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

MEMORANDUM IN SUPPORT OF THE CLASS' OBJECTION TO MAGISTRATE JUDGE'S JUNE 15, 2006 ORDER ON POST-CLASS PERIOD DISCOVERY

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I. INTRODUCTION

On June 15, 2006, Magistrate Judge Nan R. Nolan (the "Magistrate") to whom this matter was referred for all pre-trial discovery matters issued an Order denying the Class' Motion for Post-Class Period Discovery with respect to specified document requests and interrogatories. June 15, 2006 Order, attached as Exhibit A. (All exhibits are attached hereto.) The Magistrate's ruling represent a misapplication of the applicable law.

First, the Magistrate failed to give appropriate deference to the applicable case law, including Seventh Circuit authority, holding that post-Class Period information is relevant. Second, the Magistrate improperly relied upon the volume of the past production of documents as a basis for concluding that production of the requested discovery would cause an undue burden. Third, the Magistrate overlooked the fact that defendants' past production does not include documents responsive to the specific requests on which the Class moved for discovery and does not provide the information requested by the Class in the interrogatories.

The Magistrate's ruling, if allowed to stand, will have a substantial prejudicial effect on the Class. Essentially, it would allow defendants to selectively produce the post Class Period documents and information that they like while withholding negative documents and information. This would put the Class at a significant disadvantage.

The Class respectfully submits that the June 15 Order should be overruled and defendants should be ordered to respond to the targeted post-Class Period information requested by the Class for certain interrogatories and document requests as outlined in here. *See also* Exhibit B.

II. APPLICABLE LEGAL STANDARD

Under Fed. R. Civ. P. Rule 72(a), "[w]ithin 10 days after being served with a copy of the magistrate judge's order, a party may serve and file objections to the order." Fed. R. Civ. P. 72(a); *see also Sunstar, Inc. v. Alberto-Culver Co*., Case No. 01 C 0736, 2004 U.S. Dist. LEXIS 16855

(N.D. Ill. Aug. 20, 2004). Rule 72(a) provides that, "[t]he district court to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); *see also Raymond v. Ameritech Corp*., 03 C 4509, 2004 U.S. Dist. LEXIS 8083 (N.D. Ill. May 6, 2004) (applying "clearly erroneous or contrary to law" standard).

III. SUMMARY OF THE ACTION

The Complaint[1] here alleges that during the Class Period (July 30, 1999 to October 11, 2002), defendants engaged in a single multi-component fraud scheme to mislead the public regarding the true state of Household International, Inc.'s ("Household" or the "Company") business operations and financial performance, which included: (1) predatory lending practices; (2) improper reaging or restructuring practices; and (3) the August 14, 2002 restatement of the Company's accounting for certain credit card contracts. *See* Complaint, generally. Immediately after the public disclosure of a $484 million multi-state Attorneys General settlement relating to the Company's improper sales practices, Household's credit rating in the debt market was downgraded, inhibiting the Company's ability to fund its operations. ¶30; Ex. C ("S&P lowered its rating to A-/A2 for debt and commercial paper respectively, and Fitch put the company on negative watch. This will increase the cost of funds for the company . . . . [F]unding is and ratings are very important to lenders like Household"). Individual Defendant William Aldinger even acknowledged that Household's growth had slowed because of "funding issues." ¶30.

In their First Amended Answer, defendants have almost uniformly denied these allegations. *See generally*, First Amended Answer. Yet, they admitted that "as part of the [Multi-State AG]

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[1] "Complaint" refers to the [Corrected] Amended Consolidated Class Action Complaint for Violation of the Federal Securities Laws. (All paragraph ("¶") references are to the Complaint unless otherwise noted.)

settlement Household agreed to change various of its consumer lending practices." First Amended Answer, ¶99. Additionally, commentators expected these changes to dramatically impact Household's bottom line: "The real concern is that Household's business model has radically changed after recent settlements with regulators." Ex. D. Analysts downgraded their expectations accordingly, noting: "***[T]he settlement reflects past control weaknesses, managerial missteps, and carries a high degree of execution risk for the future*** . . . . Accordingly we're lowering our EPS estimates for 2002 and 2003 . . . and reducing our long term growth outlook . . . ." Ex. E (emphasis added); "We are also reducing our 5 year earnings growth rate from 15% to 12% to reflect the changes required in operations by the settlement." Ex. C. Thus, following the settlement, investors had one question on their minds: "***Can Household make as much money without predatory lending practices?"*** Ex. D (emphasis added).

