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

HOUSEHOLD DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL THE HOUSEHOLD DEFENDANTS TO COMPLY WITH THE COURT'S AUGUST 10 AND 22 ORDERS

CAHILL GORDON & REINDEL LLP
80 Pine Street
New York, New York 10005
(212) 701-3000

EIMER STAHL KLEVORN & SOLBERG LLP
224 South Michigan Ave.
Suite 1100
Chicago, Illinois 60604
(312) 660-7600

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

The Household Defendants respectfully submit this Opposition to Plaintiffs' wholly frivolous and wasteful "Motion to Compel the Household Defendants to Comply With the Court's August 10 and 22 Orders and for Appropriate Sanctions for Non-Compliance" (the "Motion"). To so characterize the Motion, filed on the eve of the September 19 status conference, as abusive is an understatement.

THE MOTON IS ABUSIVE AND UNNCESSSARY

Plaintiffs' massive Motion — including over 50 attachments and exhibits served while defense counsel were enroute to the September 19 status conference, and without meeting and conferring as required — should never have been filed. Based on the demonstrably false premise that Defendants have disobeyed the Court's instructions (*but see* below), it does not seriously attempt to obtain information relevant to Plaintiffs' claims. Rather, like so many of their motions, its only apparent objective is to portray Defendants in a false bad light, undoubtedly to set the stage for their inevitable attempt to evade the fact discovery cut-off and defer the day of reckoning on the merits. That the motion inflates Plaintiffs' lodestar, imposes considerable burden on Defendants, and deflects Defendants' resources from the job of completing discovery on a timely basis are no doubt added dividends in the Lerach playbook. That it subjects the Court to needless additional work is apparently a matter of indifference to them.

Completely mischaracterizing the directives of the Court and representations made in Court by defense counsel, in tone and substance this Motion appears to be nothing

more than a continuation of the "unprofessional" Motion for Clarification Plaintiffs filed on August 17, 2006.

Briefly stated, Plaintiffs' Motion

- misquotes the statement made by Defendants' counsel at the August 22, 2006 hearing;
- misstates the explicit language of the Court's August 22, 2006 Order;
- violates the Court's directive at the August 22 conference, and in the Court's August 22 Order, that the parties are not to return to Court if there was a disagreement as to the dates of compliance with the August 10 Order;
- violates the Court's standing requirement that there be a meet and confer between the parties prior to filing a motion as to claimed deficiencies in discovery responses; and
- is moot because Defendants have finished supplementing their discovery responses as called for in the Court's August 10 Order.

Plaintiffs' Motion is based on the incorrect premise that Defendants agreed to and the Court ordered Defendants to comply by September 5, 2006 with **all** of the supplementation to Defendants' Responses to Plaintiffs' Third Request for Production of Documents and Third Set of Interrogatories that was required by the August 10 Order. As Plaintiffs had to have known when they started and ended their motion papers with such assertions, their premise is explicitly contradicted by the transcript of the August 22 conference, as well as by the Court's August 22 Order.

As the annexed transcript confirms, Defense counsel not only did not represent that all supplemental responses would be completed by September 5; they said exactly the opposite. At the August 22 conference, the Court asked Ms. Farren, counsel for the Defendants, "Is there any real problem with September 5?" as the date for Defendants' supplemen-

tal responses to the various discovery matters that were required by the August 10 Order. The following colloquy then took place:

> "MS. FARREN: Your Honor, most of it we can do by September 5 but there's quite a lot for the (inaudible) a bit more time (inaudible) before you
>
> THE COURT: All right
>
> MS. FARREN: (Inaudible)
>
> THE COURT: That's fine. We will say September 5th except as what's carved out between the parties. Give us a written order that says what's carved out. And don't come back on a disagreement on that."

(Transcript of August 22 Hearing, pp. 5-6; Declaration of Landis C. Best ("Best Decl."), submitted in support of Defendants' Opposition, Ex. A) It is clear from the transcript (even with the unfortunate gaps in transcription) that Ms. Farren said, and the Court understood and accepted, that Defendants would not be able to provide all of their required supplemental discovery responses by September 5 and that the Court did not order that all responses had to be served by that date.

If there were any doubt (and Defendants believe the transcript is clear in this regard), it was dispelled when the Court repeated its comments in its August 22, 2006 Order issued shortly after the hearing. In that Order, the Court said: "Defendants are ordered to comply with those aspects of the Order identified in paragraph II of Plaintiffs' Motion [for Clarification, which pertains to Defendants' required supplemental responses] by September 5, 2006, except for those issues carved out by the parties, which will be due on a mutually agreeable date. The parties are not to return to the court with further disputes in this regard." (August 22 Order, Best Decl. Ex. B) Despite the plain wording and meaning of this passage,

Plaintiffs have irresponsibly based this prong of their motion on the false premise that the Order set September 5 as an immutable deadline for even those aspects of Defendants' compliance that defense counsel explained, and the Court accepted, could not be completed by then. By failing and refusing to meet and confer about a later deadline for the projects that could not be completed by September 5, Plaintiffs departed even further from the Court's expectations and created an artificial excuse for this Motion.

