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 Magistrate Judge Nan R. Nolan

THE HOUSEHOLD DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO LEAD PLAINTIFFS' MOTION FOR ADDITIONAL DEPOSITION TIME PURSUANT TO F.R.C.P. 30(d)(2)

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This memorandum is respectfully submitted on behalf of Defendants Household International, Inc., Household Finance Corp., William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar (collectively, "Household" or "Defendants") in opposition to Lead Plaintiffs' Motion For Additional Deposition Time Pursuant To Federal Rule Of Civil Procedure 30(d)(2).[1]

INTRODUCTION

Plaintiffs' motion asking this Court to disregard the "one day of seven hours" limitation on depositions expressly imposed by Rule 30(d)(2) is consistent with their campaign of "asymmetrical warfare," in which they freely ignore the directives of this Court and the Federal Rules of Civil Procedure, and repeatedly and callously waste the Household witnesses' time.

Plaintiffs have repeatedly sought to obscure that the parties do not exist on a level playing field vis-à-vis discovery of one another. If this were a case between two multinational corporations, each side would be cautious not to harass the other's witnesses by seeking additional deposition time out of fear of retaliation. Here, in contrast, Plaintiffs feel free to oppress Household's witnesses by squandering time at depositions and seeking additional hours or days[2] of examination time without fear of anything remotely approaching reciprocal treatment.

Of the 94 depositions sought by Plaintiffs to date, 76 are of present or former Household officers, directors and/or employees and ten are of Household agents, such as its outside auditors and a consultant — not including the eight depositions of Household itself that Plaintiffs have taken pursuant to Rule 30(b)(6). Unlike Household, Plaintiffs have essentially no witnesses with whom they need concern themselves. To date, Defendants have been allowed to take the deposition of only a single Plaintiff. Even when Defendants are allowed to depose a representative from each of the three remaining lead plaintiffs, as well as each of their investment advisors, as shown below, the prospect of having to defend a total of six or seven depositions has done nothing to restrain Plaintiffs' abusive conduct of their depositions of Household's employees.

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[1] Defendants submit herewith in support of their opposition to Plaintiffs' motion the Declaration of Jason A. Otto ("Otto Decl.").

[2] Plaintiffs conspicuously never say how much additional time they are seeking—there is no way to tell if it is one hour or five days—per witness.

Throughout discovery, Plaintiffs have displayed a persistent disregard of the Court's directives and any reasonable bounds of discovery. By Order dated October 28, 2005, this Court ruled that the parties were each entitled to take 35 depositions. (Again, because this is asymmetrical warfare, it is only Plaintiffs who stand to reap the benefit of this ruling.) In disregard of this Order, Plaintiffs have noticed a total of 94 depositions to date — 59 more than the limit initially set by this Court and 39 more than the 55 depositions the Court later gave them permission to pursue. Plaintiffs have also ignored the Court's Order limiting each party to 85 interrogatories. They have already served 86 interrogatories on Defendants, inclusive of subparts, and have posed hundreds of additional questions under the guise of requests for information in letters to defense counsel and so-called "Requests for Admissions" on contested issues. They have also disclosed a plan to serve another round of interrogatories soon, notwithstanding the Court-ordered limitation. Plaintiffs' insatiable appetite for production of marginally relevant documents is matter of record. While continuing to pile unreasonable and increasingly greater discovery burdens on Defendants, Plaintiffs have delayed and evaded their own compliance with Defendants' basic discovery requests, finally forcing Defendants to seek judicial confirmation that the duty to answer contention interrogatories is not limited to Defendants, as Plaintiffs irrationally contend.

Against this backdrop of one sided burdens and indifference to the Court's efforts to impose reasonable limits and deadlines, and despite the express "one day of seven hours" limitation on depositions set forth in Rule 30(d)(2), Plaintiffs seek the right, without demonstrating good cause, not only to bring Lisa Sodeika back for another day of deposition, but also unilaterally to select in advance at least six witnesses, as well as an unspecified number of additional, unidentified witnesses, whom they may depose for an unspecified period in excess of what the Federal Rules allow. Experience with these Plaintiffs suggests that if they should succeed in getting even one additional hour with one witness, they will demand additional time with more and more witnesses in the future. Plaintiffs have shown themselves completely indifferent to the immense burden that even one day of deposition imposes on a Household employee or other individual witness. These deponents are required to cancel numerous appointments, turn their attention away from *actual* work that must be done, and impose additional burden on their co-workers. It is an extreme burden to ask these employees to hold even two full days open for their deposition preparation and testimony, especially in light of Plaintiffs' repeated practice of canceling and rescheduling deposition dates. As detailed below, Plaintiffs' lack of preparation and misuse of deposition time results in

even more burden and harassment for Household's employees, even within the seven hour time-frame. Plaintiffs' unreasonable and unfounded motion should be denied in its entirety.

