (modified); 15 U.S.C. §§78c, 78t(a), 78u-4(b); 17 C.F.R. §§240.10b-1, 240.10b-5, 240.12b-2.

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 47.

Rule 10b-5 Defined

I will now instruct you concerning plaintiffs' claim against the defendants under §10(b) and Rule 10b-5. Plaintiffs' claims are based on alleged violations of §10(b) of the Exchange Act. Section 10(b) provides:

It shall be unlawful for any person, directly or indirectly . . .

* * *

To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange] Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

One of the rules promulgated by the SEC in the public interest and for the protection of investors is Rule 10b-5, which reads as follows:

Employment of manipulative and deceptive devices.

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

- (a) To employ any device, scheme, or artifice to defraud, or
- (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading, or
- (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

Authority: 17 C.F.R. §240.10b-5; 15 U.S.C. §78j(b); 3B Kevin F. O'Malley, et al., *Federal Jury Practice and Instructions* §162.220; see also 4 Hon. Leonard B. Sand, et al., *Modern Federal Jury Instructions* ¶82.01, Instruction 82-1 (2003).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 48.

Elements for Primary Liability Under Section 10(b)

Plaintiffs contend that defendants Household, Aldinger, Schoenholz, Gilmer and Vozar violated §10(b) of the Exchange Act and Rule 10b-5 by making various false or misleading statements. To establish their claim under §10(b), plaintiffs must establish, by a preponderance of the evidence, each of the five following elements:

1. that the defendant made an untrue statement of a material fact or failed to state a material fact that was necessary to prevent the statements that were made from being misleading under the circumstances;
2. that the defendant acted with particular state of mind, which is called “scienter” and which will be defined below;
3. that the plaintiffs relied on the alleged misrepresentation or omission which will be discussed below;
4. that the defendant used, or caused the use of, an instrumentality of interstate commerce – such as the mails, a telephone, or any facility of a national securities exchange – in connection with the purchase or sale of securities to plaintiffs; and
5. that the plaintiffs suffered damages as a result of the defendant’s conduct.

Element No. 4 has been stipulated to by the parties and no evidence need be presented on that element.

Authority: 15 U.S.C. §78j(b); 17 C.F.R. §240.10b-5(b); 3B Kevin F. O’Malley, et al., *Federal Jury Practice and Instructions* §§162.210, 162.230 (modified) (5th ed.); *Caremark, Inc. v. Coram Healthcare Corp.*, 113 F.3d 645 (7th Cir. 1997); *Otto v. Variable Annuity Life Ins. Co.*, 134 F.3d 841 (7th Cir. 1998); *Tricontinental Indus. v. PricewaterhouseCoopers, LLP*, 475 F.3d 824 (7th Cir. 2007), *cert. denied*, ___ U.S. ___, 128 S. Ct. 357 (2007).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 49.

Judicially Noticed Facts

The Court has decided to accept as proved the following facts, even though no specific evidence has been introduced on the subject:

1. That shares of Household stock are “securities”;
2. Household stock traded in an “efficient market”;
3. That defendants’ communications with and statements to the market during the Class Period were carried out through “the instrumentalities of interstate commerce”;
4. That a Class of individuals exists as defined by the Court in its Class Certification Order; and
5. That the plaintiffs are purchasers of Household common stock.

Authority: Fed. Civ. Jury Instr. 7th Cir. 1.04; Fed. R. Evid. 201(g).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 50.

Section 10(b) Misrepresentation or Omission

To satisfy the first element of their §10(b) claim, plaintiffs bear the burden of proving by a preponderance of the evidence that the defendant made an untrue statement of fact or omitted a material fact when making a statement.

A misrepresentation is a statement that was false and misleading when it was made. Statements are also false and misleading if they tend to create a false or misleading impression. An omission is a failure to disclose a fact that needed to be disclosed to keep the statements that were actually made from being misleading. You may find a violation of Rule 10b-5 based on a single statement or omission that is materially misleading by itself. Or you may find a violation of Rule 10b-5 if the overall impression created by several statements or omissions is materially misleading.

When a person chooses to make a statement, he or she is under a duty to include such information as would prevent the statements from misleading a reasonable investor. Having chosen to speak, there is an obligation to tell all the facts which are necessary to convey a true and fair understanding of the matters spoken of. Sometimes a statement that is true falls short of fairly informing. Under some circumstances, a half-truth or other statement that is in some sense technically or literally “true” may be misleading.

Authority: 15 U.S.C. §78j(b); 17 C.F.R. §240.10b-5; 3B Kevin F. O’Malley, et al., *Federal Jury Practice and Instructions* §162.231 (5th ed.); *Schlifke v. Seafirst Corp.*, 866 F.2d 935, 944 (7th Cir. 2989) (“incomplete disclosures, or ‘half-truths,’ implicate a duty to disclose whatever information is necessary to rectify the misleading statements”) (citation omitted); *First Virginia Bankshares v. Benson*, 559 F.2d 1307, 1317 (5th Cir. 1977) (“a duty to speak the full truth arises when a defendant undertakes to say anything”); Restatement (Second) of Torts §529, cmt. a (1977) (“A statement containing a half-truth may be as misleading as a statement wholly false. Thus, a statement that contains only favorable matters and omits all reference to unfavorable matters is as much a false misrepresentation as if all the facts stated were untrue.”); American Bar Association, *Model Jury Instructions Securities Litigation* 4.02[2] (1996) (modified).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 51.

Scienter

To satisfy the second element of their §10(b) claim, plaintiffs bear the burden of proving by a preponderance of the evidence that defendants acted with a particular state of mind, which is called scienter.

Plaintiffs can prove scienter by showing that the defendants had actual knowledge that their statements were false or misleading when made. A defendant acts knowingly when: (1) he or she makes an untrue statement with actual knowledge that the statement was false; or (2) he or she omits necessary information that would make the statement in light of the circumstances in which it was made not false or misleading. Plaintiffs can also prove scienter by a lesser standard called recklessness that does not require any showing of intentional misconduct. Recklessness may be established by a showing of carelessness approaching indifference, or by showing that a statement was made without regard for whether it was true or false. For example, a defendant acts recklessly if it had material facts at the time the statement was made, but nonetheless failed to obtain and/or disclose such facts although it could have done so without extraordinary effort. A defendant acts with recklessness when his actions: (i) are an extreme departure from the standards of ordinary care; and (ii) present a danger of misleading investors that is either known to the author or speaker or is so obvious that he must be aware of it.

Plaintiffs can prove defendants' scienter either through direct evidence or circumstantial evidence. Thus, you may infer defendants' state of mind from defendants' acts and words given all of the surrounding circumstances at that time.

Authority: 3B Kevin F. O'Malley, et al., *Federal Jury Practice and Instructions* §§162.232, 162.284 (5th ed.); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, ___ U.S. ___, 127 S. Ct. 2499, 2510 (2007); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 191, 193 & n.12, 197-99, 215 (1976); *Rowe v. Maremont Corp.*, 850 F.2d 1226, 1238 (7th Cir. 1988)

(“A plaintiff may not recover in a Rule 10b-5 action unless he proves the defendant acted with scienter – that is, intent to defraud, . . . or reckless disregard for the truth of his representations”) (citations omitted); *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977) (defining recklessness as a “danger of misleading buyers [that is] actually known or so obvious that any reasonable man would be legally bound as knowing”); *Robin v. Arthur Young & Co.*, 915 F.2d 1120, 1126 (7th Cir. 1990).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 52.

Integrity of the Market Theory – Presumption of Reliance

The third element the plaintiff Class must establish to recover under §10(b) and Rule 10b-5 is reliance. If omissions or nondisclosures meet the standards of materiality to a reasonable investor as I have previously explained them to you, reliance is presumed by the entire Class and there is no requirement that plaintiffs show that they or any Class member actually relied on defendants' statements in purchasing Household stock.

Reliance is established in the impersonal stock market context by proof of purchase and of the materiality of misrepresentations or omissions, without direct proof of reliance. A purchaser of publicly traded securities such as Household common stock may be either unaware of a specific false representation, or may not directly rely on it; he or she may purchase because of a favorable price trend, price earnings ratio, or some other factor. Nevertheless, he or she relies generally on the supposition that the stock price is validly set and that no unsuspected fraud or manipulation has affected the price, and thus indirectly on the truth of the representations underlying the stock price – whether the investor is aware of it or not, the price paid reflects materially misleading representations.

The plaintiff Class contends that the alleged misrepresentations and omissions of material fact in the statements released to the public caused the price of Household stock which they purchased to be artificially inflated – that is, that the misrepresentations and omissions caused Household stock to sell at a higher price in the market than the price at which it would have sold had misleading statements and omissions not occurred. The plaintiff Class contends that they suffered damages from such artificial price inflation, because when they purchased their stock, they paid more for it than they would have paid had all the true facts about Household been disclosed to the public.

If you find that a defendant is responsible for any misleading statements or omissions of material fact, you may presume that the market price of Household securities were affected, and that those who purchased stock were injured because the price was artificially inflated.

The reliance requirement will be established for the plaintiff Class with respect to their §10(b) and Rule 10b-5 claim if you find that at least one material misrepresentation or omission affected the market price of the Household stock which was traded during the Class Period.

Authority: *Basic Inc. v. Levinson*, 485 U.S. 224, 247 (1988) (“nearly every court that has considered the proposition has concluded that where materially misleading statements have been disseminated into an impersonal, well-developed market for securities, the reliance of individual plaintiffs on the integrity of the market price may be presumed”); *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 153-54 (1972) (“[P]ositive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in the making of this decision.”); *Peil v. Speiser*, 806 F.2d 1154, 1160-61 (3d Cir. 1986); *West v. Prudential Sec., Inc.*, 282 F.3d 935, 936 (7th Cir. 2002) (“because most publicly available information is reflected in market price, an investor’s reliance on any public material misrepresentations . . . may be presumed for purposes of a Rule 10b-5 action”) (quoting *Basic*, 485 U.S. at 247); *In re Motorola Sec. Litig.*, 505 F. Supp. 2d 501, 553 (N.D. Ill. 2007) (“[A]n investor who buys or sells shares at the price set by an efficient market is entitled, for purposes of establishing a §10(b) claim, to a rebuttable presumption that she traded in reliance on any public material misrepresentations.”).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 53.

Instrumentality of Interstate Commerce

To find this fourth element satisfied, you must find that a defendant used any means or instrumentality of interstate commerce, or of any facility of any national securities exchange. The use of an “instrumentality of interstate commerce” includes, for example, the use of the mails, e-mail, internet or the telephone. It is not necessary that a misrepresentation or omission occur during the use of the means or instrumentality of interstate commerce. All that is required is that the means or instrumentality of interstate commerce be used in a manner related to conduct at issue in this case. Also, if you find that Household securities were traded on a national securities exchange, this element is satisfied.