The Complaint also alleges that Household's 4Q02 results announced on January 15, 2003 reported net income of $388 million and earnings per share ("EPS") of $0.66, compared to 4Q01 net income of $549 million and EPS of $1.17, a 44% decrease in EPS, caused directly by defendants' inability to engage in the improper conduct. ¶170. The Class alleges that Household could not continue to report "record" financial results without its predatory sales practices, and is entitled to prove that defendants' misrepresentations regarding the propriety of their sales practices evidences their knowledge and the reduction in revenue as a result of the cessation of such practices, shows materiality.

In addition, on March 19, 2003, Household entered into a Consent Order with the Securities and Exchange Commission ("SEC") and agreed to cease and desist from making false and misleading disclosures about Household's reaging practices. Ex. F (SEC Consent Decree). The SEC Consent Decree specifically references Household's SEC filings relating to the Class Period for the years 2001 and 2002, and makes the following findings:

- Household's disclosures regarding its restructure policies fail to present an accurate description of the minimum payment requirements applicable under the various policies and are therefore false and misleading. Ex. F, ¶8.

- Household's restructure policy disclosures are also false and misleading since they fail to disclose Household's policy of automatically restructuring numerous loans. Ex. F, ¶9.

- Household's false and misleading disclosures are material in light of the significant volume of Household's loan restructures and the nature of Household's lending businesses. Ex. F, ¶10.

- Household knew or was reckless in not knowing that its disclosures regarding restructuring policies were false and misleading. Ex. F, ¶11.

- Household's disclosures relating to its restructuring and account management policies are also misleading because Household omits to disclose its policy of excluding forbearances from 2+ delinquency in certain of its businesses. Ex. F, ¶12.

- Household knowingly or recklessly omitted to disclose that loans in forbearance are excluded from its 2+ delinquency rates. Ex. F, ¶13.

- As a result of the conduct described above, Household violated §10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

As such, the Class is entitled to discover information relating to the above activities, which simply relate back to the earlier alleged fraudulent conduct and are relevant to the question of what defendants knew during the Class Period and the impact of those activities.

IV. SUMMARY OF REQUESTED DISCOVERY

The post-Class Period discovery requested by the Class falls in the following categories:

A. Predatory Lending Practices

Documents tracking Household's various sales practices that the Class alleges were predatory and the revenues earned through the following practices:

- Prepayment penalties - 3rd Request No. 9, 2nd Rog No. 8
- Single premium credit life insurance - 3rd Request Nos. 10, 27, 2nd Rog No. 7
- Discount Points - 2nd Request No. 8 and 3rd Request No. 11, 2nd Rog No. 6
- Origination fees - 3rd Request No. 22

- Misrepresentation of Interest Rates - EZ Pay (3rd Request No. 12, 2nd Rog No. 10); second loans with interest rates of more than 20% (3rd Request No. 13, 2nd Rog No. 11, 12); average interest rate tracking (3rd Request No. 21); tracking net interest margin (3rd Request No. 23); tracking loan-to-value ratios over 100% (3rd Request No. 24); finance charges (3rd Request No. 30, 2nd Rog No. 5)
- Financial impact of discontinuing these practices as mandated by the multi-state Attorneys General settlement - 3rd Request No. 25.

B. Reaging, Credit Quality and Credit Loss Reserves

- Policies and practices relating to loan delinquencies, charge-off and reaging of loans - 1st Request No. 10
- Revenue generated by the imposition and reversal of finance charges - 3rd Request No. 30
- Credit loss reserves on owned, managed and securitized receivables - 2nd Request No. 6; 3rd Request Nos. 1-2, 6, 30
- Rewrites or rewritten loans - 3rd Request No. 31
- Profits or losses and reserves required on securitized receivables - 2nd Request No. 6
- Changes instituted to Household's reaging practices, including loan portfolio performance, loss and delinquency trends and roll rate models, as a result of the SEC Consent Decree - 3rd Request Nos. 3-5.

C. Committee Materials

- Documents relating to the Audit Committee; Credit Risk Committee and Internal Audit - 2nd Request Nos. 5-6 and 32.

Each of these categories of post-Class Period documents is relevant to the Class to prove defendants' scienter as well as the materiality of the misrepresentations during the Class Period.