ARGUMENT

1. Rule 30(d)(2) Expressly Limits Depositions To "One Day Of Seven Hours".

"The rules do not allow for endless depositions, the modern form of trial by ordeal." *In re Sulfuric Acid Antitrust Litigation*, 230 F.R.D. 527, 532 (N.D. Ill. 2005). The general rule on the length of depositions is unambiguously set forth in Rule 30(d)(2) and provides, in relevant part, that "a deposition is limited to one day of seven hours." Fed. R. Civ. P. 30(d)(2). The rule makes no exception based on the type of case—not for federal securities fraud class actions, nor for cases with a large volume of documents—both of which are arguments advanced by Plaintiffs for making such an exception in this case that this Court should reject just as the drafters of Rule 30(d)(2) did.[3] The 2000 amendments to the Rules imposed the seven hour limit in order to curtail the "undue costs and delays" that had often resulted from unnecessarily long depositions. *See* Fed. R. Civ. P. 30(d)(2) Advisory Committee's note.

Plaintiffs bear the burden to show by good cause that more than seven hours is needed for a fair examination of a particular deponent. *See* Fed. R. Civ. P. 30(d)(2) Advisory Committee's note; *Nicholas* v. *Wyndham International, Inc.*, No. 2001/147MR, 2002 U.S. Dist. LEXIS 27111, at *4 (D.V.I. Nov. 18, 2002) ("[T]he party seeking an extension must move therefor upon a demonstration of good cause"). For purposes of ruling on an application for an extension of time, the Court may consider how Plaintiffs used the seven hours allotted them by the Rules. *See, e.g.*, *Beneville* v. *Pileggi*, No. 03-474 JJF, 2004 U.S. Dist. LEXIS 13586, at *3 (D. Del. July 19, 2004) (denying request for additional time where "Plaintiffs [did not provide] the Court with the deposition transcript or any other support for their arguments"); *Security Insurance Co.* v. *Trust-*

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[3] *Compare* Summary of Public Comments: Preliminary Draft of Proposed Amendments, Civil Rules Regarding Discovery 1998-99, at 125-42 (comments regarding Rule 30(d)), *available at* http://www.uscourts.gov/rules/Summary_CV_Comments_1998_1999.pdf, (summarizing comments received by the advisory committee that a seven hour limit on depositions would be unworkable in complex cases) *with* Fed. R. Civ. P. 30(d)(2) (imposing seven hour limit on depositions without an exception for complex cases).

mark Insurance Co., 218 F.R.D. 29, 32 (D. Conn. 2003) ("review of the deposition transcript and the scope of the notice of deposition does not support [the] argument that more time is justified").

In particular, Plaintiffs must *prove*—not just say—that (for some reason other than Plaintiffs' counsel's own inefficiency or unpreparedness) a fair examination of the deponent was not possible within the seven hours of examination taken. *See Jensen* v. *Astrazeneca LP*, No. 02-4844 (JRT)(FLN), 2004 U.S. Dist. LEXIS 19089, at *9 (D. Minn. Aug. 30, 2004) (denying additional time where, "[a]side from asserting that it has not been able to elicit all of the information it wished to get to, [movant] has given the Court no indication that this failure cannot be blamed on inadequate time management"). Plaintiffs cannot meet their burden merely by listing, after the fact, additional areas of inquiry that they now wish they had pursued during the deposition but failed to do so for reasons of their own. As this Court explained:

> "[i]n every deposition, choices have to be made about the subject matter to be covered. The 7-hour rule necessitates, especially in complex cases, that almost all depositions will be under-inclusive. *The examiner therefore must be selective and carefully decide how to apportion her time.*"

In re Sulfuric Acid, 230 F.R.D. at 532 (emphasis added) (denying additional examination time); *see also Benson* v. *St. Joseph Regional Health Center*, No. H-04-04323, 2006 U.S. Dist. LEXIS 28795, at **15-16 (S.D. Tex. May 1, 2006) (concluding plaintiffs failed to make a sufficiently strong showing that additional deposition time should be granted).