In compliance with their counsel's representation to the Court, and the Court's August 10 and 22 Orders, on September 5 after intensive research, Defendants provided Plaintiffs with the Bates numbers of documents previously produced (in response to Plaintiffs' First and Second Document Demands) that Defendants believed to be responsive to Request Nos. 1, 2, 6, 9, 11 and 12 of Plaintiffs' Third Demand. On the same day, Defendants wrote: "We are preparing the additional supplementation to Plaintiffs' Third Request for Production of Documents and Third Set of Interrogatories as directed by Magistrate Judge Nolan and expect to be able to provide this supplementation as soon as practicable with the hope of completing all supplemental responses by September 15." (Motion, Ex. A)

While Defendants' September 5 letter is included as an exhibit to Plaintiffs' Motion (at Ex. A), their response is not. Instead of requesting a meet and confer to discuss Defendants' further supplementation as required by the August 10 Order, *i.e.*, to "carve out" specific items of discovery supplementation that would be due after September 5, Plaintiffs responded, as they usually do, by sending an unreasonable ultimatum. In a letter of September 6 that they chose not to share with the Court, Plaintiffs ignored the Court's directive for

mutually agreeable carve-outs by making the same unfounded assertions that are the centerpiece of their Motion. Plaintiffs said:

> "Magistrate Judge Nolan ordered defendants to comply by September 5, 2006, with those aspects of the August 10 Order identified in Paragraph II of Plaintiffs' Motion for Clarification."
>
> "Ms. Farren made the representation to the Court that defendants would indeed be able to provide this information to the Class by September 5."
>
> "We intend to seek appropriate relief from the Court for defendants' continued disregard for Court orders."

(Best Decl. Ex. C) Plaintiffs did not then, or at any subsequent time prior to filing the Motion, seek to have a meet and confer to discuss the timing of the supplemental responses that could not be made (despite diligent efforts) on September 5, or to discuss any aspect of the supplemental responses that had been provided (improperly raising complaints about them for the first time in the Motion).

This aspect of the Motion is moot in any event because by September 15, 2006, Defendants had served supplemental responses to Plaintiff's Third Set of Interrogatories as required by the August 10 Order and on September 22, 2006 they completed their remaining supplemental responses to Plaintiffs' Third Request for Production of Documents as required by the August 10 Order. Defendants now have fully complied with the August 10 Order as to supplemental discovery responses.

As Plaintiffs' premise for the Motion — that Defendants agreed to and were ordered to produce all supplemental discovery responses by September 5 — is unfounded, the Motion itself has no valid basis and, in any event, is now moot. (*See* Point A below.) More-

over, Plaintiffs' criticisms of portions of Defendants' supplemental responses are not ripe for resolution by the Court because Plaintiffs have never requested a meet and confer as to such issues, and they are unfounded in any event. (*See* Point B below.) For all of these reasons, Plaintiffs' Motion should be denied in full.

DEFENDANTS' SUGGESTION

Defendants are concerned about the prospect of receiving additional frivolous discovery motions in the future, which would impose significant wasteful burdens on both Defendants and the Court. Defendants' efforts to meet the January 31, 2007 fact discovery cut-off will be severely impaired by a need to respond to further irresponsible exercises of this kind, and as the instant Motion demonstrates, Plaintiffs apparently are not deterred by either the standing requirement to meet and confer before making a discovery motion, or even by the Court's express directive to cooperate on a compliance schedule and "not to return to the Court with further disputes in this regard."

To avoid further wasteful motion practice on Plaintiffs' moot, frivolous, or demonstrably unfounded grievances (as exemplified by the instant motion and by Plaintiffs' unprofessional Motion for Clarification), Defendants respectfully propose that henceforth before Plaintiffs make a discovery-related motion, they should be required to secure the permission of the Court. To enable the Court to evaluate their request, Plaintiffs should submit to the Court, with a copy to Defendants, a two-page letter stating why the matter should be resolved by the Court (and should contain confirmation that a meet and confer was held but was unable to resolve the matter at issue). Defendants should be allowed three business days to

submit a similar two-page statement indicating their position (*e.g.*, that they agree the matter should be decided by the Court, that there is no dispute to be resolved, that the matter is moot or not ripe for the Court's resolution, etc.). The Court would then inform Plaintiffs whether they could proceed with their requested motion and, at the same time, could set a briefing schedule (to avoid the necessity for a subsequent presentment hearing on the motion). To avoid even the appearance of unfairness, Defendants would agree to comply with the same procedure if and when they wished to raise a discovery dispute with the Court.

