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

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

I. INTRODUCTION

At issue is the Class' objection to the June 15, 2006 ruling of Magistrate Judge Nolan (the "Magistrate") denying the Class' motion for discovery of post-Class Period information in response to 7 interrogatories and 25 document requests. In making this ruling, the Magistrate committed errors of law and reached clearly erroneous conclusions of fact. First, the Magistrate did not follow the appropriate legal standard for relevance of post-Class Period information and documents, finding without analysis of the applicable discovery requests that as a matter of law they could have at most marginal relevance. In this regard, the Magistrate erroneously disregarded the prior *Control Data* opinion and misread the Supreme Court's *Dura* decision.[1] Second, the Magistrate reached a clearly erroneous conclusion regarding the "immense" burden upon the defendants of producing the information and documents at issue. Here, the Magistrate improperly relied upon defendants' past document production and unsupported general assertions of burden in contravention of the requirement that objecting party must submit declarations showing undue burden to meet its burden of proof on this issue. Further, the June 15 ruling, if allowed to stand, will cause prejudice to the Class by allowing the Household International, Inc. ("Household") defendants to selectively disclose post-Class Period documents and information and preclude the Class from making arguments as to materiality and scienter. The Household defendants' opposition brief provides no support for the June 15 ruling as to each of these points. Accordingly, the Court should set aside the June 15, 2006 ruling and order the production of the requested post-Class Period information and documents.

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[1] *In re Control Data Corp. Sec. Litig.*, Master Docket 3-85-1341, 1987 U.S. Dist. LEXIS 16829 (D. Minn. Dec. 10, 1987), *aff'd*, 3-85 CIV 1341, 1998 U.S. Dist. LEXIS 18603 (D. Minn. Feb. 22, 1988); *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005).

II. ARGUMENT

A. The Magistrate's Review of Case Law Resulted in an Improper Relevancy Standard

By denying the Class' access to certain relevant post-Class Period information, the Magistrate ran afoul of the well-established law in this Circuit and elsewhere holding that post-Class Period information is relevant to prove elements of a Rule 10b-5 claim. *Control Data*, 1987 U.S. Dist. LEXIS 16829, at **7-8; *Michaels v. Michaels*, 767 F.2d 1185, 1195 (7th Cir. 1985); *SEC v. Holschuh*, 694 F.2d 130, 143-44 (7th Cir. 1982); *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). The Magistrate's reliance on the Supreme Court's *Dura* opinion was improper as that opinion concerns the pleading standard for loss causation and has no bearing on the relevancy of post-class period documents and information as to other elements of securities fraud cases, such as materiality and scienter. Indeed, this point is evident in the District Court's opinion in *Dura* after remand. Application of the correct standard as articulated in *Control Data* and the pertinent case law shows that the requested discovery is relevant.

1. The Magistrate Misinterpreted the Laws Regarding the Relevancy of the Post-Class Period Information and Documents

In its briefs to the Magistrate, the Class presented case law, including *Control Data*, establishing the relevance of the post-Class Period information and documents sought. The Magistrate improperly failed to consider this case law and reached a contrary conclusion based upon a misapplication of the Supreme Court's holding in *Dura* regarding the pleading rule for loss

causation. June 15, 2006 Order ("Order") at 10.[2] Because the Order is contrary to law, it must be set aside.

In the Class' opening brief, it showed why the Magistrate erred in not following *Control Data* and the cases cited therein in terms of the relevancy of the documents and information sought. The Household defendants do not respond to this showing, except to argue generally that the Magistrate properly distinguished the Class' case law on the facts. Defs' Opp. at 3.[3] This general argument is not applicable to *Control Data* as the Magistrate did not distinguish that case on the facts. *See* Order at 8. Indeed, *Control Data* cannot be distinguished on the facts as the court there addressed the same questions posed to the Magistrate in the same context – a motion to compel discovery beyond the class period. 1987 U.S. Dist. LEXIS, 16892, at *5.