As detailed below, Plaintiffs have made no effort to be selective or carefully apportion their time during the depositions they have taken to date. They plainly have not met their burden to show good cause for additional examination time with Ms. Sodeika, and they cannot possibly meet that burden as to the other six witnesses they name because they have not even begun those depositions yet, and the required showing under Rule 30(d)(2) cannot be made *prospectively*.

2. Plaintiffs' General Assertions Concerning This Case Fail To Show Good Cause For The Specific Exemptions They Request From Rule 30(d)(2)'s Limitation.

Although the Sodeika transcript provides a graphic demonstration of why Plaintiffs' motion should be denied (a point discussed in greater detail below), in fact none of Plaintiffs' pleas for special treatment under Rule 30(d)(2) can survive closer inspection. For example:

For purposes of this motion, Plaintiffs suddenly embrace the fact that they have forced the production of millions of documents by Defendants (Pls. Br. at 3) — at the same time they are assuring Judge Guzman (in their Objections to this Court's ruling on their motion to compel additional post-Class Period discovery) that the size of Defendants' production is illusory. (*See* Memorandum in Support of the Class's Objection to Magistrate Judge's June 15, 2006 Order on Post-Class Period Discovery at 10-11) In both contexts, Plaintiffs miss the real significance of the "four million document" point, which is to highlight the grossly disproportionate discovery burden they have already imposed on Defendants in this matter. That burden would be significantly compounded if in addition to deposing 45 witnesses more than the Federal Rules contemplate, Plaintiffs were allowed to exceed the prescribed one day of seven hours limit for an unspecified number of those already too many witnesses.

Plaintiffs also make much of the supposedly expansive duration of the relevant time period, which they state runs from 1993 to 2003 (Pls. Br. at 2), notwithstanding Judge Guzman's ruling that the Class Period began no earlier than July 1999, and their own allegation that it ended in October 2002. This argument is a clumsy sleight of hand at best, as Plaintiffs do not and cannot represent that Ms. Sodeika, Ms. Allcock or Mr. Pantelis had anything to do with either their predicate for seeking to stretch discovery back six years (*i.e.*, the alleged starting date of the accounting for certain credit card contracts) or their predicate for extending discovery for several months after the end of the Class Period (*i.e.*, the execution of Household's inadmissible settlement with the SEC). Nor do they explain why seven hours would not provide ample time to explore those subjects with these or any other witnesses. Once again, Rule 30(d)(2) requires counsel to make choices about how to use their limited time. If Plaintiffs wish to ask a deponent about events in 1993, they may well run out of time to examine that witness about events during the Class Period, but the remedy is not to give them a blanket exemption from the Rule. With their access to 45 more witnesses than the Rules contemplate, they should have more than enough opportunities to cover key issues efficiently without imposing an additional burden on any single witness.

Plaintiffs' description of the large number of Household departments or business units supposedly implicated by their securities fraud claims (Pls. Br. at 2) is another red herring. Even apart from the questionable validity of their premise (which will not be debated here), Plaintiffs do not (and could not truthfully) show that individual witnesses such as Ms. Allcock, Ms. So-

deika and Mr. Pantelis had responsibilities crossing all or most of the many business units or departments they name. The fact that other potential witnesses may work in other departments or business units has no bearing on the time needed for deposing any particular witness.

Besides being demonstrably wrong, Plaintiffs' argument that they need a dispensation from Rule 30(d)(2) because of supposed deficiencies in Defendants' discovery compliance is wholly inconsistent with their argument that they have received too much discovery compliance to allow them to work within normal deposition limits. (Pls. Br. at 7) The adequacy of Defendants' compliance is addressed in response to Plaintiffs' companion motions, but for purposes of this motion, it bears noting that Plaintiffs have not pointed to a single "missing" interrogatory answer or category of document they purportedly need to pursue by obtaining judicial sanction to add excess time to particular depositions.