This procedure will allow the Court to streamline and exercise control over motion practice and will protect the Court and Defendants from being inundated with a massive set of unnecessary papers, as Plaintiffs filed on the instant motion. This mechanism will be especially helpful in light of the January 31, 2007 fact discovery cut-off. The Court also will have the option of determining that an in-Court discussion of Plaintiffs' issue would be a more efficient and preferable way to resolve a given dispute.

ARGUMENT

A. Plaintiffs' Claims About Non-Production of Supplemental Discovery Responses Are Moot

Plaintiffs assert that Defendants have not produced documents in response to certain specified Requests and have not provided an affidavit confirming that certain responsive documents do not exist. However, the production of documents as directed by the August 10 Order is now complete, notwithstanding the digression of this motion and Plaintiffs' belief that an affidavit is required by the August 10 Order with respect to the non-existence of

documents responsive to Request Nos. 10, 24, 27 and 30, is mistaken because Defendants do not take the position that documents responsive to these requests do not exist. Because Defendants have thus completed their supplemental responses to Plaintiffs' Third Set of Interrogatories and Plaintiffs' Third Request for Production of Documents as required by the August 10 Order, Plaintiffs' demand for an Order requiring compliance with the August 10 Order should be denied as moot.

B. Plaintiffs' Criticisms About Defendants' Supplementation of Discovery Responses are Unfounded

1. Interrogatories

Plaintiffs' complaints about Defendants' supplemental responses to their interrogatories are an irresponsible waste of this Court's and the Defendants' time, and expressly contrary to this Court's clear directive that "[t]he parties are not to return to the court with further disputes" with respect to these interrogatories. Furthermore, Plaintiffs took the inappropriate step of filing their motion to compel on the next business day after the supplemental interrogatory responses were served, without *any* attempt to meet and confer regarding such responses. It is a shame that Defendants have to take time away from their efforts to comply with the Court's January 31, 2007 fact discovery cut-off in order to respond to the following picayune nonsense.

First, Plaintiffs complain that Defendants did not identify specific individuals in the "Corporate Accounting Department" in response to their interrogatory asking for the identity of individuals responsible for determining the accounting treatment used by House-

hold to address the investigation leading up to the AG Settlement and to address purported class action lawsuits filed by ACORN. (Motion, p.3, ¶5) In fact the omission of additional names from the answer was a simple oversight (as is evident from the level of additional detail Defendants provided in response to all similar interrogatories) as counsel for Plaintiffs could have learned immediately if they had simply pointed out the discrepancy in a letter or phone call instead of making a full-bore motion. This issue is a tangible demonstration of the value of the Court's meet and confer instruction and the waste and oppression Plaintiffs appear to prefer. Defendants will supplement their September 15 response by identifying specific additional individuals in the Corporate Accounting Department, if any, responsible for determining this accounting treatment. Therefore, paragraph 5 of Plaintiffs' motion in this respect is moot.

Plaintiffs also complain that the responses of the Individual Defendants somehow constitute a "refusal to answer". (Motion, p.3 ¶6) Plaintiffs ignore the fact that, for each set of interrogatory responses, the Individual Defendants who are retired (and Mr. Vozar recently retired) have expressly adopted the Responses and Objections of the Company, subject to the objections set forth in their responses. (*See* Motion, Ex. C-D) These responses simply note that the Individual Defendants have retired from the Company, did not retain copies of Company files or documents, have not reviewed the 4+ million-page document production made in this litigation, do not have access to Company files or documents, and object to the interrogatories to the extent that they seek information that is not in their control or to which they have no access as former employees of the Company. (*Id.*) For Plaintiffs to state that this is somehow a "bold refusal to answer" is a misrepresentation. Defendants either have

already served (or in the case of Mr. Vozar will shortly be serving)[1] their individual responses adopting the Company response. Therefore, paragraph 6 of Plaintiffs' motion is moot.

It truly is a waste of this Court's time and Defendants' time for Plaintiffs to raise these easily answered details in a formal motion.