Thus, the Magistrate should have applied the *Control Data* standard: documents created outside the Class Period are "treated as admissible evidence on the issue of scienter, intent, and knowledge" and thus, "***[a]ll responsive materials [to a discovery request] must be searched for and produced, notwithstanding the objections based on time frame***." *Id*. at **7-8 (emphasis added). Significantly, in reaching this legal conclusion, the *Control Data* court did not parse through individual requests, but ordered the production of all responsive post-class period documents without that analysis. *Id*. As the *Control Data* court held: "Because the intent . . . is an issue in this case, there cannot be a time-frame limit on discoverabe facts. . . . [A]ll of [defendant's] objections to plaintiffs' document requests on the grounds that they seek materials . . . after December 31, 1985 [the close of the class period] are overruled." *Id*. at *8. Under the *Control Data* standard, the

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[2] The Order is attached as Exhibit A to the Memorandum in Support of the Class' Objection to Magistrate Judge's June 15, 2006 Order on post-Class Period Discovery. (All exhibits referenced are also attached thereto.)

[3] "Defs' Opp." refers to Defendants' Memorandum in Opposition to Plaintiffs' Objections to the Magistrate Judge's June 15, 2006 Order.

Magistrate should have ordered the production of the limited post-Class Period documents and information at issue here.

The Household defendants seek to support the Magistrate's ruling by reference to the citation of *Dura* in the ruling.[4] Defs' Opp. at 2. Here, they concede that the Magistrate rejected the Class' argument that the information was relevant to materiality and scienter as a matter of law based on *Dura*. *Id*.; *compare* Order at 10. However, *Dura* does not address elements of securities claims other than loss causation. The Class does not and has not argued that the discovery sought in this motion is relevant to loss causation.

Moreover, the Magistrate's reading of *Dura*, which was adopted from the Household defendants' prior brief, is erroneous. The portion of *Dura* cited by the June 15 ruling and quoted by the Household defendants references a drop in the stock price – it does not address a drop in revenues. *See Dura*, 544 U.S. at 343. Despite this, both the Magistrate and the Household defendants incorrectly read *Dura* as applying to a drop in revenues. *See* Order at 10; Defs' Opp. at 2. Additionally, the *Dura* opinion dealt only with the pleading standard for loss causation, not the relevancy of documents or information for other elements of securities fraud claims, such as materiality, falsity or scienter. In sum, *Dura* does not support the proposition that post-class period documents and information are not relevant to materiality, falsity or scienter.

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[4] The Household defendants devote two pages of their opposition to improperly recycle their arguments made in the motion for judgment on the pleadings, which was previously denied by this Court, and their motion pursuant to 28 U.S.C. §1292(b). *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, 02 C 5893 (Consolidated), 2006 U.S. Dist. LEXIS 36603 (N.D. Ill. Apr. 24, 2006). Specifically, this Court disagreed with defendants that *Dura* changed the pleading requirements in this Circuit with regard to loss causation. *Id*. at *9. This Court further concluded that "[i]n this case, plaintiffs have sufficiently pleaded loss causation" by alleging "that Household's wrongful conduct, which included deceptive lending practices, improperly re-aging delinquent accounts and improper accounting for costs, proximately caused their economic loss." *Id*. at **11-12. This Court does not need to reconsider these previously rejected arguments.

The subsequent proceedings in *Dura* confirms this point. Upon remand, the district court 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. 2006 U.S. Dist. LEXIS 41193, at **34-38. Specifically, the court allowed plaintiffs to allege corrective disclosures made by defendants more than nine months after the class period to explain the causal relationship between defendants' allegedly fraudulent statements and the decline in stock price. *Id*. In so holding, the district court in *Dura* recognized that even as to loss causation, the scope of discovery is not limited to what was revealed by defendants within the class period, but also includes post-class period information. This holding shows that post-class period information is not precluded by the Supreme Court's *Dura* opinion even as to loss causation. Thus, the Magistrate erred in determining that *Dura*, as a matter of law, precluded the relevancy of post-Class Period documents and information as to the other elements of securities fraud claims.