Indeed, it is only *Plaintiffs'* resistance to even the most basic reciprocal discovery that allows them to make broad but unsubstantiated statements about the supposed scope of their case and attendant need for even more discovery. Plaintiffs have briefed the instant motion as though this were a consumer fraud case. They persist in following up on individual borrower complaints (a large focus of their Sodeika deposition) even though those complaints are not relevant to their securities fraud claims. At the same time, Plaintiffs vigorously resist Defendants' efforts to elicit their definition of "predatory lending" as used in their own Complaint and an explanation of how that definition relates, if at all, to their putative securities fraud claims. Plaintiffs may well prefer to procrastinate while fishing for a viable theory through extended depositions, but as developed at length in Defendants' motion to compel answers to their contention interrogatories, the time has come for them at long last to specify and narrow the scope of this case. In the meantime, Plaintiffs' request for leave to expand discovery beyond the generous scope this Court has already authorized is a truly bad idea.

3. Plaintiffs Have Repeatedly Demonstrated An Unwillingness To Apportion Their Time Carefully In Prior Depositions.

Plaintiffs have displayed a notable lack of preparation and focus in their depositions, further belying their asserted need for additional examination time for Ms. Sodeika or any upcoming witness. Representative examples are listed below.

Walt Rybak: Confirming their lack of interest in making efficient use of deposition time, Plaintiffs rejected Defendants' offer to stipulate to the substance of Mr. Rybak's testimony before the SEC (for which Plaintiffs have a transcript). Instead, Plaintiffs covered the same topics and elicited the same responses from Mr. Rybak that were contained in his SEC testimony. (*E.g.*, Otto Decl. Ex. 3 at 17:7-16; 73:20-74:21)

Timothy Titus: As a prime example of their lack of preparation, Plaintiffs devoted considerable time with this witness to trying to "understand" that the difference between the terms "revenue" and "income" turns on the accounting for expenses. (*Id.* Ex. 4 at 38:15-39:24) Despite specifically requesting a deposition to examine the subject of Household's financial statements, Plaintiffs wasted Mr. Titus's time exploring "Accounting 101" principles that should have been part of their preparation.

Elisa Gargul: Plaintiffs requested a total of 66 minutes of break time, exclusive of lunch, revealing their lack of preparation. Moreover, thirteen pages of the transcript consist of questions concerning Ms. Gargul's background and pre-Household employment that are indisputably irrelevant to Plaintiffs' claims. (*Id.* Ex. 5 at 11:15-24:17)

Lidney Clarke: Plaintiffs devoted considerable time to asking Mr. Clarke, who was an analyst within the credit risk department of Household's Consumer Lending business unit during the Class Period, about Household's general document retention policy (*id.* Ex. 6 at 110:19-112:20), even though they had already taken three depositions specific to document preservation issues—Chris Cunningham (Nov. 11, 2004 and Dec. 2, 2005) and Carol Werner (Feb. 16, 2006).

Carin Rodemoyer: Instead of attempting to elicit testimony concerning facts and events recalled by Ms. Rodemoyer, Plaintiffs repeatedly belabored the record of this deposition with multiple "follow-up" questions concerning documents about which she had no specific recollection. (*Id.* Ex. 7 at 22:10-25:17; 33:17-36:12; 76:7-78:1; 78:15-81:21; 125:15-127:19; 131:9-133:19; 161:20-163:13) (They pursued the same wasteful strategy in the Sodeika deposition, as discussed below.) Moreover, rather than zeroing in on salient topics, Plaintiffs spent time asking Ms. Rodemoyer vague and hypothetical questions, such as "[w]hat are best practices?" (*Id.* at 32:3)

Even though they wasted time, Plaintiffs completed each of these depositions within the seven hour limitation imposed by Rule 30(d)(2). If Plaintiffs *actually* allotted their time effi-

ciently, they would be able to complete any deposition of any Household witness, including those who are the subject of Plaintiffs' motion, well within the limit prescribed by the Federal Rules.