Authority: American Bar Association, *Model Jury Instructions: Securities Litigation* 1.09 (1996) (as modified); 5B Arnold S. Jacobs, *Disclosure & Remedies Under the Securities Laws* §8:2 (1981) (“[W]hile communication can, naturally, be from defendant to plaintiff, it need not be [T]he misrepresentation, omission, or other act proscribed by the Rule need not be conveyed by the jurisdictional means; use of the mails or interstate commerce is sufficient even if the transported or communicated item is innocuous.”); *SEC v. Tex. Gulf Sulphur Co.*, 401 F.2d 833, 848 (2d Cir. 1968) (Rule 10b-5 applies to stock transaction on exchanges).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 54.

Section 10(b) – Loss Causation

To satisfy the fifth element of their §10(b) claim, plaintiffs bear the burden of proving by a preponderance of the evidence that they suffered damages as a proximate result of the alleged misleading statements or omissions. This is called “loss causation.” In other words, the plaintiffs must show that the misleading statement or omission played a substantial part in bringing about or causing the damages suffered by him and that the damage was either a direct result or a reasonably foreseeable result thereof. It is not necessary for plaintiffs to show that the alleged misrepresentations or omissions were the sole or exclusive cause of the damages but that they were at least a substantial contributing cause of damages the Class member incurred. Loss causation is established by the occurrence of events that disclose or leak the relevant truth in the market and thereby dissipate the price inflation that resulted from the false or misleading statements. Disclosure of the relevant truth can come directly from the company or from third parties. Plaintiffs bear the burden of proving by a preponderance that the decline in the price of Household’s stock resulted in part from the disclosure or leakage of the truth about Household’s business and finances.

Authority: *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 342 (2005); *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049 (9th Cir. 2008); *Robbins v. Koger Props.*, 116 F.3d 1441, 1447 (11th Cir. 1997) *In re Motorola Sec. Litig.*, 505 F. Supp. 2d 501, 551 (N.D. Ill. 2007) (specific disclosure correcting previous representation or expressly disclosing particular fraud not required); *Asher v. Baxter Int’l, Inc.*, No. 02 CV 5608, 2006 WL 299068, at *7 (N.D. Ill. Feb. 7, 2006); *In re Daou Sys.*, 411 F.3d 1006, 1026 (9th Cir. 2005), *cert. denied*, 546 U.S. 1172 (2006).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 55.

Section 10(b) – Damages

If you find for plaintiffs on plaintiffs' claim under the Exchange Act, then you will consider the issue of the amount of money damages to be awarded to the plaintiffs. The law permits you to make a reasonable estimate of the damages suffered by the Class members based upon all of the relevant data that has been placed before you, either in the form of documents or testimony. Only actual damages are recoverable under the Exchange Act.

The correct measure of actual damages is the difference between the price of the stock at the time of plaintiffs' purchase, and the value of the stock had there been no misconduct by defendants.

For example, if you determine from the evidence that plaintiffs purchased stock at \$20 per share that was artificially inflated due to defendants' misstatements and omissions, and the stock was really only worth \$10 at the time of plaintiffs' purchase, then the out-of-pocket measure of damages would be \$10 per share.

Plaintiffs have provided expert testimony regarding the amount of inflation on each day of the Class Period. You are entitled to accept that amount, reject it, or award a different amount. The verdict form will include a column for you to include any inflation you find for each day of the Class Period.

Any damages you award must have a reasonable basis in the evidence. They need not be proved with mathematical certainty but there must be enough evidence for you to make a reasonable estimate of damages. Uncertainties regarding the amount of damages may be resolved in favor of the plaintiffs if you find a defendant violated §10(b) and Rule 10b-5. In calculating damages, you may rely on the opinions and findings of expert witnesses.

Authority: 15 U.S.C. §78j(b); 3B Kevin F. O'Malley, et al., *Federal Jury Practice and Instructions* §162.321 (5th ed.) (modified); *Story Parchment Co. v. Paterson*

Parchment Paper Co., 282 U.S. 555, 562-66 (1931); *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 155 (1972); *Caremark, Inc. v. Coram Healthcare Corp.*, 113 F.3d 645, 648 n.4 (7th Cir. 1997) (the proper measure of damages is the difference between the fair value of all that the plaintiff received and the fair value of what he would have received had there been no fraudulent conduct); *Associated Randall Bank v. Griffin, Kubik, Stephens & Thompson, Inc.*, 3 F.3d 208 (7th Cir. 1993) (Damages for securities fraud “usually are difference between the price of the stock and its value on date of the transaction if the full truth were known.”); *Flamm v. Eberstadt*, 814 F.2d 1169, 1179 (7th Cir. 1987) (“[U]sual measure of damages [in securities fraud case] is the difference between what stock fetched and what it would have been worth had all information been disclosed.”).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 56.

Misrepresentation by Conduct

A misrepresentation need not be expressed in words.

Any active concealment of the truth, by words or conduct, which creates a false impression, is treated as the equivalent of a misrepresentation.

A misrepresentation may be expressed by acts and conduct as well as in words. A falsehood may be expressed by deeds, acts, conduct, or artifice, as well as in words or assertions; deceptive conduct is equivalent to verbal misrepresentation. A misrepresentation may consist of a combination of conduct and concealment or conduct and language or solely of conduct.

Any conduct capable of being turned into a statement of fact is a representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts. It is sufficient that there were acts such as to mislead a reasonably cautious or prudent person in regard to the existence of a fact.

Authority: William J. Prosser, *Handbook of the Law of Torts* §86, at 720 (1st ed. 1941); 37 C.J.S. Fraud §12 (2007); *Leonard v. Springer*, 64 N.E. 299 (Ill. 1902); Restatement (Second) of Torts, §525, cmt. b (1977); *In re Mercer*, 246 F.3d 391 (5th Cir. 2001) (*en banc*).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 57.

Sophisticated Investors

In this case, some plaintiffs have been described as sophisticated investors. The federal securities laws apply to and protect all persons who purchase or sell securities, whether or not those persons are sophisticated investors. Plaintiffs are part of a Class of all types of investors, some of whom are sophisticated and some who are not.

Authority: *Sanders v. John Nuveen & Co.*, 619 F.2d 1222, 1229 (7th Cir. 1980) (whether or not plaintiffs were sophisticated investors has no bearing on whether or not they can sustain a cause of action under the applicable federal securities laws); *Spatz v. Borenstein*, 513 F. Supp. 571 (N.D. Ill. 1981) (The securities laws entitle all investors, both the experienced and the novice, to the full and truthful disclosure of material information.).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 58.

Financial Statements

Under the federal securities laws, public companies such as Household are required to disclose certain financial information to the public on a periodic basis. Some of this information is disclosed in the form of the company's "financial statements." A financial statement presents a company's financial position at one moment in time. A company's financial statement taken as a whole must disclose the information that is needed to fairly present the company's financial position, and operating results. The mere fact that a company's financial results were audited by an outside auditor does not mean that the financial statements do not include a false statement or omission, and is not by itself a defense to a violation of the securities laws.

Authority: 15 U.S.C. §78m; 15 U.S.C. §78j; American Bar Association, *Model Jury Instructions: Securities Litigation* 5.02 (1996) (as modified); *In re Spiegel, Inc. Sec. Litig.*, 382 F. Supp. 2d 989 (N.D. Ill. 2004) (The mere fact that a company's financial results were audited by an outside auditor does not mean that the financial statements do not include a false statement or omission.); *United States v. Erickson*, 601 F.2d 296 (7th Cir. 1979).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 59.

Financial Statements Not In Conformity With GAAP Presumed Misleading

If you find that any of Household's financial statements did not conform to GAAP, you may presume the financial statement or statements to have been misleading to investors in Household securities.

Authority: 17 C.F.R. §210.4-01(a)(1) ("Financial statements filed with the Commission which are not prepared in accordance with generally accepted accounting principles will be presumed to be misleading or inaccurate . . .") (Regulation S-X); *S.E.C. v. Koenig*, No. 02 C 2180, 2007 WL 1074901, at *4 (N.D. Ill. Apr. 5, 2007) ("A GAAP violation is presumptively a false or misleading statement of material fact under Rule 10b-5"); *SEC v. Sys. Software Assocs.*, 145 F. Supp. 2d 954, 958 (N.D. Ill. 2001); *Takara Trust v. Molex Inc.*, 429 F. Supp. 2d 960, 975 (N.D. Ill. 2006) ("Financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate.").

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 60.

Financial Statements In Conformity with GAAP May Nevertheless be Misleading

Even if you determine that a financial statement was in conformity with GAAP, you may nevertheless find it misleading for another reason or reasons.

Authority: *cf. United States v. Simon*, 425 F.2d 796, 805-06 (2d Cir. 1969) (Trial court properly refused to give jury instruction that defendants could not be found guilty of securities fraud if the financial statements in question were in compliance with GAAP.); *Rigas v. United States*, No. 07-494, 2008 WL 354727, at *4 (Feb. 6, 2008) (The Court upheld rule that “compliance with GAAP was not determinative” of whether financial statement is misleading. States that Judge Friendly, speaking for the court of appeals in *United States v. Simon*, 425 F.2d 796 (2d Cir. 1969), *had it right*. “In that case, there were no GAAP rules that addressed the disclosure issue at hand. An accountant sought to defend his conduct in certifying a misleading financial statement by claiming generally that he had not violated GAAP. Judge Friendly rejected that defense saying that compliance with GAAP was not determinative. He limited his opinion, however, to situations in which there are no ‘specific rules or prohibitions’ on point.”); *Malone v. Microdyne Corp.*, 26 F.3d 471, 478 (4th Cir. 1994) (“[C]ourts have found defendants liable for securities fraud under Rule 10b-5 despite having complied with GAAP”); *In re Global Crossing, Ltd. Sec. Litig.*, 322 F. Supp. 2d 319 (S.D.N.Y. 2004).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 61.

Directly or Indirectly

Rule 10b-5 makes it unlawful to mislead investors “directly or indirectly.” This means that one may not do indirectly, or through the agency of others, what one may not do directly or personally.

Authority: 15 U.S.C. §78j(b); 17 C.F.R. §240.10b-5.

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 62.

Statements Made Through Securities Analysts

You may find defendants liable for statements made by third-party securities analysts if you find that either:

1. defendants adopted those statements or became entangled with those statements such that the market had the impression that defendants made the statements; or
2. defendants made the false and misleading statements to analysts with the intent that the analysts communicate those statements to the market.

