UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

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

PLAINTIFFS' TRIAL MEMORANDUM

[REDACTED VERSION]

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Plaintiffs respectfully submit this Trial Memorandum pursuant to Local Rule 16.1.1.

I. INTRODUCTION

A. Summary of the Case

This is a certified class action for securities fraud under §§10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b) and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission. *See* 15 U.S.C. §78j(b) and 78t(a), 17 C.F.R. §240.10b-5. Lead Plaintiffs and class representatives ("Lead Plaintiffs" or "Plaintiffs") appointed by the Court are three institutions – PACE Industry Union Management Pension Fund, The International Union of Operating Engineers Local No. 132 Pension Plan, and Glickenhaus & Company. The defendants in this action are Household International, Inc. ("Household" or the "Company") and individual defendants William F. Aldinger, the Chief Executive Officer and Chairman of the Board of Directors; David A. Schoenholz, the Chief Financial Officer and later Chief Operating Officer and Vice-Chairman of the Board of Directors; and Gary D. Gilmer, the Vice-Chairman of Consumer Lending and Group Executive of U.S. Consumer Finance (collectively, "Defendants"). Household was principally a non-operating holding company, which during the Class Period provided middle-market consumers with different types of loan products through its wholly-owned subsidiaries Household Finance Corporation ("HFC") and Beneficial Corporation ("Beneficial").

Plaintiffs will prove that Defendants are liable under the federal securities laws for issuing false and misleading statements and omitting material facts about the Company's business. Defendants' wrongful course of conduct permitted Household to falsely report "record" financial results by (i) engaging in predatory lending practices; (ii) improperly "reaging" delinquent loans to "current" in order to conceal the true level of delinquencies and mask the credit quality of Household's loan portfolios as reported to investors; and (iii) overstating net income by failing to record timely expenses associated with various credit card agreements in violation of Generally

Accepted Accounting Principles ("GAAP"). These false statements and omissions inflated the value of Household common stock during the Class Period (July 30, 1999 through October 11, 2002).

In 1999, under pressure to improve Household's stock price, the Defendants hired a consultant, Andrew Kahr, to come up with ways to grow Household's business and meet Wall Street earnings estimates. Mr. Kahr, the mastermind of predatory lending practices at another subprime leader – Providian – worked with the ***individual*** defendants to institute predatory lending practices nationwide. The Defendants approved these practices – packing single premium credit insurance onto customers' loans at an exorbitant cost; misleading customers about their interest rate through an "effective rate" scam; hiding excessive prepayment penalties, "closing the back door" through equity stripping to prevent customer attrition, and other predatory and abusive practices. A new sales compensation plan was instituted that rewarded Household employees and the Defendants for selling these predatory products to its customers. Household benefitted in the short term from these practices – it reported inflated profits in 1999, 2000, and 2001.

However, customer complaints began to flood into Household and its regulators. As the state of Washington's top regulator, Chuck Cross, testified in this case that the regulators were initially inclined to believe Household's position that it was not a predatory lender. However, Washington and other state and federal banking regulators ultimately found the evidence overwhelming that Household was engaging in abusive sales practices. Meanwhile, while other lenders such as Providian and Associates ran into problems with regulators, Household still publicly denied that it was engaged in any predatory practices. In the spring of 2002, Washington state's regulator (Mr. Cross) issued a scathing report that laid out Household's predatory practices. Although Household was successful in getting a court order temporarily sealing the report, its contents leaked to the public in the summer of 2002. By this time, Household had been the subject of an extensive piece in *Barron's* and other analyst reports which questioned the Company's accounting for delinquent loans and put into question the credit equality of its loans and its prior financial results. Of course, Household had been improperly "reaging" delinquent accounts at quarter-end in order to underreport the percentage of its accounts that were 60 days overdue (referred to as the 2+ delinquency percentage in Household's quarterly press releases and SEC filings) and delaying the charging off of bad loans. Household also disclosed in August 2002 that it was restating its financial results because it had improperly deferred recording expenses in order to inflate its profits.

After being caught by regulators, Household agreed to discontinue its predatory practices and pay a huge fine. Internally the company estimated that it had overcharged customers approximately $3.2 billion in 1999, 2000, and 2001 from these predatory practices. News of a huge settlement (about $500 million) leaked into the market in the summer of 2002 and analysts further reduced Household's future earnings estimates and growth rate. Since it would no longer be able to grow its business through these predatory practices, Household ultimately settled for $484 million with attorney generals representing states across the country.