4. Plaintiffs Have Failed To Show Good Cause For Additional Examination Time With Lisa Sodeika

Plaintiffs describe Ms. Sodeika as a witness who had "critical involvement" with respect to the events giving rise to their predatory lending allegations (as opposed to their securities fraud allegations). (Pls. Br. at 8) Any such involvement by Ms. Sodeika would have occurred when she served as Special Assistant to the Vice-Chairman within the Consumer Lending business unit from August 2001 through December 2002. Plaintiffs assert that they were unable to depose Ms. Sodeika on her "involvement in internal investigations by Household into complaints, including the 'Effective Rate Complaints' and complaints emanating from the Bellingham, Washington branch office". (*Id.* at 8) However, even if that were a fair summary of her deposition at their hands on June 6, it overlooks the fact that Ms. Sodeika has already been deposed on that very topic in connection with a lawsuit brought against Household by Melissa Rutland-Drury, who was a branch sales manager in the Bellingham, Washington branch office and who was terminated as a result of certain customer complaints. Ms. Sodeika's deposition transcript in the Rutland-Drury matter has been produced to Plaintiffs and, thus, prior to deposing Ms. Sodeika in this case, Plaintiffs had ample information to plan their approach to this topic which they characterize as "significant". (*Id.*) In any event, Plaintiffs *did*, in fact, cover this topic at Ms. Sodeika's deposition (*see* Otto Decl. Ex. 1 at 83:5-92:24; 259:18-265:20) and, consequently, Defendants and Ms. Sodeika should not have to bear additional burden, expense and inconvenience simply because in hindsight Plaintiffs feel they did not cover this area satisfactorily.

Despite deferring Ms. Sodeika's deposition for six weeks after its originally scheduled date to make sure that they would have ample time to prepare, and repeatedly assuring this Court that they "spent a lot of time preparing" (*id.* Ex. 2 at 15, 22), Plaintiffs were demonstrably unprepared to take Ms. Sodeika's deposition. As this Court already explained to Plaintiffs, "it would seem to me on people who you know more about, you could really get down to it, like really down and dirty ... ." (*Id.* at 31) Instead of getting "down and dirty" with Ms. Sodeika, Plaintiffs took repeated breaks, resulting in down-time totaling one hour and 13 minutes, exclusive of lunch. (*Id.* Ex. 1 at 230:20-231:13, 256:19-257:23, 272:19-273:4)

Even with this extensive on-the-job preparation, Plaintiffs' examination of this witness was a model of inefficiency and avoidance of the merits in favor of such wasteful pursuits as establishing the job duties of witnesses already deposed, the attendees at (but not the substance of) meetings for which Plaintiffs have attendance lists, the recipients (but not the substance) of documents created or received by Ms. Sodeika showing the names of all "cc's", the timing (but not the substance) of events for which Plaintiffs have written chronologies, and Ms. Sodeika's non-recollection of individual passages in documents that she did not recall seeing in their entirety.

Notwithstanding their extra six weeks of preparation, it was evident that Plaintiffs had not even examined certain exhibits prior to marking them. For example, Plaintiffs' questions regarding their Exhibit 18 showed that they mistook the document as a list of customer complaints *directed at Household* whereas, in fact, as Ms. Sodeika pointed out to Plaintiffs, the exhibit clearly identified customers *who were satisfied with Household* and who reported to Household that they had been harassed by ACORN to accuse Household of misconduct. (*Id.* at 104:1-107:21)

Plaintiffs' representation that they "have no interest in wasting anyone's time" (*id.* Ex. 12) cannot be squared with the fact that they waited until after 4:00 p.m., *i.e. nearly seven hours after the deposition began* and 215 pages into the transcript, to first raise the topic of the 2002 settlement between Household and certain state attorneys general—the cornerstone event in Plaintiffs' predatory lending theory of their case. (*Id.* Ex. 1 at 215:5; 271:5-10) Given the importance that Plaintiffs assign to Ms. Sodeika and in light of the seven-hour limitation set forth in Rule 30(d)(2), one would have expected Plaintiffs to have "front loaded" the most salient topics during her deposition. Instead, Plaintiffs ran the clock on irrelevant trivia. For example, Plaintiffs devoted approximately five pages of transcript to discussing Ms. Sodeika's role at Household during the period 1988 to 1998—a period pre-dating the Class Period that has no relevance to Plaintiffs' claims. (*Id.* at 20:7-24:9) Later, after confirming that Ms. Sodeika handwrote her first name next to her full, printed name on a memorandum, Plaintiffs weirdly wasted time establishing that Ms. Sodeika's full signature was "a little bit longer" than her first name alone. (*Id.* at 52:3-10) Plaintiffs also devoted a line of questioning to establishing who Tom Schneider is even though Plaintiffs had already deposed Mr. Schneider on May 4, 2006. (*Id.* at 82:1-10) Only a full reading of the transcript can convey how much time was wasted that could have been devoted to issues that Plaintiffs now wish

they had raised. However, a few additional examples of Plaintiffs' lack of preparation, misuse of time and/or inattentiveness are listed below:

- Plaintiffs belabored the record with questions to which they clearly already knew the answer, apparently for the sole purpose of playing games with the witness. For example, after repeatedly asking Ms. Sodeika whether she recalled when her initial meeting with ACORN took place (*id.* at 152:6-14, 157:11-158:2), Plaintiffs then marked Exhibit 33 and directed Ms. Sodeika to the penultimate page which set forth a chronological listing of Household's meetings with ACORN (*id.* at 179:12-180:13). Similarly, they wasted inordinate time testing this witness's recollection of when a certain shareholder meeting occurred (*id.* at 107:22-108:2; 161:18-21), and when ACORN initiated litigation against Household (*id.* at 128:17-129:10), even though both are obviously matters of record, and Plaintiffs later introduced exhibits showing the answers. Such needless and time-consuming digressions directly belie Plaintiffs' assertion that "[t]his isn't gamesmanship, your Honor, this is just attempting to get the best information and in the shortest time possible." (*Id.* Ex. 2 at 21)

- Similarly, after Ms. Sodeika had testified that she did not recognize handwriting that appeared on the last page of the document marked as Exhibit 4 at her deposition, Plaintiffs asked an additional *six* questions about the handwriting. Exasperated, Ms. Sodeika testified: "I just said I didn't recognize the handwriting. I don't know if this is a note from him [Gary Gilmer]." (*Id.* Ex. 1 at 47:3-48:2)

- Again revealing their inattentiveness, after Ms. Sodeika had just testified that Gary Gilmer was involved in the decision to form the Rapid Response Team, Plaintiffs asked (a mere five questions later) whether Mr. Gilmer had any role in the formation of that team leading Ms. Sodeika to state: "you just asked if he was involved in the decision to have one, yes." (*Id.* at 81:18-82:19) (This is even more appalling given the fact that Plaintiffs had a real time transcription of Ms. Sodeika's testimony.) Elsewhere, after establishing that Ms. So-

deika did not remember how she conveyed a particular set of information to Mr. Gilmer, Plaintiffs spent pages eliciting the utterly irrelevant and obvious truism that it "could have been" by telephone, in person, by e-mail, by memo, etc. (*Id.* at 122:3-123:1)

- Plaintiffs repeatedly marked a document as an exhibit, and after establishing that Ms. Sodeika had no recollection of having seen it, proceeded to ask numerous questions about her awareness that the document said such and such. For example, after Ms. Sodeika reviewed Exhibit 10 and testified that she did not "recollect this at all", Plaintiffs' very next question was directed at a specific page in the exhibit and counterfactually predicated on Ms. Sodeika's recollection of the document. (*Id.* at 60:12-65:5) Plaintiffs did not stop there but continued to devote approximately five additional pages of the transcript to this exhibit of which Ms. Sodeika repeatedly said she had no recollection. (*Id.* at 64:15-69:2) This process was repeated with numerous other exhibits (and is a common tactic in all of the depositions to date). (*See, e.g., id.* at 267:16-270:13) For example, following Ms. Sodeika's confirmation that she did not recall seeing Exhibit 8, Plaintiffs wasted numerous questions seeking her agreement that the categories of information on Exhibit 8 corresponded to some degree to the categories of information found in Exhibit 4. (*Id.* at 55:23-57:5)

- Despite the fact that Plaintiffs previously deposed Lew Walter on March 15 and 16, 2006, Plaintiffs wasted their time with Ms. Sodeika by asking her what position Mr. Walter held and whether he provided training on selling mortgages. (*Id.* at 266:9-17) This is hardly the type of selectivity the drafters of Rule 30(d)(2) had in mind.

Above all, Plaintiffs devoted a great amount of time at Ms. Sodeika's deposition to Household's responses to complaints received from individual consumers or to the disposition of a small number of allegations compiled by ACORN that were found to be isolated to a handful of branches. (*See, e.g., id.* at 78:13-79:7; 104:7-105:11; 259:18-262:10) This obsessive attention to alleged, isolated abuses of (or misunderstandings by) consumers has been a hallmark of Plaintiffs'

entire discovery campaign, notwithstanding a total absence of any link to alleged securities fraud. While Plaintiffs may think it good strategy before a jury (if their case were ever to get that far) to depict Household as "predatory" by magnifying inevitable customer complaints and/or by mis-characterizing Household's routine efforts to improve its performance, Plaintiffs' deliberate choice to make this a key focus of Ms. Sodeika's deposition is no reason to allow them additional time to address supposedly more relevant material they overlooked.