Authority: 15 U.S.C. §78t(b) (“It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this title [] or any rule or regulation thereunder through or by means of any other person.”); *Tanner v. United States*, 483 U.S. 107, 129 (1987) (“fraud may be established when the defendant has made use of a third party to reach the target of the fraud”).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 63.

Language of Disclosure

The disclosure required by the securities laws is measured not by literal truth, but by the ability of the information to accurately inform rather than mislead investors. Representations must be interpreted according to a reasonable investor's understanding of the words used and must be read in the context in which they are made. Thus, even if the words used by a defendant are technically correct, and accurately disclose some information, you may nevertheless find them misleading if they conceal other data necessary for a true understanding.

Authority: *First Virginia Bankshares v. Benson*, 559 F.2d 1307, 1314 (5th Cir. 1977) (“a defendant may not deal in half-truths”); 5C Arnold S. Jacobs, *Disclosure and Remedies Under the Securities Laws* §12:2 (West Group 2002) (citing *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186 (3d Cir. 1990)); *Hoxworth*, 903 F.2d at 200 n.19 (“misleading half-truths” – defined as “failures to disclose sufficient information to render statements actually made not misleading” – actionable under Rule 10b-5); *In re Convergent Techs. Sec. Litig.*, 948 F.2d 507, 512 (9th Cir. 1991) (“Some statements, although literally accurate, can become, through their context and manner of presentation, devices which mislead investors. For that reason, the disclosure required by the securities laws is measured not by literal truth, but by the ability of the material to accurately inform rather than mislead prospective buyers.”) (quoting *McMahan & Co. v. Warehouse Entm't*, 900 F.2d 576, 579 (2d Cir. 1990)); *Cant v. A. G. Becker & Co.*, 374 F. Supp. 36, 46 (N.D. Ill. 1974) (“In addition to the responsibility for making disclosures of material facts is the implicit further responsibility of accomplishing this disclosure in a manner that results in the facts being clearly and intelligibly communicated and not obtusely or cryptically communicated.”) (citing *Feit v. Leasco Data Processing Equip. Corp.*, 332 F. Supp. 544 (E.D.N.Y. 1971)); *Gerstle v. Gamble-Skogmo, Inc.*, 478 F.2d 1281, 1297 (2d Cir. 1973) (“While ‘corporations are not required to address their stockholders as if they were children in kindergarten,’ . . . it is not sufficient that overtones might have been picked up by the sensitive antennae of investment analysts.”) (citation omitted).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 64.

Section 10(b) – Materiality

The plaintiffs must prove by a preponderance of the evidence that the misrepresentation or omission of the defendant was material.

A factual representation concerning a security is material if there is a substantial likelihood a reasonable investor would consider the fact important in deciding whether or not to buy or sell that security. A fact is “important” if a reasonable investor would view the fact as significantly altering the total mix of information made available.

An omission concerning a security is material if a reasonable investor would have regarded what was not disclosed to her as having significantly altered the total mix of information she took into account in deciding whether to buy or sell the security.

You must decide whether something was material based on the circumstances as they existed at the time of the statement or omission. Stock price movement in response to the disclosure of information that reveals the fraud to the market does not establish the materiality or immateriality of the misrepresentation or omission, though it is a factor you may consider in making that determination.

It is not necessary for the plaintiff to prove that the defendant subjectively recognized that the fact stated or omitted would have been important to a reasonable investor.

Authority: 3B Kevin F. O’Malley, et al., *Federal Jury Practice and Instructions* §162.281 (5th ed.); *TSC Indus. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988); *Rowe v. Maremont Corp.*, 850 F.2d 1226, 1232-33 (7th Cir. 1988) (adopting the definition of materiality set forth in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988)); *No. 84 Employer-Teamster Joint Council Pension Trust Fund v. Am. W. Holding Corp.*, 320 F.3d 920, 935 (9th Cir. 2003) (movement of stock price was one factor taken into consideration in determining the materiality of defendants’ misstatements).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 65.

Proof of Knowledge or Intent

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

Authority: 1A Kevin F. O'Malley, et al., *Federal Jury Practice and Instructions* §17.07 (6th ed.); *United States v. Dearing*, 504 F.3d 897 (9th Cir. 2007).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 66.

Scienter – Circumstantial Evidence

The scienter of a defendant, whether knowing or reckless, can be proven by either direct evidence or circumstantial evidence. There will rarely be direct evidence of intent to defraud. You may infer defendant's state of mind from the defendant's acts and words given all of the surrounding circumstances at that time.

While you should consider only the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "*Direct evidence*" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "*Circumstantial evidence*" is proof of a chain of facts and circumstances indicating that something is or is not a fact. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Authority: *Herman & MacLean v. Huddleston*, 459 U.S. 375, 391 n.30 (1983) ("The Court of Appeals also noted that the proof of scienter required in fraud cases is often a matter of inference from circumstantial evidence. If anything, the difficulty of proving the defendant's state of mind supports a lower standard of proof. In any event, we have noted elsewhere that circumstantial evidence can be more than sufficient."); *In re Fleming Cos. Sec. & Derivative Litig.*, No. 5-03-MD-1530 (TJW), 2004 U.S. Dist. LEXIS 26488, at *33 (E.D. Tex. June 10, 2004) ("there will rarely be direct evidence of intent to defraud"); see 4 Hon. Leonard R. Sand, et al., *Modern Federal Jury Instructions* ¶82.02, Instruction 82-8 (2006).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 67.

Notice or Knowledge – Duty of Inquiry

The means of knowledge are ordinarily the equivalent in law to knowledge. If it appears from the evidence in the case that a person had information that would lead a reasonably prudent person to make inquiry through which that person would surely learn the facts, then this person may be found to have had actual knowledge of those facts, the same as if that person had made such inquiry and had actually learned such facts.

That is to say, the law charges a person with notice and knowledge of whatever that person would have learned, on making such inquiry as it would have been reasonable to expect the person to make under the circumstances.

Knowledge or notice may also be established by circumstantial evidence. If it appears that a certain condition has existed for a substantial period of time, and that the person had regular opportunities to observe the condition, then you may draw the inference that the person had knowledge of the condition.

Authority: 3 Kevin F. O'Malley, et al., *Federal Jury Practice and Instructions* §104.24 (5th ed.).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 68.

Neither Motive, Nor Intent to Violate the Law, Required

In order to prove knowledge or recklessness, plaintiffs do not have to show that defendants intended to violate the law, nor do plaintiffs have to show any particular motive for any defendant's alleged wrongful conduct. Although motive is not required to prove knowledge, evidence of motive may be a basis for inferring knowledge.

Authority: 3 Kevin F. O'Malley, et al., *Federal Jury Practice and Instructions* §104.24 (5th ed.); *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 192 n.39 (1963) (“it is not necessary that the person making the misrepresentations intend to cause loss to the other or gain a profit for himself; it is only necessary that he intend action in reliance on the truth of his misrepresentations”) (citation omitted); *United States v. Simon*, 425 F.2d 796, 809 (2d Cir. 1969) (“[The Government’s] burden was not to show that defendants were wicked men with designs on anyone’s purse . . . but rather that they had certified a statement knowing it to be false.”); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965) (“no requirement that the actor [] be aware that he is violating one of the” federal securities rules or acts); *Kas v. Caterpillar, Inc., G.A.*, 815 F. Supp. 1158 (C.D. Ill. 1992) (knowledge may be inferred from motive).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 69.

Motive May Allow an Inference of Scienter

Although motive is not required to prove scienter, evidence of motive may be a basis for inferring scienter.

Authority: *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, __U.S. __, 127 S. Ct. 2499 (2007); *Novak v. Kasaks*, 216 F.3d 300, 307 (2d Cir. 2000); *Roth v. Aon Corp.*, No. 04-C-6835, 2008 U.S. Dist. LEXIS 18471 (N.D. Ill. Mar. 7, 2008).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 70.

Core Operations Inference

When determining whether or not defendants knowingly or recklessly made false and misleading statements, you may, but are not required to, draw a reasonable inference that, because of defendant Aldinger's position as Chief Executive Officer and Chairman of Household, Schoenholz's position as Chief Financial Officer of Household, Gilmer's position as Head of Household's Consumer Lending Business Unit or Vozar's position as Chief Financial Officer of Household's Consumer Lending Business Unit, they would be aware of facts which were critical to Household's core operations or facts relating to Household's important transactions.

Authority: *In re Read-Rite Corp. Sec. Litig.*, 335 F.3d 843, 848-49 (9th Cir. 2003) ("reasonable inference" may be established that defendants, based upon their job duties at the company, were aware of the falsity of some of the statements concerning the company's new products); *In re Cendant Corp. Litig.*, 60 F. Supp. 2d 354, 369-70 (D.N.J. 1999); *Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982 (9th Cir. 2008); *In re Sears, Roebuck & Co. Sec. Litig.*, 291 F. Supp. 2d 722, 727 (N.D. Ill. 2003) ("Officers of a company can be assumed to know of facts 'critical to a business's core operations or to an important transaction that would affect a company's performance.'"); *Stavros v. Exelon Corp.*, 266 F. Supp. 2d 833, 850 (N.D. Ill. 2003).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 71.

Inferences Drawn from Post-Class Period Admissions

If you find that defendants did acts or made statements after the Class Period which directly contradict or are inconsistent with earlier acts or statements made by defendants during the Class Period, you may reasonably infer that defendants had knowledge that the earlier statements were false or misleading.

Authority: *In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 72 (2d Cir. 2001); *Roth v. AON Corp.*, No. 04-C-6835, 2008 U.S. Dist. LEXIS 18471 (N.D. Ill. Mar. 7, 2008); *In re Next Level Sys. Sec. Litig.*, No. 97 C 7362, 1999 U.S. Dist. LEXIS 5653 (N.D. Ill. Mar. 31, 1999) (Defendant's statements made after the class period revealed events during the class period and allowed a reasonable person to infer scienter).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 72.

In Connection with

In order to hold a defendant liable, you must find that its conduct was “in connection with” the purchase or sale of securities. You may find this if you determine that the defendants’ conduct either: (i) coincided with the purchase or sale of securities; or (ii) if it affected a market for securities. Defendants’ conduct of making false and/or misleading statements affects a market for securities.

Authority: 15 U.S.C. §78j(b); §17 C.F.R. §240.10b-5; *SEC v. Zandford*, 535 U.S. 813, 822 (2002) (“It is enough that the scheme to defraud and the sale of securities coincide”).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 73.

Efficient Market

In this case, the parties agree that Household common stock traded in an efficient market. In an efficient market, new information is rapidly absorbed and reflected in the stock price. How rapidly new information is reflected in the stock price depends on the facts of each case.