The Household defendants' own arguments do not support a contrary result. As the Magistrate noted, the Class relies in part on the theory that the drop in revenues resulted from the cessation of Household's fraudulent practices. Order at 10. The Household defendants seek to justify the Magistrate's ruling on the grounds that any drop in revenues might result from causes other than the discontinuation of their predatory lending practices. Defs' Opp. at 11. This argument at most would demonstrate that causation for the drop in revenues is an open issue for trial and does not support precluding the Class from discovery, particularly where there already exists a clear causal relationship between discontinuation of the predatory lending practices and loss of revenues.

Further, precluding the Class from discovery of this information and documents will prejudice its ability to prove its theory at trial. First, it will eliminate the foundational evidence of the drop in revenues. Second and more importantly, the post-Class Period documents at issue will contain defendants' own assessment of the cause of the drop in revenues. Where these internal

documents acknowledge the link between the drop in revenues and the Attorneys General ("AG") settlement (or the link between the later reported credit quality numbers and the Securities and Exchange Commission ("SEC") settlement), these documents as party admissions will preclude defendants from arguing a lack of causation. Thus, the Order would preclude the Class from obtaining documents that would further establish the causal link.

In these circumstances, there can be no dispute but that the post-Class Period information and documents sought are relevant and probative as to materiality, falsity and scienter. *See For Your Ease Only, Inc. v. Calgon Carbon Corp.*, No. 02 C 7345, 2003 U.S. Dist. LEXIS 20267, at *4 (N.D. Ill. Nov. 10, 2003) (relevancy under Rule 26 is "extremely broad").

2. The Magistrate Made No Ruling Respecting the Alleged Overbreadth of the Individual Discovery Requests, Which Are Properly Focused

As a back up argument, the Household defendants attack the requests at issue as "overbroad and wide-ranging." Defs' Opp. at 12. Significantly, although this argument was presented below, the Magistrate did not adopt it and thus, impliedly rejected it. This Court should do likewise.

As the Household defendants concede, on the last day of the Class Period, Household agreed in a settlement with a group of multi-state AG to eliminate or modify the predatory lending practices at issue in this case. ¶¶97-101.[5] Further, on March 19, 2003, following an investigation by the SEC, Household entered into a Consent Decree and agreed to cease and desist from making false and misleading disclosures about Household's reaging practices. *See* Ex. F (SEC Consent Decree). The discovery requests at issue are narrowly focused to obtain information and documents concerning the impact of these events on Household's revenues and business practices. *See* Order at 2-3. The

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

Household defendants' unwillingness to discuss any specific requests is an indication as to the weakness of their blunderbuss attack on the overbreadth of these requests.

a. The Requests at Issue Seek Discovery of the Consequences of the AG Settlement

The post-Class Period discovery at issue includes requests for post-Class Period documents and information as to revenues from Household's various sales practices that the Class alleges were predatory, such as 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; 3rd Request Nos. 11, 22; 2nd Rog No. 6), misrepresentation of interest rates (3rd Request Nos. 12, 13, 21, 23-24, 30; 2nd Rog Nos. 5, 10, 11, 12), and the revenues that Household earned through these practices. *See* Ex. B. This post-Class Period discovery is necessary to assess the impact of the AG settlement on Household's various revenue streams. The Class is entitled to establish materiality by demonstrating that once Household could not resort to improper lending practices, such as charging customers excessive discount points without buying down interest, it could not achieve the revenues defendants touted to the market. The most direct way to accomplish this point is to compare revenues Household earned after the AG settlement with revenues earned during the Class Period. *See id*. (2nd Rog Nos. 5-8(a)); Order at 2. Moreover, post-Class Period documents made after the AG settlement concerning Household's modified practices may demonstrate defendants' knowledge that discontinuation of Household's improper practices during the Class Period was causing a loss of revenues.

b. Discovery of the Impact of the SEC Investigation and Settlement

The post-Class Period discovery pertaining to the impact of SEC settlement is likewise focused on important issues, specifically the adequacy of Household's credit loss reserves (2nd Request No. 9; 3rd Request Nos. 1-2, 6, 30) and reaging loans (1st Request No. 10; 3rd Request Nos.