In light of the above, the representation by Plaintiffs' counsel to the Court that "my deposition [of Ms. Sodeika] was narrow and focused" (*id.* Ex. 2 at 30) deserves no credence. Plaintiffs have not met their burden to demonstrate that good cause exists for additional examination time with Ms. Sodeika, and as the case law cited above establishes, providing a wish list of subjects they now think they should have covered does not come close to meeting that test. *See, e.g., In re Sulfuric Acid*, 230 F.R.D. at n.3. ("The content of a deposition is constrained by temporal limitations ..."). It was Plaintiffs' responsibility to avoid the sort of meandering, unfocused and largely irrelevant questioning that marked their examination of Ms. Sodeika. This Court should not reward Plaintiffs for their lack of preparation and waste of time during her deposition by subjecting her or any other witness to rambling and unfocused questioning going beyond the seven hour time limit prescribed by Rule 30(d)(2) for even complex cases.

5. Rule 30(d)(2) Does Not Allow Plaintiffs To Seek Additional Examination Time For Witnesses They Have Yet To Depose.

At the June 15 status conference, this Court admonished Plaintiffs as follows:

> "You're going to have to convince me because—*and you're going to have to set out who these 15 people are. And you're going to have to set out specific reasons for them. And you better tell me who they are, how they impact your theory, how many documents—I mean, I don't know ... if these people have answered interrogatories, if they didn't answer interrogatories.* ... It would seem to me on people who you know more about, you could really get down to it, like really down and dirty. ... And then just like, boom, boom, boom. ... So I'm not going to give a blanket yes to 15 more than—I'm not going to do that." (Otto Decl. Ex. 2 at 31) (emphasis added)

Plaintiffs have ignored this Court's unambiguous directives by seeking leave to select at some future point an unspecified number of additional, *unidentified* witnesses whom they may depose for more than seven hours. (Pls. Br. at n.1, 11) Nowhere in their motion papers do Plaintiffs identify any of these witnesses or explain how they impact Plaintiffs' theories, and what

their specific reasons are for seeking more time. Instead, Plaintiffs baldly assert that "there are other depositions that will present this issue and thus, this guidance is necessary as soon as possible." (*Id.* at 11) In other words, Plaintiffs admittedly hope to use this Court's ruling on this motion as a tool to burden unidentified witnesses in the future without having to show good cause for additional examination time—a showing expressly ordered by this Court and required by Rule 30(d)(2).

Plaintiffs have yet to depose any of the six witnesses in addition to Ms. Sodeika actually identified in their moving papers—Ms. Allcock, Mr. Pantelis and the four individual defendants—and, thus, have no basis to request more time. A party cannot *prospectively* meet its burden to show good cause for additional examination time under Rule 30(d)(2). *See, e.g., General Electric Co.* v. *Indemnity Insurance Co.*, No. 3:06-CV-232 (CFD), 2006 WL 1525970, at *3 (D. Conn. May 25, 2006) (noting that courts have recognized an "exhaustion requirement with regard to moving for leave to extend a deposition" and ordering the parties to go forward with seven hours of deposition testimony before seeking additional time); *Malec* v. *Trustees of Boston College*, 208 F.R.D. 23, 24 (D. Mass. 2002) (rejecting request for additional examination time made in advance of deposition and noting that "the better practice is for the deposition to go forward to determine how much is able to be covered in the seven hours"); 7 James W. Moore et al., *Moore's Federal Practice* § 30.45, at 30-77 (3d ed. 2006) ("A party generally should not seek additional time for a deposition before the deposition is taken"). Defendants have repeatedly offered to make a good faith judgment at the *conclusion* of depositions as to whether Plaintiffs carefully apportioned their time such that good cause exists to stipulate to additional time where requested by Plaintiffs. (Otto Decl. Exs. 11, 13) Plaintiffs have rejected Defendants' proposal.