Defendants tried to cash out of their fraud for tens of millions of dollars from huge stock options and sell Household before the truth came out. In the fall of 2000, Defendants began shopping Household to other companies. In May 2002, Wells Fargo made an offer to buy Household for $66 per share. This offer was based on the same information available to class members – Household's SEC filings and reported "record" financial results. Yet, after only two weeks of due diligence of Household's internal documents, Wells Fargo walked away from buying Household at any price – noting in internal documents that Household was likely overstating its earnings, and misrepresenting its delinquency and credit quality information to investors.

As investors reevaluated Household's business, the credibility of its management and the veracity of its financial statements from November 2001 through October 2002, Household's stock declined much further than the overall market and its peers – dropping from $60 a share to approximately $28 a share. Plaintiffs are only seeking per share damages for the decline related to the fraud – an amount of approximately $8 to $23 per share for each day of the Class Period.

II. FACTUAL CONTENTIONS AND LEGAL AUTHORITY IN SUPPORT THEREOF

A. Defendants Violated Section 10b and Rule 10b-5

To prove securities fraud, Plaintiffs must prove (1) a material misrepresentation or omission; (2) scienter; (3) a connection with the purchase or sale of a security; (4) reliance; (5) damages; and (6) a causal connection between the material misrepresentation or omission and the damages (also known as "loss causation"). *See Dura Pharms, Inc. v. Broudo*, 544 U.S. 336, 341(2005); *Caremark, Inc. v. Coram Healthcare Corp.*, 113 F.3d 645 (7th Cir. 1997). All of these elements will be satisfied at trial.

1. Defendants Misrepresented and Concealed Material Facts

Defendants violated §10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder by making untrue statements of a material fact and failing to state material facts that were necessary to prevent the statements from being misleading under the circumstances, thereby artificially inflating the market price of Household common stock during the Class Period. The evidence will demonstrate that the misstatements were materially false and misleading and contain material omissions relating to the Company's predatory lending and sales practices, reaging or restructuring and charge-off practices, and the accounting manipulations relating to various credit card agreements. (*See* Statement of Uncontested Facts attached to [Proposed] Final Pretrial Order, Ex. A, attachment A.)

Plaintiffs will prove that during the Class Period, Defendants failed to disclose to the market that Household engaged in predatory lending practices. The evidence will demonstrate the impact of those predatory lending practices on Household's financial statements. The evidence will also show that during the Class Period, Defendants concealed the true credit quality of Household's loan portfolio by failing to disclose – and later affirmatively misrepresenting – Household's aggressive and improper restructuring policies and practices and other credit quality concealment techniques that understated Household's reported delinquency ("2+" number) and charge-off statistics. Defendants also failed to disclose to the market that Household used improper accounting with respect to certain credit card contracts, which also resulted in Household overstating its reported net income.

2. Defendants' Misrepresentations and Omissions Were Material

The statements and omissions at issue were clearly material. A statement is material under the securities laws if "there is a substantial likelihood that disclosure of the information would have been viewed by the reasonable investor to have significantly altered the total mix of information." *Searls v. Glasser*, 64 F.3d 1061, 1066 (7th Cir. 1995); *Rowe v. Maremont Corp.*, 850 F.2d 1226, 1232-33 (7th Cir. 1988) (adopting the definition of materiality set forth in *Basic*); *see also Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32, 238 (1988). Similarly, an omission concerning a security is material if a reasonable investor would have regarded what was not disclosed as having significantly altered the total mix of information she took into account in deciding whether to buy or sell the security. *See Basic*, 485 U.S. at 231-32 ("'[T]here must be a substantial likelihood that the disclosure of [an] omitted fact would have been viewed by a reasonable investor as having altered the "total mix" of information made available.'") (citation omitted).

Here, the jury can readily find that Defendants' misrepresentations and omissions were material. Among other things, as the expert testimony to be presented by Plaintiffs will show, Household's stock declined when the true facts were disclosed to the market about the Company's predatory lending practices, its reaging and charge-off manipulation practices, and the accounting manipulations related to the Company's various credit card agreements.