3-5, 30-31). *See* Ex. B. Whether, following the SEC investigation and Consent Decree, Household made modifications to the estimates and assumptions used in calculating Household's reserve requirements is relevant to establish that during the Class Period, Household did not maintain adequate loss reserves as it claimed in its Form 10-K. ¶115. Furthermore, changes that Household made to its methodology of reserve calculations after the Class Period would tend to show the inadequacy of reserves during the Class Period. Finally, post-Class Period documents or communications, to the extent they discuss setting aside of reserves during the Class Period, are relevant to demonstrate defendants' knowledge that Household improperly set aside reserves during the Class Period.

Similarly, changes instituted to Household's reaging practices as a result of the SEC investigation and Consent Decree and the impact on Household's credit quality data (3rd Request No. 3) are relevant to prove the Class' allegations. The Class alleges that because defendants improperly reaged or restructured delinquent loans, Household's data during the Class Period did not accurately reflect its loan portfolio's true performance. ¶¶107-133. The Class is entitled to compare Household's pre-Class Period loan performance data with post-Class Period loan performance data to demonstrate the materiality of Household's false statements regarding its reaging activities and the reported credit quality numbers during the Class Period. To the extent that the post-Class Period loan performance data shows a decrease of reaging and restructure activities, such decrease directly relates to materiality. Similarly, an increase in delinquency and charge-off rates (two credit quality factors) also would bear directly on materiality and tend to show falsity.

c. Discovery Regarding Household's Various Committees and Internal Audit Materials

The final discovery category at issue concerns post-Class Period documents relating to Household's Audit Committee, Internal Audit department and Credit Risk Committee (2nd Request Nos. 5-6, 32).

Audits relating to events that occurred during the Class Period continued after the Class Period. For example, the Audit Committee of the Board of Directors would have reviewed Household's 2002 financial results during meetings held in 2003. In addition, Household amended its 2002 Form 10-K on June 27, 2003, after Household's 2002 Form 10-K was filed in March 2003. The Audit Committee should have held at least one meeting in 2003 to review this amendment. Thus, post-Class Period documents and communications relating to Household's Audit Committee meetings necessarily discuss events and policies in place during the Class Period and are relevant to the Class' allegations.

Similarly, post-Class Period documents and communications concerning Household's internal audits during the Class Period are relevant to determine whether Household had adequate internal controls during that time. In fact, documents revealing changes in Household's internal controls following the Class Period are likely to demonstrate that the controls during the Class Period were inadequate.

Lastly, any changes in the reaging, charge-off, and delinquency policies and practices after the SEC Consent Decree would have been reviewed and approved by the Credit Risk Committee. Such changes are relevant to establish that during the Class Period, Household's representations regarding its reaging policies and practices were materially false and misleading.

As illustrated above, the well-established laws support the Class' discovery of all post-Class Period documents and information that is relevant to prove scienter, falsity, and materiality. Therefore, the Magistrate's Order misinterpreted the relevancy as a matter of law of the post-Class Period information and should be overruled. This alone is sufficient to set aside the June 15, 2006 ruling. However, the Magistrate also erred in finding undue burden in producing the requested documents and information, particularly in the absence of any evidence of such burden in the form of declarations or affidavits.

B. The Magistrate's Ruling Was Based on an Improper and Unsubstantiated Finding of Undue Burden

The Magistrate erroneously found the burden of producing responsive post-Class Period documents and information as undue based on (1) the past production of documents and (2) the argument that defendants have already produced some post-Class Period documents relating to state or federal investigations. Order at 8-10. In doing so, the Magistrate failed to follow the well-established test that required the Household defendants as the party with the burden of proof on this issue to demonstrate undue burden by competent evidence, such as declarations or affidavits. Further, the Magistrate did not assess the specific burden, if any, associated with production of the post-Class Period documents and information at issue. Instead, the Magistrate erroneously allowed the Household defendants to meet their burden of proof by unsubstantiated general claims of burden and the past production of documents. Thus, the Magistrate's Order was also clearly erroneous and contrary to law with respect to the finding of undue burden.

