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) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

PLAINTIFFS' MOTION FOR WITHDRAWAL OF THE REFERRAL TO MAGISTRATE JUDGE NOLAN FOR A REPORT AND RECOMMENDATION REGARDING DEFENDANTS' OBJECTIONS TO CERTAIN CLAIMS

On April 19, 2012, this Court recommended that defendants' Objections to Certain Claims Included in the Report of Claims Administrator Gilardi & Co., LLC be referred to the calendar of Magistrate Judge Nolan for the issuance of a Report and Recommendation. The Executive Committee ordered the referral, as recommended, on April 20, 2012. Magistrate Judge Nolan held a status conference on April 25, 2012. Lead Plaintiffs submit this request asking the Court to reconsider its recommendation, at a minimum, as to certain categories of objections in the interests of both expediency and justice.

At the April 20, 2012 status conference, this Court stated: "And the referral to the magistrate judge at this time of these issues is the most expeditious way to proceed." April 20, 2012 Tr. at 9. However, based on the April 25 status conference with Magistrate Judge Nolan, that does not appear to be the case. Magistrate Judge Nolan informed the parties that she was retiring effective September 30, 2012 and that she literally did not know if she could get a report and recommendation completed before her retirement date. April 25, 2012 Tr. at 27-29, 34-35, 42. Magistrate Judge Nolan also urged the parties to consider the possibility of a special master to provide continuity in the event that the report and recommendation is not done by September 30 and the case is referred to another magistrate judge to complete the task. *Id*.

In light of Magistrate Judge Nolan's views plaintiffs believe that this Court can summarily decide and should withdraw at least some of defendants' objections from the referral. Nevertheless, since plaintiffs argued the issue before this Court at the April 20 status conference, this Court may consider this request as a motion for reconsideration. In any event, even under the standard applicable to motions for reconsideration, this motion should be granted. Reconsideration is appropriate when the law or facts change significantly after the issue is presented to the Court, the Court has patently misunderstood a party, has made a decision outside the adversarial issues presented to it, or has made an error not of reasoning but of apprehension. *Bank of Waunakee v.*

Rochester Cheese Sales, Inc., 906 F.2d 1185, 1191 (7th Cir. 1990); *Bell v. Leavitt*, No. 06-C-3520, 2007 U.S. Dist. LEXIS 11675, at *3 (N.D. Ill. Feb. 16, 2007). Here, this Court's recommendation was based on its finding that the referral "is the most expeditious way to proceed." April 20, 2012 Tr. at 9. Based on the subsequent proceedings before Magistrate Judge Nolan, that finding appears to be unfounded.

This case was filed on August 19, 2002. The jury returned its verdict on May 7, 2009. And now the Class faces another lengthy delay. However, the vast majority of the objections could be decided by this Court, based on its familiarity with the issues, long before September 30. Plaintiffs believe that this Court, in light of the record, should reconsider its recommendation that all objections be referred to Magistrate Judge Nolan. In plaintiffs' view, 16 of the 19 categories objected to by defendants are ripe for decision. If this Court can decide just some of these issues, it will drastically reduce the burden on Magistrate Judge Nolan.

A review of five categories of objections demonstrates that thousands of objections could be resolved by a decision on basic, straightforward questions with which this Court, rather than Magistrate Judge Nolan, is intimately familiar. For example, this Court should decide the following issues, at a minimum:

1. Do the beneficial owners themselves have to provide proof that they authorized the custodian banks and third-party filers listed in defendants' Ex. A-1 to file claims on their behalf? For example, Northern Trust has submitted a declaration that it was authorized to file claims on behalf of its 1,813 clients – is that sufficient or must Lead Counsel reach back out, through Northern Trust, for additional evidentiary support of authorization from each of the 1,813 claimants? A decision on this simple question will resolve defendants' objections as to 8,290 claims. Defendants' Objections, II.A. (Docket No. 1800) at 6-9.

2. Do beneficial owners with an allowed loss less than $250,000 who submitted claims directly (*i.e.*, not through a custodian bank or third-party filer) have to answer the question on page 5 of the proof of claim form? A decision on this question would resolve defendants' objections to 2,554 of the 2,572 claims identified in Section II.D.2 of defendants' objections. If the Court requires an answer from each of these class members, plaintiffs will have to reach back out to these class members – which will take additional time. Clearly, obtaining an answer now if necessary – rather than later this year – would only serve to advance the litigation.

3. The Court held on May 31, 2011 that claimants with an allowed loss of less than $250,000 who filed through custodian banks and third-party filers, did not have to answer the question on page 5 of the proof of claim form. Defendants objected to these 22,667 claims despite the unambiguous May 31 Order – admittedly to preserve their appellate rights on this issue. Defendants' Objections, II.D.2. Will the Court simply affirm its May 31 Order and overrule this objection?