V. PROCEDURAL BACKGROUND

Although the initial complaint in this case was filed on August 19, 2002, all discovery was stayed under the mandatory discovery stay provision of the Private Securities Litigation Reform Act ("PSLRA"). This stay on discovery lasted until March 2004 when this Court ruled on the motions to dismiss, denying them in large part. Document production did not begin until June 24, 2004 after the Rule 26(f) conference had occurred and an interim protective order was in place.

Plaintiffs have consistently taken the position, with defendants as well as the Magistrate that post-class period discovery is not only proper in securities fraud cases, but particularly necessary here where certain significant events relevant to the elements of scienter and materiality occurred outside the Class Period. *See* §III, *supra.* Although these issues arose peripherally numerous times throughout discovery, the Class formally raised the issue of post-Class Period information in its January 20, 2006 Motion to Compel Responses to Second Set of Interrogatories. These interrogatories addressed financial revenues and loan information relating to Household's predatory lending practices. In its February 17, 2006 Minute Order, the Magistrate reserved ruling on the issue of post-Class Period information.

At the March 9, 2006 status hearing, the Magistrate requested additional facts and case law supporting the relevancy of the Class' request for post-Class Period information. Both parties filed briefs supporting their respective positions. At the April 18, 2006 motion hearing, the Magistrate requested additional information from the Class detailing the relevance of each specific request to the Class' claims and the significance of post-Class Period information for that request. The Class provided the Magistrate with the requested detail after which defendants filed a response. On June 15, 2006, the Magistrate issued the Order denying the Class' motion.

VI. ARGUMENT

A. The June 15 Order Is Contrary to Established Legal Authority Holding That Post-Class Period Evidence Is Relevant to Prove Intent and Materiality

Although the Magistrate recognized the general proposition that post-Class Period information is relevant, she found that the cases cited by the Class do not support production of post-Class Period information. Order at 5. This holding is contrary to the law because the cases cited establish that post-class period discovery is relevant to prove intent and materiality. Thus,

production of responsive documents and information should have been compelled in light of the lack of evidence from Household as to undue burden.

The Magistrate interpreted the *In re Control Data Corp. Sec. Litig.*, Master Docket 3-85-1341, 1987 U.S. Dist. LEXIS 16829, at **7-8 (D. Minn. Dec. 10, 1987), *aff'd*, 3-85 CIV 1341, 1998 U.S. Dist. LEXIS 18603 (D. Minn. Feb. 22, 1988), decision as one making only a "general statement" that post-class period information has been "admitted on issues of scienter, intent and knowledge." Order at 6. In fact, the scope of discovery was a threshold issue in that case. *Control Data Corp.*, 1987 U.S. Dist. LEXIS 16829, at **7-8. Indeed, on defendant's appeal of the magistrate's order, the district court affirmed the magistrate's ruling allowing post-class period discovery. *Control Data*, 1988 U.S. Dist. LEXIS 18603.

Further, the Magistrate found that the cases relied upon by the *Control Data* case do not support post-class period production in the case at hand. Order at 6. For example, in *Michaels v. Michaels*, 767 F.2d 1185 (7th Cir. 1985), the Seventh Circuit found that the withheld information relating to post-purchase agreement was material and affirmed the jury verdict. The Seventh Circuit found that the evidence demonstrated that defendants deliberately withheld material information from plaintiff which, if revealed, would have affected his decision to sell his shares in defendant company. *Id.* at 1195. In so finding, the court held that "activities occurring after January 27, 1976 are relevant to the materiality issue only to the extent that they reflect what [defendant uncles] knew at the time they signed the stock purchase agreement." *Id.* Thus, under *Michaels*, post-Class Period information related to defendants' knowledge is relevant. Although the Magistrate outlined the facts and the holding of the *Michaels* case, there is no analysis in the Order of why the Magistrate did not apply the Seventh Circuit's holding to the case at hand.

Similarly, in *SEC v. Holschuh*, 694 F.2d 130 (7th Cir. 1982), defendant appealed arguing that "a violation of the securities laws may not be based on events occurring after a sale has been

completed, because such events could not have influenced the decisions of investors and cannot satisfy the statutory requirement of being 'in connection with the purchase or sale of any security.'" *Id.* at 143 (citation omitted). In disagreeing with the appellant, the Seventh Circuit found "Mr. Holschuh's conduct prior to the sale clearly satisfied the 'in connection with' requirement, and his ***subsequent lulling activities***, which the court found to be ***part of a single scheme*** or plan, ***simply related back to the earlier fraudulent conduct and were relevant to the question of intent***." *Id.* at 144 (emphasis added).