Authority: *West v. Prudential Secs., Inc.*, 282 F.3d 935, 939 (7th Cir. 2002) (“One fundamental attribute of efficient markets is that information, not demand in the abstract, determines stock prices.”).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 74.

Section 10(b) – Apportionment of Responsibility

I have prepared a special verdict form for you to use in recording your verdict. This special verdict form is made up of questions concerning the important issues in this case. Some of these questions are to be answered either “yes” or “no” as indicated, and others are to be answered with numbers or percentages as indicated.

If you find that the Class is entitled to an award of damages for the §10(b) claim, the verdict form requires you to answer certain questions with respect to Household, William F. Aldinger, David A. Schoenholz, Gary D. Gilmer, and Joseph A. Vozar and certain other persons who are not technically defendants in this trial, but about whom there has been evidence introduced at this trial. With respect to each of these persons, your verdict form must indicate the answer to three questions:

First, whether that person violated §10(b);

Second, if the answer to the first question is “yes,” whether each defendant knowingly committed a violation of the securities laws; and

Third, the percentage of responsibility of that person for the loss incurred by the Class. In determining the percentage of responsibility of each person, you should consider the nature of the conduct of each person you find contributed to the plaintiffs’ loss.

Authority: *See* 15 U.S.C. §78u-4(g); 3B Kevin F. O’Malley, et al., *Federal Jury Practice and Instructions* §162.335 (5th ed.).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

JURY INSTRUCTION NO. 75.

Liability of a Corporation

Under the law, a corporation is considered to be a person. It can only act through natural persons as its employees, agents, directors, or officers. In general, any officer, director, employee or agent of a corporation may bind the corporation by their acts and declarations made while acting within the scope of their authority delegated to them by the corporation or within the scope of their duties as employees of the corporation. Household is liable if it issued an untrue statement of material fact or omitted a material fact necessary to make the statement not misleading, that was made by or with the approval of an executive officer of Household, with actual knowledge or recklessness by that officer that the statement was false or misleading. The executive officers of Household include defendants Aldinger, Schoenholz, Gilmer and Vozar, among others.

Authority: 3 Kevin F. O'Malley, et al., *Federal Jury Practice and Instructions* §103.31 (5th ed.) (adapted and modified); *Am. Soc'y of Mech. Eng'rs v. Hydrolevel Corp.*, 456 U.S. 556 (1982) (corporation may be held liable for statements by employees who have apparent authority to make them); *Makor Issues & Rights, Ltd. v. Tellabs Inc.*, 513 F.3d 702, 707 (7th Cir. 2008) (establishing "corporate liability for a violation of Rule 10b-5 requires 'look[ing] to the state of mind of the individual corporate official or officials who make or issue the statement (or order or approve it or its making or issuance, or who furnish information or language for inclusion therein, or the like) rather than generally to the collective knowledge of all the corporation's officers and employees acquired in the course of their employment'" (citation omitted).

GIVEN: _____

REFUSED: _____

MODIFIED: _____

WITHDRAWN: _____

THE HONORABLE RONALD A. GUZMAN
UNITED STATES DISTRICT JUDGE

Exhibit 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

PLAINTIFFS' STATEMENT OF CONTESTED ISSUES OF FACT AND LAW

I. PLAINTIFFS' STATEMENT OF CONTESTED ISSUES OF FACT

1. Whether defendant Household International, Inc. ("Household") made an untrue statement of a material fact or failed to state a material fact that was necessary to prevent the statements that were made from being misleading under the circumstances;

2. Whether defendant Household acted with scienter;

3. Whether defendant William F. Aldinger ("Aldinger") made an untrue statement of a material fact or failed to state a material fact that was necessary to prevent the statements that were made from being misleading under the circumstances;

4. Whether defendant Aldinger acted with scienter;

5. Whether defendant David A. Schoenholz ("Schoenholz") made an untrue statement of a material fact or failed to state a material fact that was necessary to prevent the statements that were made from being misleading under the circumstances;

6. Whether defendant Schoenholz acted with scienter;

7. Whether defendant Gary D. Gilmer ("Gilmer") made an untrue statement of a material fact or failed to state a material fact that was necessary to prevent the statements that were made from being misleading under the circumstances;

8. Whether defendant Gilmer acted with scienter;

9. Whether defendant Joseph A. Vozar ("Vozar") made an untrue statement of a material fact or failed to state a material fact that was necessary to prevent the statements that were made from being misleading under the circumstances;

10. Whether defendant Vozar acted with scienter;

11. If any defendant is found to have violated §10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b), whether

defendant Aldinger was a controlling person within the meaning of §20(a) of the Exchange Act, 15 U.S.C. §78t(a);

12. If any defendant is found to have violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b), whether defendant Schoenholz was a controlling person within the meaning of §20(a) of the Exchange Act, 15 U.S.C. §78t(a);

13. If any defendant is found to have violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b), whether defendant Gilmer was a controlling person within the meaning of §20(a) of the Exchange Act, 15 U.S.C. §78t(a);

14. If any defendant is found to have violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b), whether defendant Vozar was a controlling person within the meaning of §20(a) of the Exchange Act, 15 U.S.C. §78t(a);

15. If any defendant is found to have violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b), whether defendant Household was a controlling person within the meaning of §20(a) of the Exchange Act, 15 U.S.C. §78t(a);

16. Whether the plaintiff Class suffered damages as a result of the conduct of defendants Household, Aldinger, Schoenholz, Gilmer and/or Vozar and the amount of such damages sustained by the plaintiff Class;

17. For each defendant found to have violated the securities laws, the percentage of responsibility of each defendant for the damages incurred by the plaintiff Class;

18. For each defendant found to have violated the securities laws, whether any such violation was committed knowingly;

19. Whether plaintiffs are entitled to prejudgment interest;

20. Whether defendants have proven that the price of Household stock declined during the Class Period for reasons other than the disclosure of Household's true financial condition;

21. Whether defendants have proven that the truth about the alleged fraud was known to the market and if so, the date on which the truth became known to the market;

II. PLAINTIFFS' STATEMENT OF CONTESTED ISSUES OF LAW

22. Whether defendant Household violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b);

23. Whether defendant Aldinger violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b);

24. Whether defendant Schoenholz violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b);

25. Whether defendant Gilmer violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b);

26. Whether defendant Vozar violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b);

27. If any defendant is found to have violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b), whether defendant Aldinger is jointly and severally liable under §20(a) of the Exchange Act, 15 U.S.C. §78t(a);

28. If any defendant is found to have violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b), whether defendant Schoenholz is jointly and severally liable under §20(a) of the Exchange Act, 15 U.S.C. §78t(a);

29. If any defendant is found to have violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b), whether defendant Gilmer is jointly and severally liable under §20(a) of the Exchange Act, 15 U.S.C. §78t(a);

30. If any defendant is found to have violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b), whether defendant Vozar is jointly and severally liable under §20(a) of the Exchange Act, 15 U.S.C. §78t(a); and

31. If any defendant is found to have violated §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5(b), whether defendant Household is jointly and severally liable under §20(a) of the Exchange Act, 15 U.S.C. §78t(a).

Exhibit 5

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*ADMITTED IN
DC ONLY

**ADMITTED IN
DC, TX, VA ONLY

November 7, 2008

Re: Lawrence E. Jaffe Pension Plan v.
Household International, Inc., et al.
Case No. 02-CV-5893 (N.D. Ill.)

Dear Luke:

I write regarding a specific deficiency that permeates the various submissions Plaintiffs provided to Defendants on October 31.¹ Plaintiffs do not, in their proposed Statement of Contested Issues, Proposed Jury Instructions or any other submission, provide any indication of what alleged false statements of fact or omissions Plaintiffs intend to prove at trial, in what way the unspecified allegedly false statements were untrue, or how "truth" of the unspecified allegedly false statements was revealed.

Securities fraud liability is premised on false statements or omissions. As Plaintiffs acknowledge, proof of a false disclosure is literally the "first element of their § 10(b) claim." See *Plaintiffs' Proposed Jury Instruction No. 50* ("To satisfy the first element of their §10(b) claim, plaintiffs bear the burden of proving by a preponderance of the evidence that the defendant made an untrue statement of fact or omitted a material fact when making a statement."). All of the other elements of the § 10(b) claim relate to the particular false statement(s) or omission(s) at issue. The fact that Plaintiffs nowhere in their submission enumerate the alleged false statements or omissions they intend to prove at trial evinces bad faith and an inexcusable failure to comply with the letter and spirit of the Pretrial Order process.

In response to Defendants' interrogatories, Plaintiffs have previously alleged more than 80 "affirmative misrepresentations" they attribute to Defendants (Plaintiffs' responses to interrogatories Nos. 41-43) as well as numerous alleged omissions (Plaintiffs' responses to interrogato-

¹ The fact that I am writing regarding this single issue does not indicate that Plaintiffs' submissions are not deeply flawed in other respects. We will address other deficiencies elsewhere.

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-2-

ries Nos. 36-40). Is this the universe of misstatements and omissions that Plaintiffs will attempt to prove at trial, or will they focus on a subset of these and/or a different set of allegedly fraudulent disclosures? Although Plaintiffs presumably know (or by now should know) what they intend to prove at trial, their October 31 submissions are silent on this key subject.

For instance, Plaintiffs' proposed Verdict Form proposes to ask jurors generally whether *any* false statement was made by a given Defendant, with no specification of the alleged false statement(s) or omission(s) that Plaintiffs intend to prove at trial. In addition to leaving Defendants and the Court in the dark about the proposed scope of trial, Plaintiffs' open-ended Verdict Form would provide no necessary guidance to the jury. Similarly, Plaintiffs' Statement of Contested Facts reads like a headnote on the elements of a securities fraud claim, with no clue as to their suggested application to this case, except for the mention of individual Defendants' names. In these (as in many other) respects, these submissions stand in sharp contrast to the PTOs deemed acceptable by the courts supervising recent securities fraud trials. (See for example, the detailed verdict form used in *In re JDS Uniphase Corp. Securities Litigation*, which identified each alleged false statement or omission so that the jury could decide on each element of the Rule 10b-5 action as to each alleged false statement or omission attributed to each Defendant.)²

This deficiency must be cured immediately in order for Defendants to refine their PTO submissions in response to Plaintiffs' proposed trial plan. The process of negotiating and agreeing on a draft Pretrial Order is designed to narrow and identify the issues for trial and specify the parties' respective positions on issues to be tried. As Defendants, we are necessarily in a position of reacting to your proposals. We cannot make progress toward reaching an agreement on a draft Pretrial Order unless and until Plaintiffs provide Defendants with a reasonable proposal, made in good faith. Unless Plaintiffs promptly identify the alleged false statement(s) or omission(s) they intend to introduce in connection with the "first element" of their § 10(b) claim, and propose a modified Statement of Contested Issues that specifies in what specific way each alleged false statement was false and how the truth of each alleged false statement came to be known, Defendants and the Court will be entitled to assume that Plaintiffs do not intend to rely at trial on any particular statement or omission. Put another way, Plaintiffs will have waived their right to prove the alleged falsity of any statement or omission that is not identified in their PTO submission.