3. Defendants Acted with the Requisite Level of Scienter

Plaintiffs will prove at trial that Defendants made or were substantially involved in preparing each of the above material misstatements or omissions with knowledge of their falsity or with reckless disregard of their truth. Under Seventh Circuit law, either an intent to deceive or manipulate, reckless disregard of the truth, or deliberate ignorance suffices to show scienter to recover on a securities fraud claim. *SEC v. Kelly*, 545 F. Supp. 2d 808, 811-12 (N.D. Ill. 2008); *In re Sears, Roebuck & Co. Sec. Litig.*, 291 F. Supp. 2d 722, 726 (N.D. Ill. 2003) (for purposes of a securities fraud claim, reckless disregard of the truth constitutes "scienter"); *SEC v. Jakubowski*, 150 F.3d 675, 681-82 (7th Cir. 1998) ("Deliberate ignorance . . . is a form of knowledge.); *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1039-40, 1043-45 (7th Cir. 1977) (to recover in a Rule 10b-5 action, a plaintiff must prove that the defendant acted with scienter – that is, intent to defraud, or with reckless disregard for the truth of his representations).

Plaintiffs will demonstrate Defendants' scienter through Defendants' own internal documents, third-party documents, and the testimony of various fact witnesses. Plaintiffs will prove at trial that the manner in which Household made loans to borrowers across the United States was deceptive and misleading, while at the same time continuously re-assuring investors that they did not engage in predatory lending. Defendants' heightened emphasis on achieving their announced growth objectives led to a greater focus on sales and profitability to the detriment of compliance and fair dealing with customers during the Class Period. Defendants oversaw the predatory lending practices and tracked the profits generated by their improper practices, such as insurance packing, the piling on of excessive points, and prepayment penalties. In fact, Defendants paid in excess of $1.8 million to Andrew Kahr, the mastermind of Providian's fraudulent practices, to work as their consultant on ways to increase profits through predatory practices. In an effort to incentivize their employees to further Defendants' scheme, Aldinger, Schoenholz and Gilmer intentionally introduced new compensation plans which rewarded loan growth, margin incentives, increased loan features and products per loan, including insurance products, thus encouraging sales employees to make as many loans as possible, regardless of the quality of the loans, and without regard to the benefit to the borrower or their ability to pay. Various state and federal regulators eventually found that Household engaged in systemic predatory lending practices. Household's stock price declined when investors slowly became aware of Household's predatory lending practices and that Household would have to discontinue these practices (reducing its future growth rate) and pay hundreds of millions in restitution to customers.

Plaintiffs will demonstrate that while the sales staff was being incentivized to increase loan production, the Quality Assurance & Compliance function was completely disbanded and sales staff management were delegated the oversight function. Notwithstanding that Household's internal audit group identified this delegation as a serious conflict, Defendants did nothing about it until state and federal regulators increased their scrutiny of Household's sales practices and the lawsuits continued to mount. Further, Defendants ensured that the Company's infrastructure for addressing customer complaints was woefully inadequate, again delegating the resolution of customer complaints to the branch level – to the same sales staff that had made the predatory loan in the first place.

Plaintiffs will also show that Household's sales training fostered an environment where deceptive lending practices thrived, and no corrective actions or reprimands were meted out even upon receipt of complaints. Plaintiffs will show that Defendants were able to conceal the full magnitude of Household's predatory lending practices during the Class Period – preventing customer attrition by resorting to equity stripping or putting the customer upside down; making second loans at a very high interest rates; and charging high prepayment penalties. This nefarious activity was widespread. Former branch sales managers from across the United States will testify that they were trained to engage in these predatory practices.

Plaintiffs will also demonstrate that as customers became delinquent, Household engaged in various reaging and restructuring activities to mask past due loans to conceal the impact of their predatory lending activities. These reaging and charge-off practices were not disclosed in the Company's quarterly and annual SEC filings to equity investors until 2002, and even when disclosed, were done in a manner that failed to accurately provide complete information. Plaintiffs will demonstrate that during the Class Period, the various business units of Household had constantly changing and inconsistently applied reaging and charge-off policies resulting in unreliable reported delinquency statistics, which were relied on by investors to their detriment.