Here, the Magistrate found that "unlike the plaintiff in *Holschuh*, Plaintiffs do not allege that Household engaged in post-Class Period efforts to conceal fraud." Order at 8. In so finding, the Magistrate erred. Part of this error stems from the Magistrate's apparent misapprehension: "I have never heard of post-conspiracy state of mind to show state of mind at the time." Ex. G (excerpt of March 9, 2006 Transcript of Proceedings). Acts of concealment after the main object of a conspiracy are completed, although not actionable as part of the conspiracy, are admissible at the trial of the conspiracy to prove state of mind – "consciousness of guilt" – during the conspiracy. *United States v. Green*, 594 F.2d 1227, 1229, n.1, 1230 (9th Cir. 1979) (relying on *Grunewald v. United States*, 353 U.S. 391 (1957)).

The Magistrate also erred in finding, that unlike in *Quintel Corp., N.V. v. Citibank, N.A.*, 596 F. Supp. 797 (S.D.N.Y. 1984), there were no allegations of negligence in the case at hand. Order at 8. The critical inquiry is not whether the claims asserted are identical to a previously decided case, but whether in light of the legal precedent, the application of the law to the facts of the case make it logical to permit post-class period discovery. *See Quintel*, 596 F. Supp. at 805 ("the post-closing evidence as to the discrepancies between the projections and the result goes directly to the question of what factors were in existence at that time"). As in *Quintel*, the Class is entitled to compare post-Class Period changes in sales practices as well as delinquency, charge-off and reserve data to the

information defendants provided to investors during the Class Period in order to assess the impact of Household's improper activities during the Class Period. During the presentment of defendants' *Dura* motion, this Court indicated that with respect to the predatory lending allegations, the question for the Class was "whether or not you can tie them in . . . to a loss of value in shares and – whether or not they are somehow an misrepresentation which was a causative factor in the purchasing of the shares." Ex. H.

Accordingly, the Class is entitled to obtain the specific post-Class Period information delineated in §IV *infra*, because it relates back to defendants' conduct during the Class Period and is essential to defendants' intent as well as the materiality of the impact of such practices on Household's financials.

The Magistrate also erred in denying post-Class Period information in finding that, unlike *State Teachers Retirement Bd. v. Fluor Corp.*, 589 F. Supp. 1268 (S.D.N.Y. 1984), this case does not involve allegations of insider trading. Order at 8. *In State Teachers Retirement Bd.*, the court allowed plaintiffs to present evidence of defendants' stock sales that took place during and after the class period when they had inside information on the basis that this evidence will be relevant to the jury's determination of the materiality and scienter issues. 589 F. Supp. at 1272. Although the Class' Complaint does not have insider trading allegations, the Complaint does allege that the individual defendants' compensation and incentives, based on the performance of the Company's stock price, motivated them to make false and misleading statements during the Class Period. ¶¶156-162. The Complaint also alleges the sale of Household to HSBC Finance Corporation ("HSBC") was structured to ensure an immediate windfall to defendants Aldinger and David Schoenholz, wherein Aldinger received over $60 million in consideration and options accelerations as a result of the proposed merger with HSBC, including a $10 million "special retention grant" for selling Household to HSBC, and Schoenholz received over $20 million. ¶6. None of this

information has been provided to the Class, calling into question the completeness of defendants' production for the requests for which they contend they produced documents.

Thus, because the Magistrate misapplied this law that favors post-Class Period discovery to the facts of this case, the June 15 Order should be overruled.[2]

B. The Magistrate's Repeated Reliance on Four Million Pages of Documents Already Produced to Show Burden Overlooks Critical Facts Weighing in Favor of the Necessity of this Relevant Evidence

1. A Voluminous Production of Unusable Documents Does Not Outweigh the Class' Need for Relevant Documents

The Magistrate also erred in denying the Class' request for additional post-Class Period information based on its already having received four million pages of documents, stating that the "marginal probative value of further discovery does not justify the immense burden of production." Order at 1-2, 9-10. In denying the targeted post-Class Period information sought by the Class, the June 15 Order references no less than four times defendants' production of over four million documents. *Id*. at 1, 5, 9-10. Quantity, however, has never been a substitute for quality. *See In re Abbott Labs. Derivative S'holder Litig.*, No. 99 C 7246, 2004 U.S. Dist. LEXIS 5451, at *7 (N.D. Ill. Mar. 29, 2004) (permitting post-class period discovery on the premise that "[t]hough the estimated number of pages rendered discoverable by this ruling is impressive, it alone does not show a burden to Abbott, and it in no way refutes the benefits of discovery for plaintiffs").