1. A Showing of Burden Cannot Be Based Merely on the Volume of Past Document Productions

Under Rule 26(b)(2) of the Federal Rules of Civil Procedure, the party opposing discovery has the burden of providing the court with clear evidence of undue burden and cannot rely on vague and unsubstantiated arguments. *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 351, 361 (N.D. Ill. 2005) (holding that the party who opposed the motion to compel had the responsibility to demonstrate undue burden by providing affirmative proof in the form of affidavits). Relevant factors in assessing undue burden include "the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation." Fed. R. Civ. P. 26(b)(2). Neither in the Federal Rules nor in the case law is the volume of a party's past production identified as a relevant factor to be considered when a court decides on the burden issue. Not surprisingly, defendants did not provide any legal authority for this proposition to either the

Magistrate or this Court. On the contrary, courts have recognized that the relevant burden is with respect to the discovery requests at issue in the motion and have concluded that even in this context the sheer number of documents to be produced alone is not enough to establish undue burden. *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"); *see also Hobley v. Burge*, 226 F.R.D. 312, 320 (N.D. Ill. 2005) (holding that defendant had an obligation to produce responsive documents in its possession, custody or control); *Japan Halon Co. v. Great Lakes Chem. Corp*., 155 F.R.D. 626, 628 (N.D. Ind. 1993) (held that defendants must produce all responsive documents). The quantity of defendants' past production is not a basis upon which the Household defendants can meet their burden of showing burden.[6]

These same cases preclude any reliance upon the fact that defendants have produced post-Class Period documents in response to other discovery requests. It is undisputed (and undisputable) that defendants have not produced in response to the discovery requests at issue. Accordingly, the Household defendants' argument that they have produced some post-Class Period documents relating to investigations by state and federal agencies is not persuasive and does not meet their burden of proof on this issue.

Additionally, the Magistrate's ruling on this issue does not make sense. The only way to compare the relative burdens and benefits of a particular discovery request is to weigh the burden

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[6] Even if it were, the Magistrate should not have relied upon Household defendants' assertion that they have produced over four million pieces of paper. Over 1.3 million pages of defendants' production consist of incomprehensible Excel sheets, which led to a court order requiring the production of documents in their native format. Additionally, a multitude of documents have been produced in multiple copies.

associated with that request to the relevance of the documents or information requests. If there is any undue burden issue related to a past production, the producing party should have raised this issue prior to the production, not after it. By undertaking and completing the production, the producing party waives any claim of undue burden regarding that particular production.

Finally, in this Circuit, parties who oppose discovery requests based on undue burden must submit affidavits or declarations detailing the nature of the burden. *Sulfuric Acid*, 231 F.R.D. at 360; *Sills v. Bendix Commercial Vehicle Sys.*, LLC, Cause No. 1:04-CV-00149, 2005 U.S. Dist. LEXIS 3392, at *6 (N.D. Ind. Mar. 3, 2005) (same). Indeed, in *Sulfuric Acid*, the court rejected an assertion that production was unduly burdensome based merely on statements of counsel. 231 F.R.D. at 360-62.

Neither the Magistrate in the ruling nor the Household defendants in their opposition to this objection cite to any declaration or affidavit as providing such evidence. There are no such declarations or affidavits. The only declaration or affidavit to even touch upon this issue, the Affidavit of Diane E. Giannis submitted in opposition to the motion to compel responses to the relevant interrogatories, does not address the burden associated with producing post-Class Period information. *See* Affidavit of Diane E. Giannis in Support of Defendants' Memorandum of Law in Opposition to Lead Plaintiffs' Motion to Compel Certain Responses to Lead Plaintiffs' Second Set of Interrogatories (Docket No. 402); *see* related affidavits (also Docket No. 402).