Defendants' scienter is also shown by reviewing documents and testimony from third-party Wells Fargo. Wells Fargo performed due diligence in May 2002 in connection with a proposed acquisition of Household. Wells Fargo agreed to buy Household for $66 per share based on Household's public financials but subject to due diligence. The individual defendants stood to gain tens of millions of dollars by selling their stock and options to Wells Fargo at the inflated $66 per share price. After reviewing Household's internal documents, however, Wells Fargo concluded that Household's true business and financial condition was different than publicly reported. Wells Fargo noted that:

[redacted]

May deposition Ex. 33, attached hereto as Ex. A.

Wells Fargo also noted that the impact of predatory lending practices on the future growth of Household could be "big." There are a number of different Wells Fargo internal documents that support the fact that Household's financial condition was not as publicly reported. After due diligence, Wells Fargo walked away from the $66 per share deal for Household and there is no evidence that Wells Fargo wanted to buy Household at any price. Only five months later, after the true condition of Household's business and real growth rate was disclosed, Household was forced to sell itself to HSBC for only $28 per share.

Defendants' scienter is also demonstrated by their destruction of documents in the spring of 2001 in branch offices relevant to their predatory lending practices. Defendants also destroyed key documents written by Andrew Kahr (the details are set forth in Plaintiffs' previously filed spoliation motion).

Further, Defendants violated GAAP with respect to their accounting for certain credit card agreements – claiming in one case that they could ignore new accounting rules because they were "grandfathered in" to outdated accounting principles. Defendants Aldinger and Schoenholz signed three Form 10-Ks during the Class Period, which contained this materially false information. In fact, only when the Office of the Comptroller of the Currency questioned their accounting, and KPMG refused to sign off on Household's financial statements, were Defendants forced to concede that their accounting was in violation of GAAP. As a consequence, Defendants restated their financial statements – admitting that the 10-Ks that Aldinger and Schoenholz had previously affirmed were, in fact, materially false.

Although Defendants knew the true facts, they affirmatively misrepresented Household to the investing public, as a company that was an ethical lender that stood apart from other sub prime lenders and did not engage in any predatory lending or abusive sales practices. Defendants also falsely portrayed Household's credit quality to be better than its peers, claiming that the Company's customized collection activities were the reason that Household had a lower percentage of delinquencies and defaults, when in reality it was the Company's arbitrary and improper reaging and charge-off manipulation that allowed Defendants to conceal Household's true credit quality and inflate its reported financial results. Based on the proof to be adduced at trial, much of it from Household's own officers and documents, a jury will be able to find the required scienter, whether at the level of intent or of reckless disregard.

4. Plaintiffs Can Satisfy the Element of Reliance

Plaintiffs can prove at trial that presumption of fraud-on-the-market exists and that, in purchasing Household stock, Plaintiffs relied on the integrity of the market to set a fair price for Household common stock. *Basic*, 485 U.S. at 247. Defendants do not dispute that reliance is presumed and have excluded this element from their proposed jury instructions. *See* Defs.' Proposed Jury Instructions, 4.22 and 1.08, attached to the [Proposed] Final Pretrial Order as Ex. I-3.

5. Plaintiffs Have Satisfied the "In Connection With" Element

Defendants do not dispute this element.

6. Plaintiffs Can Prove the Element of Loss Causation

To prove loss causation, the Plaintiffs must show that the misleading statement or omission played a substantial part in bringing about or causing the damages suffered by them 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. 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. *Dura Pharms*, 544 U.S. at 342; *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 U.S. Dist. LEXIS 4821, at *18-*21 (N.D. Ill. Feb. 7, 2006); *In re Daou Sys.*, 411 F.3d 1006, 1026 (9th Cir. 2005).

Plaintiffs' expert Professor Fischel performed an extensive "event" study that isolated the stock price declines caused by the disclosure of the fraud as opposed to non-fraud market declines. Professor Fischel concluded that the "economic evidence is consistent with Plaintiffs' claim that the alleged wrongdoing caused investors in Household's common stock to incur losses." Excerpt from Professor Fischel's Report is attached hereto as Ex. B. Plaintiffs will demonstrate through Professor Fischel's trial testimony the connection between Household's unlawful conduct and the damage suffered by Plaintiffs and the Class.