Defendants therefore ask that Plaintiffs provide, by Tuesday November 11, proposed submissions, including a Statement of the Contested Issues and Verdict form, that identify the particular alleged false statements or omissions that Plaintiffs intend to prove at trial to satisfy the first element of their § 10(b) claim and that specify in what specific way each alleged false statement was false and how the truth of each alleged false statement came to be known. Please let me know whether you will do so.

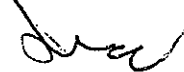
²

As you may be aware, your colleague Ms. Mehdi has previously cited approvingly to the verdict form adopted by the *JDS Uniphase* court. See Transcript of November 20, 2007 Status Conference Before Hon. Nan R. Nolan at 18:12-24.

CAHILL GORDON & REINDEL LLP

-3-

Sincerely,



Ira J. Dembrow

Luke O. Brooks, Esq.
Coughlin Stoia Geller
Rudman & Robbins LLP
100 Pine Street, 26th Floor
San Francisco, CA 94111

VIA FACSIMILE

cc: Adam Deutsch, Esq. (via facsimile)
Marvin A. Miller, Esq. (via facsimile)

Exhibit 6

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JAN 16 2008
 CLERK U.S. DISTRICT COURT
 DISTRICT OF ARIZONA
 BY DEPUTY

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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA

In re Apollo Group Inc. Securities
Litigation,

Master File No. CV 04-2147-PHX-JAT
 (LEAD)
 CV 04-2204-PHX-JAT (Consolidated)
 CV 04-2334-PHX-JAT(Consolidated)

CLASS ACTION

This Document Relates To: All Actions

VERDICT FORM

We, the jury, duly empaneled and sworn in the above-entitled case, upon our oaths,
 do hereby find as follows:

1 **SECTION 10(b) CLAIM AGAINST APOLLO**

2 1. Did Apollo make an untrue statement of a material fact or omit a material fact
3 necessary under the circumstances to keep the statements that were made from being
4 misleading?

5 A) The Press Release of Apollo Group, Inc., dated February 27, 2004:

6 Yes: X No:

7 B) The Analyst Conference on March 12, 2004:

8 Yes: X No:

9 C) The Form 10-Q dated April 13, 2004:

10 Yes: X No:

11 D) The Analyst Conference Call on June 24, 2004:

12 Yes: X No:

13 E) The Analyst Conference Call on August 25, 2004:

14 Yes: X No:

15 F) The Analyst Conference Call on September 7, 2004:

16 Yes: X No:

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18 If you answered all parts of Question 1 "no," leave Questions 2, 3, and 4 blank and
19 proceed to Question 5. If you answered Question 1 "yes" as to any statement, answer
20 Question 2 as to that statement. Do not answer Question 2 for any statement for which you
21 answered Question 1 "no."

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2. For any statement as to which a "yes" answer was given in Question 1, did Apollo act knowingly or recklessly with respect to that misrepresentation or omission?

A) The Press Release of Apollo Group, Inc., dated February 27, 2004:

Yes: No:

B) The Analyst Conference on March 12, 2004:

Yes: No:

C) The Form 10-Q dated April 13, 2004:

Yes: No:

D) The Analyst Conference Call on June 24, 2004:

Yes: No:

E) The Analyst Conference Call on August 25, 2004:

Yes: No:

F) The Analyst Conference Call on September 7, 2004:

Yes: No:

If you answered Question 2 "no" as to all statements left over from Question 1, leave Questions 3 and 4 blank and proceed to Question 5. If you answered Question 2 "yes" as to any statement, answer Question 3 as to that statement. Do not answer Question 3 for any statement for which you answered Question 2 "no."

1 3. For any statement as to which a "yes" answer was given in Question 2, more
2 specifically, did Apollo act knowingly with respect to that misrepresentation or omission?

3 A) The Press Release of Apollo Group, Inc., dated February 27, 2004:

4 Yes: X No:

5 B) The Analyst Conference on March 12, 2004:

6 Yes: X No:

7 C) The Form 10-Q dated April 13, 2004:

8 Yes: X No:

9 D) The Analyst Conference Call on June 24, 2004:

10 Yes: X No:

11 E) The Analyst Conference Call on August 25, 2004:

12 Yes: X No:

13 F) The Analyst Conference Call on September 7, 2004:

14 Yes: X No:

15
16 Proceed to Question 4.

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1 4. For any statement as to which a "yes" answer was given in Question 2, did that
2 misrepresentation or omission cause the plaintiff to suffer damages? (By answering this
3 question in the affirmative, you are finding that Apollo violated the securities laws.)

4 A) The Press Release of Apollo Group, Inc., dated February 27, 2004:

5 Yes: X No:

6 B) The Analyst Conference on March 12, 2004:

7 Yes: X No:

8 C) The Form 10-Q dated April 13, 2004:

9 Yes: X No:

10 D) The Analyst Conference Call on June 24, 2004:

11 Yes: X No:

12 E) The Analyst Conference Call on August 25, 2004:

13 Yes: X No:

14 F) The Analyst Conference Call on September 7, 2004:

15 Yes: X No:

16

17 Proceed to Question 5.

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1 **SECTION 10(b) CLAIM AGAINST TODD NELSON**

2 5. Did Todd Nelson make an untrue statement of a material fact or omit a material
3 fact necessary under the circumstances to keep the statements that were made from being
4 misleading?

5 A) The Press Release of Apollo Group, Inc., dated February 27, 2004:

6 Yes: X No:

7 B) The Analyst Conference on March 12, 2004:

8 Yes: X No:

9 C) The Form 10-Q dated April 13, 2004:

10 Yes: X No:

11 D) The Analyst Conference Call on June 24, 2004:

12 Yes: X No:

13 E) The Analyst Conference Call on August 25, 2004:

14 Yes: X No:

15 F) The Analyst Conference Call on September 7, 2004:

16 Yes: X No:

17

18 If you answered all parts of Question 5 "no," leave Questions 6, 7, and 8 blank and
19 proceed to Question 9. If you answered Question 5 "yes" as to any statement, answer
20 Question 6 as to that statement. Do not answer Question 6 for any statement for which you
21 answered Question 5 "no."

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1 6. For any statement as to which a "yes" answer was given in Question 5, did Todd
2 Nelson act knowingly or recklessly with respect to that misrepresentation or omission?

3 A) The Press Release of Apollo Group, Inc., dated February 27, 2004:

4 Yes: X No:

5 B) The Analyst Conference on March 12, 2004:

6 Yes: X No:

7 C) The Form 10-Q dated April 13, 2004:

8 Yes: X No:

9 D) The Analyst Conference Call on June 24, 2004:

10 Yes: X No:

11 E) The Analyst Conference Call on August 25, 2004:

12 Yes: X No:

13 F) The Analyst Conference Call on September 7, 2004:

14 Yes: X No:

15

16 If you answered Question 6 "no" as to all statements left over from Question 5, leave
17 Question 7 and 8 blank and proceed to Question 9. If you answered Question 6 "yes" as to
18 any statement, answer Question 7 as to that statement. Do not answer Question 7 for any
19 statement for which you answered Question 6 "no."

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7. For any statement as to which a "yes" answer was given in Question 6, more specifically, did Todd Nelson act knowingly with respect to that misrepresentation or omission?

A) The Press Release of Apollo Group, Inc., dated February 27, 2004:

Yes: X No:

B) The Analyst Conference on March 12, 2004:

Yes: X No:

C) The Form 10-Q dated April 13, 2004:

Yes: X No:

D) The Analyst Conference Call on June 24, 2004:

Yes: X No:

E) The Analyst Conference Call on August 25, 2004:

Yes: X No:

F) The Analyst Conference Call on September 7, 2004:

Yes: X No:

Proceed to Question 8.

1 8. For any statement as to which a "yes" answer was given in Question 6, did that
2 misrepresentation or omission cause the plaintiff to suffer damages? (By answering this
3 question in the affirmative, you are finding that Todd Nelson violated the securities laws.)

4 A) The Press Release of Apollo Group, Inc., dated February 27, 2004:

5 Yes: X No:

6 B) The Analyst Conference on March 12, 2004:

7 Yes: X No:

8 C) The Form 10-Q dated April 13, 2004:

9 Yes: X No:

10 D) The Analyst Conference Call on June 24, 2004:

11 Yes: X No:

12 E) The Analyst Conference Call on August 25, 2004:

13 Yes: X No:

14 F) The Analyst Conference Call on September 7, 2004:

15 Yes: X No:

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17 Proceed to Question 9.

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1 **SECTION 10(b) CLAIM AGAINST KENDA GONZALES**

2 9. Did Kenda Gonzales make an untrue statement of a material fact or omit a material
3 fact necessary under the circumstances to keep the statements that were made from being
4 misleading?

5 A) The Press Release of Apollo Group, Inc., dated February 27, 2004:

6 Yes: X No:

7 B) The Form 10-Q dated April 13, 2004:

8 Yes: X No:

9

10 If you answered all parts of Question 9 "no," leave Questions 10, 11, and 12 blank and
11 proceed to Question 13. If you answered Question 9 "yes" as to any statement, answer
12 Question 10 as to that statement. Do not answer Question 10 for any statement for which you
13 answered Question 9 "no."

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1 10. For any statement as to which a "yes" answer was given in Question 9, did Kenda
2 Gonzales act knowingly or recklessly with respect to that misrepresentation or omission?

3 A) The Press Release of Apollo Group, Inc., dated February 27, 2004:

4 Yes: X No:

5 B) The Form 10-Q dated April 13, 2004:

6 Yes: X No:

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 If you answered Question 10 "no" as to all statements left over from Question 9, leave
Questions 11 and 12 blank and proceed to Question 13. If you answered Question 10 "yes"
as to any statement, answer Question 11 as to that statement. Do not answer Question 11 for
any statement for which you answered Question 10 "no."

1 11. For any statement as to which a "yes" answer was given in Question 10, more
2 specifically, did Kenda Gonzales act knowingly with respect to that misrepresentation or
3 omission?

4 A) The Press Release of Apollo Group, Inc., dated February 27, 2004:

5 Yes: No:

6 B) The Form 10-Q dated April 13, 2004:

7 Yes: No:

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9 Proceed to Question 12.