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[2] While the Magistrate found unpersuasive several cases cited by the Class allowing post-Class Period discovery because they were at the pleading stage (Order at 5), the court itself relied on *Dura Pharms, Inc. v. Broudo*, 544 U.S. 336, 343 (2005), the Supreme Court case articulating the standard for ***pleading*** loss causation in a securities fraud case. Order at 5, 10 (citing *In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 72-73 (2d Cir. 2001); *Rothman v. Gregor*, 220 F.3d 81, 92 (2d Cir. 2000); *In re TCW/DW N. Am. Gov't Income Trust Sec. Litig.*, 941 F. Supp. 326, 331 n.7 (S.D.N.Y. 1996)). Significantly though, upon remand, the district court in *Dura*, held that post-class period disclosures may be relied upon by plaintiffs to explain how the earlier misrepresentations may have caused economic loss during the class period. *In re Dura Pharms, Inc. Sec. Litig.*, Civil No. 99cv0151-L(NLS), 2006 U.S. Dist. LEXIS 41193, at **34-38 (S.D. Cal. June 2, 2006).

Notably, over 1.3 million pages of the purported four million pages were Excel spreadsheets produced in PDF format, making those documents unreadable, incomprehensible and unusable. Indeed, this factor, among others, was the driving force behind the Class' motion to compel production of documents in native electronic format, which was granted by the Magistrate. Ex. I. (excerpts of June 6, 2005 Motion to Compel the Household Defendants to Produce Electronic Evidence in Native Format at 11); Ex. J (excerpt of August 24, 2005 Status Hearing where the Magistrate acknowledged, "I can't read one thing here").

In addition, defendants have produced a vast amount of duplicate documents, sometimes five to six identical copies of the same document. Although this may add to the volume, again it does not address whether relevant documents have been produced.

2. Defendants Have Not Produced Documents Responsive to the Requests at Issue Here

The Magistrate also held that defendants have already produced post-Class Period documents, indicating that plaintiffs are merely complaining for naught. Order at 1-2, 9-10. Although defendants have produced a small amount of post-Class Period documents, they have refused to produce information related to the requests that were the subject of the Order.[3] Moreover, defendants have been obstructive in depositions where the Class has attempted to mark post-Class Period documents.

The Class' focus on those requests was based on the Class' review of defendants' prior production and designed to pick up on the gaps in defendants' prior production. Interestingly, those requests are precisely the documents that defendants adamantly refuse to produce. However,

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[3] The completeness of defendants' document production even for the ones that they contend they have produced responsive documents is at issue. Ex. K. During the meet and confers related to the first request, defendants refused to produce the relevant post-Class Period documents sought by the Class with the exception of Request Nos. 1-3.

defendants' selective production of post-Class Period documents renders their production incomplete. Such cherry-picking of post-Class Period documents by the party in possession, custody and control of the documents is prejudicial to the Class. The Magistrate's concern about defendants having to redo their document search, is also unfounded. Order at 9. Given that the Class has sought post-Class Period discovery from the very beginning of discovery (June 2004 after the lifting of the PSLRA discovery stay), defendants' assertion that it would be unduly burdensome to produce such information because of the late stage of discovery is without merit. Any burden is self-imposed.

3. The Magnitude of the Fraud and the Lengthy Class Period Will Invariably Result in Voluminous Discovery

In a case where the Class Period spans 39 months (July 30, 1999 to October 11, 2002) and involves three separate factual areas: (1) predatory lending practices; (2) improper reaging or restructuring practices and manipulation of credit quality; and (3) an eight-year restatement of the Company's accounting for certain credit card contracts dating back to 1994, it is to be expected that discovery will be voluminous. These three factual areas involve various combinations of Household's multiple business units as well as the Household corporate entity, whose stock was publicly traded.