7. The Element of Economic Loss (Damages) Will Be Shown on a Per-Share Basis

The Plaintiffs will prove the element of economic loss and that the Class suffered damages as a result of Defendants' conduct. The standard measure of damages for securities fraud is "the difference between the price received in fact and the price that would have been received but for the fraud." *Harris Trust & Sav. Bank v. Ellis*, 810 F.2d 700, 706 (7th Cir. 1987) (quoted in *Caremark*, 113 F.3d at 649 n.4). Accordingly, Plaintiffs will ask the jury to determine the artificial inflation present in Household's common stock on a per share basis for each day of the Class Period.

Professor Fischel has prepared a detailed event study demonstrating the effect of Defendants' misrepresentations and omissions on the price of the Company's common stock during the Class Period. In accordance with loss causation principles, Professor Fischel has calculated the amount of daily inflation in Household's stock price by removing all market factors and identifying only the loss caused by Defendants' wrongful conduct from any later price declines in Household's stock when the truth regarding Household's fraud began to be revealed to the market from November 14, 2001 through October 11, 2002. Plaintiffs will present damages based on two methodologies employed by their expert, Professor Daniel R. Fischel. Exhibit 53 to Professor Fischel's Report (attached to the [Proposed] Final Pretrial Order as Ex. H-1, attachment A) identifies the estimated daily per share artificial inflation using only specific disclosures that were statistically significant in causing Household's stock price to decline upon revelation of Household's true financial condition. Professor Fischel has opined that this quantification understates the actual damages suffered by class members. As a result, Professor Fischel opined that a "leakage" model was appropriate in this case. Exhibit 56 to Professor Fischel's Report (attached to the [Proposed] Final Pretrial Order as Ex. H-1, attachment B) identifies the estimated daily per share artificial inflation by using a "leakage" model that takes into account the fact that news about Household's true financial condition entered the market over a period of time through disclosures by Household or third parties. Professor Fischel is a preeminent expert in the field in analyzing damages in securities fraud cases, primarily testifying for Defendants in these cases. In fact, Defendants sought to hire Professor Fischel in this action.

Plaintiffs also seek prejudgment interest on the amount of actual damages that the jury may award. Prejudgment interest is a form of compensation and the decision to award prejudgment interest rests in the sound discretion of the district court. *Michaels v. Michaels*, 767 F.2d 1185 (7th Cir. 1985).

B. Household and the Individual Defendants Violated Section 20(a)

For Household and the Individual Defendants to be liable under §20(a), Plaintiffs must prove (1) a primary violation of §10(b); (2) that individual defendants "exercised general control over [the] operations" of Household; and (3) that individual defendants "possessed the power to control the specific transaction or activity upon which the primary violation is predicated, but he ***need not prove that this later power was exercised***." *Harrison v. Dean Witter Reynolds, Inc.*, 974 F.2d 873, 877 (7th Cir. 1992) (emphasis in original).

William F. Aldinger, David A. Schoenholz and Gary D. Gilmer were Household's three top officials, each with a lengthy term of service at the Company. The parties have stipulated that both Aldinger and Schoenholz actually exercised general control over the operations of Household.[1] In light of this stipulation, Plaintiffs believe no proof is required on that first part of the test as to those two defendants, in relation to Household. Plaintiffs will show that both Aldinger and Schoenholz were "controlling persons" with respect to defendant Gary D. Gilmer because Gilmer reported to them and because Aldinger and Schoenholz possessed the power and ability to control Gilmer's conduct.

Additionally, Plaintiffs will show that Gary D. Gilmer was a "controlling person" because as an officer – Gilmer was Vice-Chairman of Consumer Lending and Group Executive of U.S. Consumer Finance during the Class Period – and a member of Household senior management, Gilmer had both general control over Household's operations and the ability to control activities related to the Household's business, operations, finances and accounting, particularly for the Consumer Lending or Consumer Finance business unit, which comprised both the HFC and BFC subsidiaries and accounted for the majority of Household's revenues during the Class Period. Gilmer also had direct impact on the decisions made at Household relating to the above and was quoted in press releases that misrepresented or omitted material facts about Household's business practices, operations and finances. The proof as to each of the individual defendants will more than suffice to sustain §20(a) liability against each of them.