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1 12. For any statement as to which a "yes" answer was given in Question 10, did that
2 misrepresentation or omission cause the plaintiff to suffer damages? (By answering this
3 question in the affirmative, you are finding that Kenda Gonzales violated the securities laws.)

4 A) The Press Release of Apollo Group, Inc., dated February 27, 2004:

5 Yes: X No:

6 B) The Form 10-Q dated April 13, 2004:

7 Yes: X No:

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9 Proceed to Question 13.

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1 SECTION 20(a) CLAIM AGAINST TODD NELSON

2

3 Answer Question 13 only if you answered Question 4 "yes." If you answered
4 "no" to Question 4 or left it blank, leave Questions 13 and 14 blank and proceed to
5 Question 15.

6

7 13. Did Todd Nelson possess, directly or indirectly, the actual power to direct or
8 cause the direction of the management and policies of Apollo?

9

Yes: No:

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11 Proceed to Question 14.

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1 14. Did the defendants prove by a preponderance of the evidence both that Todd
2 Nelson did not directly or indirectly induce Apollo's violation of the securities laws and that
3 he acted in good faith as that term is defined in the jury instructions?

4 Yes: _____ No: X

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6 Proceed to Question 15.

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Answer Question 15 only if you answered Question 12 "yes." If you answered "no" to Question 12 or left it blank, leave Questions 15 and 16 blank and proceed to Question 17.

15. Did Todd Nelson possess, directly or indirectly, the actual power to direct Kenda Gonzales?

Yes: X No:

Proceed to Question 16.

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16. Did the defendants prove by a preponderance of the evidence both that Todd Nelson did not directly or indirectly induce Kenda Gonzales's violation of the securities laws and that he acted in good faith as that term is defined in the jury instructions?

Yes: No:

Proceed to Question 17.

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Answer Question 17 only if you answered “yes” to Questions 4, 8, or 12. If you answered “no” to each of these questions or left them blank, sign and return the verdict form without answering any further questions.

17. Specify the total amount of damages per share that the plaintiff suffered as a result of the misrepresentation(s) or omission(s):

\$ 5.55 per share

Proceed to Question 18.

1 18. What is the percentage of responsibility for the plaintiff's loss that you assign to
 2 each defendant whom you found in answers to Questions 4, 8, and/or 12 to have violated the
 3 securities laws? The total must add up to 100%. In determining the percentage of
 4 responsibility for each such defendant, you must consider: (1) the nature of the conduct of
 5 each defendant found to have caused or contributed to the loss incurred by the plaintiff; and
 6 (2) the nature and extent of the causal relationship between the conduct of each defendant
 7 and the damages incurred by the plaintiff.

	<u>Percentage</u>
8 Apollo	<u>60</u>
9 Todd Nelson	<u>30</u>
10 Kenda Gonzales	<u>10</u>
11	= 100% Total

12
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 14 Sign and return this form.
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24 9
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 26 (Presiding Juror Number)

1/16/08
 27 (Date)

Exhibit 7

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re JDS UNIPHASE CORPORATION
SECURITIES LITIGATION

No. C 02-1486 CW
VERDICT QUESTIONS
FORM

Part A--Section 10(b) and Section 20 False or Misleading
Statements Liability

Please answer the questions below for each of the statements on the Table of Challenged Statements and indicate your unanimous answers on the Verdict Table. If a box on the Verdict Table is blacked out or already filled in, that means that the question does not apply to the corresponding statement or that the parties have agreed to an answer. Please skip any question that is blacked out or already answered. A "yes" answer favors Plaintiffs; a "no" answer favors Defendants.

1. Do you find that this challenged statement contains an untrue statement of material fact, or omits a material fact necessary under the circumstances to keep the statement that was made from being misleading? Answer Yes or No.

If you answered "Yes," please proceed to Question 2, and if Question 2 is blacked out, please skip to Question 3. If you answered "No," please return to Question 1 for the next statement.

2. Do you find that the challenged statement was not accompanied by meaningful cautionary statements as defined in the instructions? Answer Yes or No.

If you answered "Yes," please proceed to Question 3. If you answered "No," please return to Question 1 for the next statement.

3. Please enter "Yes" in the box representing any Individual Defendant who you find was substantially involved in the preparation of the challenged statement.

If you identified any Individual Defendant, or if any Individual Defendant was already marked, please proceed to Question 4a. If you did not identify any Individual Defendant and no Individual Defendant was already marked, please return to Question 1 for the next statement.

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4a. Do you find that any Individual Defendant who you found in Question 3 made or was responsible for the statement, or who the parties agree made the statement, did so with actual knowledge that the statement was materially false or misleading? Answer Yes or No.

If you answered "No" for any Individual Defendant identified in Question 4a, please answer Question 4b for that Individual Defendant. Otherwise, skip to Question 5.

4b. Do you find that any Individual Defendant who you found in Question 3 made or was responsible for the statement, or who the parties agree made the statement, did so with deliberate recklessness? Answer Yes or No.

If you answered "Yes" to Question 4a or 4b for any Individual Defendant, please proceed to Question 5. Otherwise, please return to Question 1 for the next statement.

5. Do you find that the untrue statement of material fact, or the omitted material fact, played a substantial part in causing a loss to Plaintiffs? Answer Yes or No.

If you answered "Yes," please proceed to Question 6. If you answered "No," please return to Question 1 for the next statement.

6. Please enter "Yes" in the box representing any Individual Defendant who you find directly or indirectly controlled the person who made the challenged statement, directly or indirectly induced the person to make the statement, and did not act in good faith.

Please return to Question 1 for the next statement. When you have completed the chart for all statements, please review your answers recorded on the Verdict Table. If you found for Plaintiff on any statement (i.e. if you answered "yes" in Column 5 for any statement), please proceed to Part B, Question 7. Otherwise, please skip to Part D, Question 14.

United States District Court
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Part B--Section 10(b) and Section 20 False or Misleading Statements Damages

7. Which of these two methods do you find is the most accurate method for calculating damages in this case?

___ Dollar Inflation ___ Percentage Inflation

If you selected "Dollar Inflation," please complete Question 8. If you selected "Percentage Inflation," please complete Question 9 on Page 5. (Do not complete both tables.)

8. If you answered "Dollar Inflation," please complete the table, following the instructions below.

- a. Please black out Column 2 for any date on which you do not find that the challenged statement(s) on that date caused a loss (i.e. for which you answered "No" in Column 5 of the Verdict Table).
- b. Beginning with the first date that is not blacked out in Column 2, please enter the dollar amount by which you find the false or misleading statement(s) made on that date inflated the price of JDSU stock.
- c. For this first row only, please copy the amount you entered in Column 2 into Column 4.
- d. Proceed to the next row. If Column 2 is not blacked out, enter the dollar amount by which you find the false or misleading statement(s) made on this date inflated the price of JDSU stock. Enter, in Column 3, the amount, if any, by which you find that any corrective disclosures, since the date of the previous row, have reduced the inflation created by false or misleading statements. Take the number from Column 4 in the previous row, add the number, if any, in Column 2, subtract the number, if any, in Column 3, and enter the result in Column 4.
- e. Please continue to complete each row.

When you are finished, please skip to Part C, Question 10.

Dollar Inflation Table

COLUMN 1	COLUMN 1a	COLUMN 2	COLUMN 3	COLUMN 4
Date	Price per share on this Date	Inflation created by false or misleading statement(s) on this date	Reduction in inflation due to corrective disclosures, if any, since previous date	Total inflation due to challenged statements on this date
4/25/00	\$93.38	\$		\$
5/25/00	\$79.00		\$	\$
6/25/00	\$123.44		\$	\$
7/26/00	\$135.94	\$	\$	\$
8/25/00	\$125.31		\$	\$
9/1/00	\$123.81	\$	\$	\$
9/7/00	\$119.88	\$	\$	\$
10/26/00	\$74.44	\$	\$	\$
10/30/00	\$71.31	\$	\$	\$
11/14/00	\$75.63	\$	\$	\$
11/17/00	\$70.13	\$	\$	\$
12/20/00	\$46.00		\$	\$
1/25/01	\$55.19	\$	\$	\$
2/12/01	\$40.63	\$	\$	\$
2/13/01	\$38.50	\$	\$	\$
3/23/01	\$23.19	\$	\$	\$
4/24/01	\$20.82	\$	\$	\$
5/11/01	\$20.69	\$	\$	\$
6/15/01	\$12.44		\$	\$
7/26/01	\$9.47		\$	\$

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9. If you selected "Percentage Inflation" in Question 7 above, please complete the table, following the instructions below.
- a. Please black out Column 2 for any date on which you do not find that the challenged statement(s) on that date caused a loss (i.e. for which you answered "No" in Column 5 of the Verdict Table).
 - b. Beginning with the first date that is not blacked out in Column 2, please enter the percent by which you find the false or misleading statement(s) made on that date inflated the price of JDSU stock.
 - c. For this first row only, please copy the amount you entered in Column 2 into Column 4.
 - d. Proceed to the next row. If Column 2 is not blacked out, enter the percent by which you find that any false or misleading statement(s) made on this date inflated the price of JDSU stock. Enter, in Column 3, the amount, if any, by which you find that any corrective disclosures, since the date of the previous row, have reduced the inflation created by false or misleading statements. Take the number from Column 4 in the previous row, add the number, if any, in Column 2, subtract the number, if any, in Column 3, and enter the result in Column 4.
 - e. Please continue to complete each row.

When you are finished, please proceed to Part C, Question 10.

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Percentage Inflation Table

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Date	Inflation created by false or misleading statement(s) on this date	Reduction in inflation due to corrective disclosures since previous date	Total inflation due to challenged statements on this date
4/25/00	%		%
5/25/00		%	%
6/25/00		%	%
7/26/00	%	%	%
8/25/00		%	%
9/1/00	%	%	%
9/7/00	%	%	%
10/26/00	%	%	%
10/30/00	%	%	%
11/14/00	%	%	%
11/17/00	%	%	%
12/20/00		%	%
1/25/01	%	%	%
2/12/01	%	%	%
2/13/01	%	%	%
3/23/01	%	%	%
4/24/01	%	%	%
5/11/01	%	%	%
6/15/01		%	%
7/26/01		%	%

United States District Court
For the Northern District of California

United States District Court
For the Northern District of California

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Part C--Section 14(a) Misrepresentation in a Proxy Statement for Merger Liability & Damages

If you found in answer to Question 1 above that Statement 10 was materially false or misleading, please answer Question 10. Otherwise, please skip to Part D, Question 14.

10. Do you find that statement 10 was an essential link in the accomplishment of the JDS-SDL merger?

Yes No

Please proceed to Question 11

11. Do you find that Defendant Straus failed to act with ordinary or reasonable care when he made statement 10?

Yes No

Please proceed to Question 12.

