UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED,

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

Plaintiff,

CLASS ACTION

- against -

Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

HOUSEHOLD INTERNATIONAL, INC., ET AL.,

Defendants.

THE HOUSEHOLD DEFENDANTS' MOTION FOR LEAVE TO FILE A SUR-REPLY TO PLAINTIFFS' CROSS-MOTION TO COMPEL PRODUCTION OF CERTAIN DOCUMENTS

In the event that the Court elects to consider certain arguments that Plaintiffs raised for the first time in their Reply Brief (*but see* below), Defendants Household International, Inc., Household Finance Corp., William F. Aldinger, David A. Schoenholz, Gary Gilmer, and J.A. Vozar respectfully move for leave of this Court to file the accompanying Sur-Reply and Supplemental Affidavit of Mark Leopold. These proposed submissions address only Plaintiffs' efforts to force disclosure of Household's confidential litigation database and material on individual case reserves — demands for which Plaintiffs offered no justification in their opening brief. Now that Plaintiffs have belatedly tried to cure that deficiency in their "Reply", in the interest of fairness Defendants should be allowed to correct Plaintiffs' invalid factual assumptions and unreliable legal arguments.

The preferred course, however, is for this Court to disregard Plaintiffs' newly minted arguments and deny this prong of their motion on the basis of waiver. There is abundant support for that outcome, as the Court of Appeal for the Seventh Circuit has definitively held that arguments not made in an opening brief are deemed waived, see, e.g., Estate of Phillips v. City of Milwaukee, 123 F.3d 586, 597 (7th Cir. 1997), and that a "necessary corollary to the principle is that '[a]rguments raised for the first time in the reply brief are waived." Id. See also, Central States, Southeast and Southwest Areas Pension Fund v. Midwest Motor Express, Inc., 181 F.3d 799, 808 (7th Cir. 1999) ("Arguments not developed in any meaningful way are waived"); American National Bank and Trust Co. v. AXA Client Solutions, LLC, No. 00 C 6786, 01 C 9974, 2004 WL 438505, at *3 (N.D. Ill. Mar. 5, 2004) (same); Renaldi v. Sears Roebuck and Co., No. 97 C 6057, 2001 WL 290372, at *17 (N.D. Ill. Mar. 21, 2001) (Nolan, M.J.) (rejecting an argument because its proponent "cite[d] no authority for his assertions").

CONCLUSION

Plaintiffs' Cross Motion for an order compelling Household to disclose its confidential litigation database and documents discussing individual case reserves should be denied on the basis of waiver because Plaintiffs offered no justification for this aspect of its Cross Motion in their opening brief. In the alternative, should the Court receive any of the arguments raised by Plaintiffs for the first time in their Reply Brief, Defendants respectfully ask that it also accept and review the Sur-Reply brief and Supplemental Affidavit submitted herewith.

Dated: June 30, 2006 Chicago, Illinois

EIMER STAHL KLEVORN & SOLBERG LLP

By: s/ Adam B. Deutsch
Nathan P. Eimer
Adam B. Deutsch

224 South Michigan Ave. Suite 1100 Chicago, Illinois 60604 (312) 660-7600

Cahill Gordon & Reindel LLP 80 Pine Street New York, New York 10005 (212) 701-3000

Attorneys for Defendants Household International, Inc., Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar

CERTIFICATE OF SERVICE

Adam B. Deutsch, an attorney, certifies that on June 30, 2006, he served copies of The Household Defendants' Motion for Leave to File a Sur-Reply to Plaintiffs' Cross-Motion to Compel Production of Certain Documents, to the parties listed below in the manner stated.

s/ Adam B. Deutsch	
Adam B. Deutsch	

Via Email and Federal Express

Patrick J. Coughlin Azra Z. Mehdi Luke O. Brooks LERACH COUGHLIN STOIA & ROBBINS LLP 100 Pine Street, Suite 2600 San Francisco, California 94111 (415) 288-4545 (415) 288-4534 (fax)

Via Email and Federal Express

Marvin A. Miller
Jennifer Winter Sprengel
Lori A. Fanning
MILLER FAUCHER and CAFFERTY LLP
30 North LaSalle Street, Suite 3200
Chicago, Illinois 60602
(312) 782-4880
(312) 782-4485 (fax)