The predatory lending practice allegations focus on two of those units, Consumer Lending and Mortgage Services with the involvement of a third, Household Insurance Group, as to one practice, the sale of single premium credit life insurance. The credit card restatement allegations focused on two other business units, Household Retail Services and Household Credit Card Services and data back to 1993.[4] The reage/restructure allegations involve the Consumer Lending, Mortgage

[4] In the February 28, 2006 Order cutting two years off the prior class period, the Court did not address the validity of the Class' substantive allegations since that ruling was based upon whether the five-year

Services, Retail Services as well as Auto Finance and Credit Card Service business units. The fact that Household had over 32,000 employees during the Class Period further lends to the volume of the document production. However, the Class should not be penalized for defendants dumping unusable documents onto plaintiffs only to demonstrate that they have already made a voluminous production.

4. The Scope of the Class' Request for Post-Class Period Discovery Is Reasonable and Outweighs Burden

The Class' request for post-Class Period discovery was limited to information for an additional 14 months, *i.e.*, until December 31, 2003. This limitation on the scope was grounded upon the following facts: (1) the October 11, 2002 $484 million Attorneys General settlement that required Household to cease certain sales practices, modify others and institute a monitoring program to ensure compliance with the Attorneys General settlement agreement; (2) the SEC investigation that was ongoing during the Class Period and culminated in the March 19, 2003 Consent Decree; and (3) the November 11, 2002 announcement by Household that it would be acquired by HSBC and the March 28, 2003 acquisition. As further detailed in §III, this information is relevant to the Class' claims.

Despite this reasonable temporal limitation, the Magistrate denied the Class any post-class period information in addition to what defendants had selected to give them. Order at 1-2, 9-10.

Sarbanes-Oxley statute of limitations applied to the Class' claims. Because information regarding defendants' pre-Class Period statements and activities remains relevant, targeted discovery related to events occurring prior to July 30, 1999 may be appropriate particularly here, where the $386 million restatement dates back to 1994. *See In re Enron Corp. Sec., Derivative & ERISA Litig.*, 235 F. Supp. 2d 549, 689 (S.D. Tex. 2002) (even where a claim is time-barred, conduct prior to the class period may still be relevant to establish scienter or a pattern and practice amounting to a scheme for purposes of §10(b)); *Scholastic*, 252 F.3d at 72 (rejecting argument that pre-class period data is not relevant to defendants' state of mind during the class period: "Any information that sheds light on whether class period statements were false or materially misleading is relevant."). To the extent that the Order implies that the Class may be overreaching obtaining documents "dating as far back as 1994," the Magistrate erred. Order at 9.

Cases cited by the Magistrate in support of her denial mandate the opposite result. For example, in *State Teachers Retirement Bd.*, the class period was four days and the court allowed post-class period discovery for an additional month – *i.e.*, a 750% increase. 589 F. Supp. at 1272. In *In re Seagate Tech. II Sec. Litig.*, No. C-89-2493 (A)-VRW, 1993 U.S. Dist. LEXIS 18065 (N.D. Cal. June 10, 1993), the class period was six months and the court allowed an additional five months of post-class period discovery – an 83% increase. Here, where the Class Period is 39 months, the request for an additional 14 months of discovery amounts to an increase of only 36%.

The Magistrate also noted that "this case has been pending for nearly four years without any end in sight." Order at 1, 10. As an initial matter, discovery did not begin until June 2004 after the PSLRA discovery stay was lifted. Moreover, merits discovery was stayed twice at the behest of the Magistrate – once in August 2004 (to allow class certification discovery) (*see* Ex. L) and again on March 8, 2005 (pending a private mediation scheduled for May 23, 2005). The Class has been diligent in moving discovery along.

Next, the Magistrate found that in *Control Data*, where the class period was one year, "there was no suggestion that the plaintiffs received anywhere close to the number of documents at issue here." Order at 9. The Magistrate's finding is clearly erroneous because there are no facts either way to suggest what the volume of the production was in *Control Data*. Moreover, the facts and circumstances of a case determine and limit the relevancy of information sought in discovery. *Stabilus, Div. of Fichtel & Sachs Indus., Inc. v. Haynsworth, Baldwin, Johnson & Greaves, P.A.*, 144 F.R.D. 258, 265 (E.D. Pa. 1992). This is a case of a systemic fraud involving multiple business units at an enormous company and continuing for many years.

VII. CONCLUSION

For all the foregoing reasons, the Magistrate's June 15, 2006 Order denying the Class' request for post-Class Period discovery should be overruled.

DATED: June 29, 2006

Respectfully submitted,

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