Plaintiffs have already demonstrated their inability to project their deposition needs based on the volume of documents that may pertain to the witness. For example, prior to deposing Tom Schneider on May 4, 2006, Plaintiffs moved this Court for additional examination time asserting they would need more than seven hours based on the number of documents that might pertain to Mr. Schneider. (*Id.* Ex. 15) This Court rejected Plaintiffs' request for additional examination time in advance of Mr. Schneider's deposition. (*Id.* Ex. 16) Despite Plaintiffs' alleged concerns, they completed Mr. Schneider's deposition in under *six* hours. Likewise, prior to deposing Mr. Walter, who suffers from Parkinson's disease, Plaintiffs insisted that they would need the entire seven hours for his examination. Plaintiffs agreed to divide the seven hours of deposition between two days to

accommodate Mr. Walter's medical condition. However, they deposed Mr. Walter for a total of only three hours and 55 minutes over the two days—three hours *less* than the seven hours Plaintiffs had claimed they would need prior to deposing Mr. Walter. The Schneider and Walter depositions demonstrate convincingly that Plaintiffs cannot meet their burden to show good cause for additional examination time in advance of the depositions of Ms. Allcock, Mr. Pantelis, the four individual defendants or any other deponents based on mere speculation as to the scope of these witnesses' knowledge or the volume of documents that may pertain to them.

Plaintiffs have refused to proceed with the deposition of Daniel Pantelis scheduled for July 26, which Defendants had previously re-scheduled at Plaintiffs' request, stating their desire to learn in advance whether this Court will grant them additional examination time. (*Id.* Ex. 14) Mr. Pantelis is exactly the type of witness that this Court described as someone about whom Plaintiffs know a great deal and with whom Plaintiffs could "get down to it" at deposition. They have had Mr. Pantelis's files for over one year, as well as a copy of his testimony before the SEC. Plaintiffs' unilateral cancellation of the Pantelis deposition shows their unwillingness to make a good faith attempt to complete the deposition in seven hours before seeking additional examination time that may not even be necessary. *See* Schneider and Walter discussion *supra* at pp. 13-14.

It bears noting, moreover, that Plaintiffs have outright rejected this Court's suggestion (*id.* Ex. 2 at 26) to provide Defendants in advance with copies of the documents they intend to mark as exhibits in order to make efficient use of deposition time. (*Id.* Ex. 10) *See also* Fed. R. Civ. P. 30(d)(2) Advisory Committee's note (noting it is "often desirable for the interrogating party to send copies of the documents to the witness sufficiently in advance of the deposition so that the witness can become familiar with them"). Plaintiffs' petulant unwillingness to streamline depositions in this way should not be rewarded with a blanket exemption from Rule 30(d)(2).

6. Defendants Have Agreed To Produce Relevant Resume Information If It Exists, Rendering Plaintiffs' Motion On This Point Moot.

Plaintiffs are simply wasting more of this Court's time by their motion to require Defendants to produce "resumes or summary documents for the deponents showing their positions at Household and the related dates." (Pls. Br. at 12) Defendants have already informed Plaintiffs' counsel that "[w]ith regard to your request that we provide Plaintiffs with a current resume for current or former employees who are deposed, we will undertake to do so if such resumes already exist

in Defendants' files and are relevant (i.e., if they contain the information Plaintiffs have represented they are seeking—positions held at Household and the relevant dates)." (Otto Decl. Ex. 13) Plaintiffs' motion should therefore be denied as moot.

It nevertheless bears noting for purposes of the first prong on Plaintiffs' motion that their contention that "[p]rovision of these documents would make the depositions more efficient and less time consuming" (Pls. Br. at 12) has not proven to be true. Plaintiffs devoted no less time to meandering through the background of witnesses for whom they had resumes or other biographical information, such as Per Ekholdt (Otto Decl. Ex. 8 at 11:21-18:1) and Rich Peters (*id.* Ex. 9 at 14:8-23:11), than they did for other witnesses. Moreover, having rejected Defendants' suggestion that they rely on Ms. Sodeika's resume rather than spend time on her pre-Class Period activities, Plaintiffs proceeded to explore Ms. Sodeika's background going back as far as 1988. (*Id.* Ex. 1 at 20:7-24:9)

CONCLUSION

For the foregoing reasons, Plaintiffs' motion should be denied in its entirety.

Dated: July 14, 2006
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CERTIFICATE OF SERVICE

Adam B. Deutsch, an attorney, certifies that on July 14, 2006, he caused to be served copies of The Household Defendants' Memorandum of Law in Opposition to Lead Plaintiffs' Motion for Additional Deposition Time Pursuant to F.R.C.P. 30(d)(2), to the parties listed below via the manner stated.

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