As noted above, this absence of declarations or affidavits establishing evidence of any undue burden cannot be overcome by vague and general assertions of burden made in a party's briefs. *See Sulfuric Acid*, 231 F.R.D. at 360. The Household defendants' arguments respecting a need to "re-do" searches, thus, are not only wrong with respect to the parties' prior discussions but also have no legal significance in terms of meeting the responsibility of establishing undue burden. *See* Defs' Opp. at 13.

Moreover, whatever the burden claimed by defendants, it pales by comparison to that in other cases where the court nonetheless ordered discovery. *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 614 (7th Cir. 1997) (discovery involved more than 1,000 depositions and over 50 million pages of documents); *United States v. IBM Corp.*, 83 F.R.D. 97 (S.D.N.Y. 1979) (ordering civil antitrust defendant to comply with a subpoena that defendant estimated required production of over five billion pages of documents); *In re Fine Paper Antitrust Litig.*, 685 F.2d 810, 818 (3rd Cir. 1982) (court permitted taking of 270 depositions and production of nearly two million documents in complex, nationwide antitrust claim); *see also Fridkin v. Minnesota Mut. Life Ins. Co.*, No. 97 C 0332, 1998 U.S. Dist. LEXIS 1017, at **8-9 & n.6 (N.D. Ill. Jan. 28, 1998) (unduly burdensome objection overruled where even though search of files would be required, files were likely computerized or stored in some other automated form). In this case, where potential damages are measured in the billions, the production of the limited post-Class Period documents and information at issue is not and cannot be unduly burdensome.

Given these points, as the party with the burden of proof on this issue, the Household defendants failed to establish the validity of their undue burden objection. *Sulfuric Acid*, 231 F.R.D. at 361. Further, the Magistrate improperly considered past production in determining the burden. Thus, the Magistrate's finding of undue burden is clearly erroneous and contrary to law. It should be set aside.

C. Selective Production Will Unfairly Prejudice the Class at the Summary Judgment Stage

As noted in the Class' opening memorandum, the "selective" production by defendants of post-Class Period documents places the Class in a substantial disadvantage at the summary judgment stage. *Whitehall Specialties, Inc. v. Delaportas*, 04-C-436-C, 2005 U.S. Dist. LEXIS 4345, at **12-22 (W.D. Wis. Mar. 10, 2005) (holding that when defendants produced only some, but not all, relevant documents sought by plaintiff, defendants' failure to produce these documents prejudiced

plaintiff in opposing a motion for summary judgment or prosecute its lawsuit); *Computer Task Group, Inc. v. Brotby*, 364 F.3d 1112, 1116 (9th Cir. 2004) (*per curiam*) (holding that "failure to produce documents as ordered is considered sufficient prejudice"); *Inmuno Vital, Inc. v. Telemundo Group, Inc*., 203 F.R.D. 561, 573 (S.D. Fla. 2001) (holding that plaintiff was seriously prejudiced by defendants' failure to produce the disputed documents). Defendants in their opposition do not contest this point. To level the playing field, the Class should be permitted to obtain all requested post-Class Period documents and information.

III. CONCLUSION

For all the foregoing reasons, this Court should set aside the Magistrate's June 15, 2006 Order denying the Class' request for specified post-Class Period discovery and order the Household defendants to provide this discovery.

DATED: August 9, 2006

Respectfully submitted,

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DECLARATION OF SERVICE BY EMAIL 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 Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on August 9, 2006, declarant served by electronic mail and by U.S. Mail the **REPLY IN SUPPORT OF THE CLASS' OBJECTION TO MAGISTRATE JUDGE'S JUNE 15, 2006 ORDER ON POST-CLASS PERIOD DISCOVERY** to the parties listed on the attached Service List. The parties' email addresses are as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th day of August, 2006, at San Francisco, California.

s/ Karen Heinz
KAREN HEINZ