4. The Court's January 11, 2011 Order set a claim deadline of May 24, 2011, but authorized Lead Counsel to accept late-submitted claims "so long as further proceedings in the Action are not materially delayed thereby." January 11, 2011 Order, ¶4. If a claim postmarked after May 24, 2011 was received by Gilardi in time to be processed and included in its Report dated December 22, 2011, was it appropriate for Lead Counsel to accept it consistent with the January 11 Order? Or should it be rejected? An answer to this simple question will resolve 737 objections. Defendants' Objections, II.E.1.

5. Similarly, certain class members submitted the one-page supplemental claim form after September 12, 2011, but in time to be processed and included in Gilardi's December 22, 2011 report. Should those claims be denied? An answer will resolve 17 objections to claims valued at $13,112,897. Defendants' Objections, II.E.2.

The five questions set forth above, if answered, would resolve thousands and thousands of objections. In fact, plaintiffs believe that 16 of the 19 categories of objections could be resolved in a short hearing – they are fully briefed and only require the Court to make decisions. There are only three categories of objections that require additional inquiry (defendants' categories II.B.3 (Unbalanced Claims), II.B.4 (Negative Balances) and II.C.3 (Defendants' Calculations of the Allowed Losses Are Less Than Gilardi's Allowed Losses) – perhaps these categories could remain with Magistrate Judge Nolan for additional analysis and resolution. The remaining objections simply require a decision. This Court, armed with extensive knowledge of the procedural posture of the case and the claims process, is well-positioned to make that decision.[1]

Further, this Court's concern with lengthy delays and the impact of delay on the potential dissipation of defendants' assets is well-documented. As this Court wrote: "Time, of course, is extremely important. The court has previously voiced its concern that the longer the process takes the less likely it is that the defendants will actually have sufficient assets available to satisfy any final judgment that might result from which has already been a long, difficult and expensive process." May 31, 2011 Order at 4. *See also* August 16, 2011 Order at 11 ("Plaintiffs, on the other hand, argue that, after a determination of class-wide liability such as we have here, such delay works to their extreme detriment. They have no way of ensuring that defendant's ability to pay any damages they are awarded is not being dissipated; leaving them with a worthless judgment that took nine years and a tremendous expenditure of resources to obtain."). Concerns regarding defendants' dissipation of assets have not been alleviated since 2011. On May 1, 2012, HSBC Holdings plc ("HSBC") announced that it had closed the sale of certain of the assets and liabilities of its card and retail

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[1] Another two categories can not be decided by Magistrate Judge Nolan until this Court rules on the reliance issue – a decision that was anticipated by April 20, 2012. Defendants' Objections, ¶¶D.1, D.3.

services business in the United States. *See* Ex. 1 (HSBC Finance Corporation, Form 8-K dated May 1, 2012). Under the terms of the transaction, HSBC received cash consideration of $31.3 billion, including approximately 12.7 billion for the assets of HSBC Finance Corp., formerly Defendant Household International. HSBC Holdings plc is based in London, England.

Plaintiffs' counsel understands that the dockets in this district are crowded. However, this case is 10 years old; it was tried to a jury verdict 3 years ago; it affects over 45,000 class members; and the damages are at a minimum $1.375 billion and could well exceed $2.225 billion plus prejudgment interest. This case has been pending too long and the verdict came too long ago to endure another interminable delay. Nor should it be shifted to a judge or special master who will be considering these issues for the first time without prior involvement in the procedural posture of the case or the claims process. As this Court stated: "Meanwhile, this nine year old case continues without resolution for either side. At some point, getting a case to a final conclusion becomes paramount. The lawsuit is worthless to the plaintiffs and damaging to the defendants if it goes on for so long that the relief granted is, by virtue of the workings of time, dissipated and the parties involved both come out losers." August 16, 2011 Order at 10-11.

DATED: May 7, 2012

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
MICHAEL J. DOWD (135628)
SPENCER A. BURKHOLZ (147029)
DANIEL S. DROSMAN (200643)
LAWRENCE A. ABEL (129596)
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)

ROBBINS GELLER RUDMAN
& DOWD LLP
LUKE O. BROOKS (90785469)
JASON C. DAVIS (253370)
Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
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

DECLARATION OF SERVICE BY ELECTRONIC 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 W. Broadway, Suite 1900, San Diego, California 92101.

2. That on May 7, 2012, declarant caused to be served by electronic mail to the parties the following documents:

PLAINTIFFS' MOTION FOR WITHDRAWAL OF THE REFERRAL TO MAGISTRATE JUDGE NOLAN FOR A REPORT AND RECOMMENDATION REGARDING DEFENDANTS' OBJECTIONS TO CERTAIN CLAIMS

The parties' e-mail addresses are as follows:

TKavaler@cahill.com	Mrakoczy@skadden.com
PSloane@cahill.com	Rstoll@skadden.com
PFarren@cahill.com	Ldegrand@degrandwolfe.com
LBest@cahill.com	TWolfe@degrandwolfe.com
DOwen@cahill.com	MMiller@MillerLawLLC.com
JHall@cahill.com	LFanning@MillerLawLLC.com

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of May, 2012, at San Diego, California.

s/ Deborah S. Granger
DEBORAH S. GRANGER