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[1] Although Defendants do not dispute that Aldinger and Schoenholz are control persons, they have included references to the good faith defense to §20(a) in their proposed verdict forms. Defendants' reference to their purported good faith affirmative defense to Plaintiffs' §20(a) claims is unfounded. Defendants pleaded a good faith affirmative defense in their original answer. However, confronted by interrogatories regarding this affirmative defense, which Defendants refused to answer, and a motion to compel responses, Defendants amended their answer and stipulated to the dismissal of this affirmative defense with prejudice. Stipulation for Leave to File an Amended Answer ("Stipulation"), Dkt. No. 342 (filed December 6, 2005). Thus, Defendants should be precluded from raising that defense at trial.

III. THE TRIAL SHOULD NOT BE BIFURCATED

Plaintiffs do not request bifurcation of any issues at trial. The liability and damages phases of the trial should not be bifurcated. The jury will be asked to render a verdict on all class wide issues, including reliance, liability and the damages per share for each day of the Class Period. If there is a verdict in favor of Plaintiffs, a claims process will take place and individual class members' damages will be calculated pursuant to a formula for the calculation of individual class member damages to be approved by the Court. Defendants have not identified any issues that could not be addressed through the claims process. Accordingly, there will be no need for a second jury.

Defendants will argue that they have the right to rebut the presumption of reliance that they concede exists in this case since Household's stock was traded in an efficient market. One means to do so is through a truth-on-the-market defense. If Defendants intend to present this defense, it will be in this trial. Alternatively, Defendants could seek to rebut the presumption by showing that a class member would have purchased Household stock even knowing about all of the facts of the fraud. It is black letter law that no one would knowingly buy stock that was inflated by fraud. *See Basic*, 485 U.S. at 246-47. In fact, each class member could be asked on the claim form to answer the only relevant question – "would you still have purchased Household stock during the Class Period if you knew that Defendants had made materially false statements which artificially inflated the price that you paid for that stock at the time?" Only if the class member answers "yes," would Defendants rebut the presumption of reliance.

Thus, Defendants' proposal to bifurcate the liability and damages portions of this action and thereby force each class member to submit to discovery and appear in Court before a jury is improper, inefficient, unfair, and unnecessary. Defendants' proposal will result in possibly thousands of trials that are inconsistent with the whole premise of a class action.

DATED: January 30, 2009

Respectfully submitted,

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
PATRICK J. COUGHLIN (111070)
MICHAEL J. DOWD (135628)
SPENCER A. BURKHOLZ (147029)
DANIEL S. DROSMAN (200643)
MAUREEN E. MUELLER (253431)

/s/ Michael J. Dowd

MICHAEL J. DOWD

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154432)
LUKE O. BROOKS (90785469)
JASON C. DAVIS (253370)
100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

Lead Counsel for Plaintiffs

MILLER LAW LLC
MARVIN A. MILLER
LORI A. FANNING
115 S. LaSalle Street, Suite 2910
Chicago, IL 60603
Telephone: 312/332-3400
312/676-2676 (fax)

Liaison Counsel

LAW OFFICES OF LAWRENCE G.
SOICHER
LAWRENCE G. SOICHER
110 East 59th Street, 25th Floor
New York, NY 10022
Telephone: 212/883-8000
212/355-6900 (fax)

Attorneys for Plaintiff

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

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Diego, State of California, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway Suite 1900, San Diego, California 92101.

2. That on January 30, 2009, declarant served by electronic mail and by U.S. Mail to the parties the **PLAINTIFFS' TRIAL MEMORANDUM**.

The parties' email addresses are as follows:

TKavaler@cahill.com PSloane@cahill.com PFarren@cahill.com LBest@cahill.com DOwen@cahill.com	NEimer@EimerStahl.com ADeutsch@EimerStahl.com MMiller@MillerLawLLC.com LFanning@MillerLawLLC.com

and by U.S. Mail to:

Lawrence G. Soicher, Esq.
Law Offices of Lawrence G. Soicher
110 East 59th Street, 25th Floor
New York, NY 10022

David R. Scott, Esq.
Scott & Scott LLC
108 Norwich Avenue
Colchester, CT 06415

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of January, 2009, at San Diego, California.

/s/ Teresa Holindrake
TERESA HOLINDRAKE