12. Do you find that Defendant Muller failed to act with ordinary or reasonable care when he made statement 10?

Yes No

If you have answered "Yes" to Question 10 and to either Question 11 and/or Question 12, please proceed to Question 13. Otherwise, please skip to Part D, Question 14.

13a. If you did not determine damages for Statement 10 on the Verdict Table, do you find that Statement 10 played a substantial part in causing a loss to Plaintiffs?

Yes No

If you answered "Yes," please proceed to Question 13b. Otherwise, please skip to Part D, Question 14.

13b. What is the dollar amount or percentage amount that Statement 10 inflated the price of JDSU stock on February 13, 2001? Please answer only once, using the method you selected in response to Question 7.

\$ _____ or _____ %

Please proceed to Part D, Question 14.

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**Part D--Section 20A Trading on Inside Information
Liability & Damages**

14. Do you find that one or more of the Individual Defendants made a decision to sell shares of JDSU stock using material, non-public information about the company?

Defendant Abbe	Yes	_____	No	_____
Defendant Kalkhoven	Yes	_____	No	_____
Defendant Muller	Yes	_____	No	_____
Defendant Straus	Yes	_____	No	_____

If you answered "Yes" as to any defendant, please proceed. Otherwise, sign, date and return your verdict.

If, in answer to Question 7, you selected "Dollar Inflation," please complete Question 15. If you selected "Percentage Inflation," please skip to Question 16 on Page 12. (Do not complete both tables.)

15. If you selected "Dollar Inflation" in Question 7, please complete the table below for any Defendant who you found sold JDSU stock using material, non-public information.

- a. Enter "Yes" in Column 2 for the date of any stock sale which you find the Individual Defendant made using material, non-public information about the company.
- b. For every date on which you answered "Yes", please enter the dollar amount by which the price of JDSU stock was inflated because the public did not have this material information.

Then sign, date and return your verdict.

1
2 Dollar Inflation Tables

3 Defendant Abbe

4 Column 1	Column 1a	Column 2	Column 3
5 Date	Market Price Per Share on Date	Used Material, Non-Public Information?	Dollar Inflation on Date of Sale
6 8/1/00	\$116.87		\$
7 8/11/00	\$117.75		\$
8 2/26/01	\$32.63		\$
9 2/27/01	\$27.81		\$
10 2/28/01	\$26.75		\$

11
12 Defendant Kalkhoven

13 Column 1	Column 1a	Column 2	Column 3
14 Date	Market Price Per Share on Date	Used Material, Non-Public Information?	Dollar Inflation on Date of Sale
15 5/22/00	\$85.31		\$
16 5/24/00	\$83.50		\$
17 7/31/00	\$118.16		\$
18 8/4/00	\$115.94		\$
19 8/7/00	\$121.19		\$
20 8/21/00	\$124.38		\$
21 8/22/00	\$124.50		\$
22 8/31/00	\$124.48		\$
23 9/1/00	\$123.81		\$
24 9/7/00	\$119.88		\$
25 9/12/00	\$103.19		\$
26 9/13/00	\$104.81		\$

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 For the Northern District of California

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9/18/00	\$97.81		\$
9/19/00	\$107.94		\$
9/20/00	\$107.13		\$
9/22/00	\$107.00		\$
9/25/00	\$106.81		\$
10/4/00	\$94.06		\$
10/5/00	\$95.06		\$
10/11/00	\$85.88		\$
10/13/00	\$94.38		\$
10/16/00	\$94.44		\$
10/20/00	\$102.38		\$
10/27/00	\$77.25		\$
11/1/00	\$78.56		\$
1/18/01	\$60.31		\$

Defendant Muller

Column 1	Column 1a	Column 2	Column 3
Date	Market Price Per Share on Date	Used Material, Non-Public Information?	Dollar Inflation on Date of Sale
5/22/00	\$85.31		\$
5/30/00	\$91.38		\$
7/31/00	\$118.13		\$
8/1/00	\$116.88		\$
8/2/00	\$112.63		\$
8/4/00	\$115.94		\$
8/7/00	\$121.19		\$
8/8/00	\$119.88		\$
8/11/00	\$117.75		\$
8/14/00	\$120.25		\$

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Defendant Straus

Column 1	Column 1a	Column 2	Column 3
Date	Market Price Per Share on Date	Used Material, Non-Public Information?	Dollar Inflation on Date of Sale
8/1/00	\$116.88		\$
8/4/00	\$115.94		\$
8/7/00	\$121.19		\$
*	\$55.81	11/30/00	2/1/01 \$
*	\$28.00	11/30/00	3/6/01 \$

*You must determine whether Defendant Straus used material, non-public information on November 30, 2000 in deciding whether he is liable for insider trading based on these sales. However, the damages must be calculated as of the actual date of the sales.

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16. If you selected "Percentage Inflation" in Question 7, please complete the table below for any Defendant who you found sold JDSU stock using material, non-public information.
- a. Enter "Yes" in Column 2 for the date of any stock sale which you find the Individual Defendant made while using material, non-public information about the company.
 - b. For every date on which you answered "Yes", please enter the percentage by which the price of JDSU stock was inflated because the public did not have this material information.

Then sign, date and return your verdict.

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Percentage Inflation Tables

Defendant Abbe

Column 1	Column 2	Column 3
Date	Used Material, Non-Public Information?	Percentage Inflation on Date of Sale
8/1/00		%
8/11/00		%
2/26/01		%
2/27/01		%
8/1/00		%

Defendant Kalkhoven

Date	Used Material, Non-Public Information?	Percentage Inflation on Date of Sale
5/22/00		%
5/24/00		%
7/31/00		%
8/4/00		%
8/7/00		%
8/21/00		%
8/22/00		%
8/31/00		%
9/1/00		%
9/7/00		%
9/12/00		%
9/13/00		%
9/18/00		%
9/19/00		%
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9/22/00		%

United States District Court
 For the Northern District of California

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9/25/00		%
10/4/00		%
10/5/00		%
10/11/00		%
10/13/00		%
10/16/00		%
10/20/00		%
10/27/00		%
11/1/00		%
1/18/01		%

Defendant Muller

Date	Used Material, Non-Public Information?	Percentage Inflation on Date of Sale
5/22/00		%
5/30/00		%
7/31/00		%
8/1/00		%
8/2/00		%
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8/8/00		%
8/11/00		%
8/14/00		%

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Defendant Straus

Date	Used Material, Non-Public Information?	Percentage Inflation on Date of Sale
8/1/00		%
8/4/00		%
8/7/00		%
*	11/30/00	2/1/01 %
*	11/30/00	3/6/01 %

*You must determine whether Defendant Straus used material, non-public information on November 30, in deciding whether he is liable for insider trading based on these sales. However, the damages must be calculated as of the actual date of the sales.

Please sign, date and return this form.

Dated:

Jury Foreperson

Exhibit 8

1 BERNSTEIN LITOWITZ BERGER
 & GROSSMANN LLP
 2 ALAN SCHULMAN (Bar No. 128661)
 ROBERT S. GANS (Bar No. 214420)
 3 BLAIR A. NICHOLAS (Bar No. 178428)
 NIKI L. MENDOZA (Bar No. 214646)
 4 BRETT M. MIDDLETON (Bar No. 199427)
 12544 High Bluff Drive, Suite 150
 5 San Diego, CA 92130
 Tel: (858) 793-0070
 6 Fax: (858) 793-0323

7 Attorneys for Lead Plaintiff
 Otter Creek Partners and
 8 Lead Counsel for the Class

9
 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 In re CLARENT CORPORATION
 SECURITIES LITIGATION

Master File No. C-01-3361 CRB (JCS)

CLASS ACTION

15 This Document Relates To:
 16 ALL ACTIONS.

Date: January 24, 2005 Trial Began
 Time: 8:30 a.m.
 Courtroom 8, 19th Floor
 Judge: The Honorable Charles R. Breyer

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 22 FINAL JURY VERDICT FORMS -- PHASE I
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1 Plaintiff hereby submits the finalized Jury Verdict Forms for Phase I, as instructed by the
2 Court during the conference held on February 11, 2005, and pursuant to the Court's February 11,
3 2005 Order Re: Phase I Verdict Form. The finalized Jury Verdict Forms have been circulated to
4 defense counsel without objection.

5 DATED: February 13, 2005

Respectfully submitted,

6 BERNSTEIN LITOWITZ BERGER
7 & GROSSMANN LLP

8 /s/ Niki L. Mendoza

9 NIKI L. MENDOZA

10 ALAN SCHULMAN
11 ROBERT S. GANS
12 BLAIR A. NICHOLAS
13 NIKI L. MENDOZA
14 BRETT M. MIDDLETON
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Fax: (858) 793-0323

15 *Counsel for Lead Plaintiff Otter Creek Partners and*
16 *Lead Counsel to the Class*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re CLARENT CORPORATION
SECURITIES LITIGATION

Master File No. C-01-3361 CRB (JCS)

CLASS ACTION

This Document Relates To:
ALL ACTIONS.

Judge: The Honorable Charles R. Breyer

SPECIAL VERDICT FORM AS TO ERNST & YOUNG LLP'S LIABILITY

1 **Section 10(b) Claim Against Ernst & Young**

2 **Year-End 2000**

- 3 1. Did Ernst & Young make an untrue statement of a material fact or omit a material
4 fact necessary under the circumstances to keep the statements that were made from
5 being misleading in Clarent's Annual Report on Form 10-K for 2000 (including Ernst
& Young's Audit Report), issued March 29, 2001?

6 Yes ____ No ____

7 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 2. IF YOU
ANSWERED "NO," PLEASE PROCEED TO QUESTION 5.

- 8 2. Did Ernst & Young act either knowingly or recklessly in making the false statement
9 or omission you found in answering Question 1?

10 Yes ____ No ____

11 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 3. IF YOU
ANSWERED "NO," PLEASE PROCEED TO QUESTION 5.

- 12 3. Did Ernst & Young act knowingly or recklessly (choose one)?

13 Knowingly ____ Recklessly ____

14 PLEASE PROCEED TO QUESTION 4.

- 15 4. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable
16 result of the misstatement or omission you found in answering Question 1?

17 Yes ____ No ____

18 PLEASE PROCEED TO QUESTION 5.

19 **First Quarter 2001**

- 20 5. Did Ernst & Young make an untrue statement of a material fact or omit a material
21 fact necessary under the circumstances to keep the statements that were made from
22 being misleading in Clarent's Quarterly Report on Form 10-Q or earnings release for
23 first quarter 2001?

24 Yes ____ No ____

25 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 6. IF YOU
ANSWERED "NO," PLEASE PROCEED TO QUESTION 9.

- 26 6. Did Ernst & Young act either knowingly or recklessly in making the false statement
27 or omission you found in answering Question 5?

28 Yes ____ No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 7. IF YOU
ANSWERED "NO," PLEASE PROCEED TO QUESTION 9.

1 7. Did Ernst & Young act knowingly or recklessly (choose one)?

2 Knowingly ____ Recklessly ____

3 PLEASE PROCEED TO QUESTION 8.

4 8. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable
5 result of the misstatement or omission you found in answering Question 5?

6 Yes ____ No ____

7 PLEASE PROCEED TO QUESTION 9.

8 Second Quarter 2001

9 9. Did Ernst & Young make an untrue statement of a material fact or omit a material
10 fact necessary under the circumstances to keep the statements that were made from
11 being misleading in Clarent's Quarterly Report on Form 10-Q or earnings release for
12 second quarter 2001?

13 Yes ____ No ____

14 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 10. IF YOU
15 ANSWERED "NO," PLEASE SIGN AND DATE BELOW AND THEN PROCEED
16 TO THE JURY VERDICT FORM AS TO JERRY CHANG. IF BOTH JURY
17 VERDICT FORMS HAVE BEEN COMPLETED, PLEASE STOP, SIGN AND
18 DATE BELOW, AND REPORT YOUR FINDINGS TO THE COURT.

19 10. Did Ernst & Young act either knowingly or recklessly in making the false statement
20 or omission you found in answering Question 9?

21 Yes ____ No ____

22 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 11. IF YOU
23 ANSWERED "NO," PLEASE SIGN AND DATE BELOW AND THEN PROCEED
24 TO THE JURY VERDICT FORM AS TO JERRY CHANG. IF BOTH JURY
25 VERDICT FORMS HAVE BEEN COMPLETED, PLEASE STOP, SIGN AND
26 DATE BELOW, AND REPORT YOUR FINDINGS TO THE COURT.

27 11. Did Ernst & Young act knowingly or recklessly (choose one)?

28 Knowingly ____ Recklessly ____

PLEASE PROCEED TO QUESTION 12.

1 12. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable
2 result of the misstatement or omission you found in answering Question 9?

3 Yes ____ No ____

4 PLEASE SIGN AND DATE BELOW AND THEN PROCEED TO THE JURY
5 VERDICT FORM AS TO JERRY CHANG. IF BOTH JURY VERDICT FORMS
6 HAVE BEEN COMPLETED, PLEASE STOP, SIGN AND DATE BELOW, AND
7 REPORT YOUR FINDINGS TO THE COURT.

8 Dated: _____

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10 Jury Foreperson
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re CLARENT CORPORATION
SECURITIES LITIGATION

Master File No. C-01-3361 CRB (JCS)

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

Judge: The Honorable Charles R. Breyer

SPECIAL VERDICT FORM AS TO JERRY CHANG'S LIABILITY

1 **Section 10(b) Claim Against Jerry Chang**

2 **First Quarter 2000**

3 1. Did Jerry Chang make an untrue statement of a material fact or omit a material fact
4 necessary under the circumstances to keep the statements that were made from being
5 misleading in Clarent's Quarterly Report on Form 10-Q or earnings release for first
6 quarter 2000?

7 Yes ____ No ____

8 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 2. IF YOU
9 ANSWERED "NO," PLEASE PROCEED TO QUESTION 5.

10 2. Did Jerry Chang act either knowingly or recklessly in making the false statement or
11 omission you found in answering Question 1?

12 Yes ____ No ____

13 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 3. IF YOU
14 ANSWERED "NO," PLEASE PROCEED TO QUESTION 5.

15 3. Did Jerry Chang act knowingly or recklessly (choose one)?

16 Knowingly ____ Recklessly ____

17 PLEASE PROCEED TO QUESTION 4.

18 4. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable
19 result of the misstatement or omission you found in answering Question 1?

20 Yes ____ No ____

21 PLEASE PROCEED TO QUESTION 5.

22 **Second Quarter 2000**

23 5. Did Jerry Chang make an untrue statement of a material fact or omit a material fact
24 necessary under the circumstances to keep the statements that were made from being
25 misleading in Clarent's Quarterly Report on Form 10-Q or earnings release for second
26 quarter 2000?

27 Yes ____ No ____

28 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 6. IF YOU
ANSWERED "NO," PLEASE PROCEED TO QUESTION 9.

6. Did Jerry Chang act either knowingly or recklessly in making the false statement or
omission you found in answering Question 5?

Yes ____ No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 7. IF YOU
ANSWERED "NO," PLEASE PROCEED TO QUESTION 9.

1 7. Did Jerry Chang act knowingly or recklessly (choose one)?

2 Knowingly ____ Recklessly ____

3 PLEASE PROCEED TO QUESTION 8.

4 8. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable
5 result of the misstatement or omission you found in answering Question 5?

6 Yes ____ No ____

7 PLEASE PROCEED TO QUESTION 9.

8 Third Quarter 2000

9 9. Did Jerry Chang make an untrue statement of a material fact or omit a material fact
10 necessary under the circumstances to keep the statements that were made from being
11 misleading in Clarent's Quarterly Report on Form 10-Q or earnings release for third
12 quarter 2000?

13 Yes ____ No ____

14 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 10. IF YOU
15 ANSWERED "NO," PLEASE PROCEED TO QUESTION 13.

16 10. Did Jerry Chang act either knowingly or recklessly in making the false statement or
17 omission you found in answering Question 9?

18 Yes ____ No ____

19 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 11. IF YOU
20 ANSWERED "NO," PLEASE PROCEED TO QUESTION 13.

21 11. Did Jerry Chang act knowingly or recklessly (choose one)?

22 Knowingly ____ Recklessly ____

23 PLEASE PROCEED TO QUESTION 12.

24 12. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable
25 result of the misstatement or omission you found in answering Question 9?

26 Yes ____ No ____

27 PLEASE PROCEED TO QUESTION 13.

1 Fourth Quarter and Year-End 2000

2 13. Did Jerry Chang make an untrue statement of a material fact or omit a material fact
3 necessary under the circumstances to keep the statements that were made from being
4 misleading in Clarent's Annual Report on Form 10-K for 2000 or earnings release for
5 fourth quarter and year-end 2000?

6 Yes ___ No ___

7 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 14. IF YOU
8 ANSWERED "NO," PLEASE PROCEED TO QUESTION 17.

9 14. Did Jerry Chang act either knowingly or recklessly in making the false statement or
10 omission you found in answering Question 13?

11 Yes ___ No ___

12 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 15. IF YOU
13 ANSWERED "NO," PLEASE PROCEED TO QUESTION 17.

14 15. Did Jerry Chang act knowingly or recklessly (choose one)?

15 Knowingly ___ Recklessly ___

16 PLEASE PROCEED TO QUESTION 16.

17 16. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable
18 result of the misstatement or omission you found in answering Question 13?

19 Yes ___ No ___

20 PLEASE PROCEED TO QUESTION 17.

21 First Quarter 2001

22 17. Did Jerry Chang make an untrue statement of a material fact or omit a material fact
23 necessary under the circumstances to keep the statements that were made from being
24 misleading in Clarent's Quarterly Report on Form 10-Q or earnings release for first
25 quarter 2001?

26 Yes ___ No ___

27 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 18. IF YOU
28 ANSWERED "NO," PLEASE PROCEED TO QUESTION 21.

18. Did Jerry Chang act either knowingly or recklessly in making the false statement or
omission you found in answering Question 17?

Yes ___ No ___

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 19. IF YOU
ANSWERED "NO," PLEASE PROCEED TO QUESTION 21.

1 19. Did Jerry Chang act knowingly or recklessly (choose one)?

2 Knowingly ____ Recklessly ____

3 PLEASE PROCEED TO QUESTION 20.

4 20. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable
5 result of the misstatement or omission you found in answering Question 17?

6 Yes ____ No ____

7 PLEASE PROCEED TO QUESTION 21.

8 Second Quarter 2001

9 21. Did Jerry Chang make an untrue statement of a material fact or omit a material fact
10 necessary under the circumstances to keep the statements that were made from being
11 misleading in Clarent's Quarterly Report on Form 10-Q or earnings release for second
12 quarter 2001?

13 Yes ____ No ____

14 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 22. IF YOU
15 ANSWERED "NO," PLEASE SIGN AND DATE BELOW AND THEN PROCEED
16 TO THE JURY VERDICT FORM AS TO ERNST & YOUNG. IF BOTH JURY
17 VERDICT FORMS HAVE BEEN COMPLETED, PLEASE STOP, SIGN AND
18 DATE BELOW, AND REPORT YOUR FINDINGS TO THE COURT.

19 22. Did Jerry Chang act either knowingly or recklessly in making the false statement or
20 omission you found in answering Question 21?

21 Yes ____ No ____

22 IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 23. IF YOU
23 ANSWERED "NO," PLEASE SIGN AND DATE BELOW AND THEN PROCEED
24 TO THE JURY VERDICT FORM AS TO ERNST & YOUNG. IF BOTH JURY
25 VERDICT FORMS HAVE BEEN COMPLETED, PLEASE STOP, SIGN AND
26 DATE BELOW, AND REPORT YOUR FINDINGS TO THE COURT.

27 23. Did Jerry Chang act knowingly or recklessly (choose one)?

28 Knowingly ____ Recklessly ____

PLEASE PROCEED TO QUESTION 24.

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24. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable result of the misstatement or omission you found in answering Question 21?

Yes _____ No _____

PLEASE SIGN AND DATE BELOW AND THEN PROCEED TO THE JURY VERDICT FORM AS TO ERNST & YOUNG. IF BOTH JURY VERDICT FORMS HAVE BEEN COMPLETED, PLEASE STOP, SIGN AND DATE BELOW, AND REPORT YOUR FINDINGS TO THE COURT.

Dated: _____

Jury Foreperson

Exhibit 9

United States District Court

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE CLARENT CORPORATION
SECURITIES LITIGATION

No. C 01-03361 CRB

ORDER Re: Phase I Verdict Form

This order applies to: ALL ACTIONS

While the Court was preparing the final version of the phase I jury instructions after the charging conference this morning, the Court realized that the proposed verdict form does not include a special interrogatory regarding loss causation even though a loss causation instruction is given. This omission is problematic because the jury is instructed that an essential element of the 10(b) claim is that the plaintiffs suffered damages as a result of a defendant's misrepresentation. The Court therefore directs the parties to include in the phase I verdict form a special interrogatory which asks the jury to find this element with respect to each alleged misstatement. The issue of how much damage was caused will be addressed in the phase II arguments, instructions, and verdict form.

Dated: February 11 , 2005

/s/
CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California

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