2. Document Demand

The August 10 Order directed Defendants to identify previously produced documents responsive to a number of the specific Requests in Plaintiffs' Third Document Demand. Defendants did so on September 5 and 7, 2006. Plaintiffs now complain that the lists provided by Defendants of previously produced documents were too lengthy. The fact is, however, that they were lengthy because the demands themselves were extremely broad and the volume of responsive material in Defendants' production was accordingly large. Defendants made a good faith effort to identify narrower subsets of documents that were responsive to the indicated Third Document Demand Requests, but Plaintiffs appear to believe that Defendants should have conducted a manual page-by-page review of their entire multi-million page production to prepare even more refined lists. That is not a reasonable demand.[2]

The reason for the lengthy lists of responsive documents is the fact that the Requests propounded by Plaintiffs were extremely broad. This would not have occurred if

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1 The supplemental responses of William F. Aldinger were served on Plaintiffs last week. (Best Decl. Ex. D) Defendant Joseph A. Vozar is recently bereaved due to the death of his mother. His supplemental response will be forthcoming as soon as reasonably possible.

2 If we assume a review of one page per second (which is wholly unreasonable), such a manual review would take over a thousand hours of attorney review time. A review of one page per ten seconds (more reasonable) would take over ten thousand hours of attorney review time.

Plaintiffs had submitted more targeted document requests in the first place. Now, having submitted extremely broad requests and receiving lengthy lists of responsive documents, Plaintiffs wish to shift to Defendants the burden of sorting responsive material into even narrower subsets not specified in the requests. Aside from an improper shifting of the burden, it would be impossible for Defendants to know which documents or which areas within Plaintiffs' enormously broad requests are of particular interest to Plaintiffs.

Plaintiffs' Motion is deceptive on the latter point because it attempts to substantially downplay the breadth of the subject Requests. For instance, Plaintiffs say that "Request No. 9 [of the Third Document Demand] asks for an entire set of documents that track prepayment penalties for every financial quarter." (Motion at 5) However, Request No. 9, as set forth in Plaintiffs' Third Document Demand is not so limited. Rather, it calls for the production of "an entire set of documents that track, **analyze or describe prepayment penalties, whether in terms of number of loans, revenues, change in contract rate, or otherwise, for every financial quarter during the Relevant Time Period."** Based on the language of this Request, it is difficult to imagine any document relating in any way to prepayment penalties that would not be responsive to the Request as propounded.

Also, Request No. 12 of the Third Request for Production of Documents seeks documents regarding EZ Pay accounts: "An entire set of documents that track, analyze or describe EZ Pay accounts, whether in terms of number of loans, revenues or otherwise, for every financial quarter during the Relevant Time Period." Documents relating to EZ Pay accounts could be found in the documents Household produced to the SEC, which were requested in Request No. 1 of Plaintiffs' First Request for Production of Documents, in docu-

ments relating to Household's lending policies and practices (Request No. 7 of the First Request), in documents relating to training (Request No. 9 of the First Demand), in documents relating to reage, charge-off or delinquency policies (Request No. 10 of the First Demand), in documents relating to incentive programs (Request No. 13 of the First Demand), in documents relating to client practices (Request No. 21 of the First Demand), in documents relating to EZ Pay (Request No. 7 of the Second Demand, as well as Request No. 12 of the Third Demand), etc. As a result of the enormous broadness of Plaintiffs' various initial requests and the overlap between these broad Requests and the broad requests in Plaintiffs' Third Demand, it is inevitable that there may be and are a vast number of documents produced by Defendants pursuant to Plaintiffs' First and Second Document Demands that would be responsive to various Requests in the Third Demand. That Defendants were forced to direct Plaintiffs to a lengthy amount of previously produced documents is the fault only of Plaintiffs and their overbroad Requests.

In any event, Plaintiffs' need to obtain a listing of certain "responsive" documents from Defendants is questionable at best. As Plaintiffs acknowledged in a February 17, 2006 Affidavit of Christine Sanders filed with the Court in support of one of their many motions, Plaintiffs have a fully searchable database (actually, as the Affidavit stated, seven separate databases) by means of which they can locate any document among the four million plus documents that Defendants produced that they would consider to be "responsive" to one of the Third Document Demand Requests. If Plaintiffs want those databases sorted in any particular way, they have the means to do it themselves, and their demand that Defendants in ef-

fect serve as their paralegals for this purpose should be rejected for the oppressive overreaching it is.

C. Sanctions Are Not Warranted in These Circumstances

As noted above, Defendants have not failed to comply with the Court's August 10 and August 22 Orders. Defendants have fully complied with these Orders by providing the supplemental discovery responses required by the August 10 Order and by attempting to reach a mutually acceptable compliance schedule with Plaintiffs, who ignored the Court's directive to that effect. Thus, there is no basis whatsoever for the Court to impose sanctions of any kind against Defendants.

CONCLUSION

For the above reasons, Plaintiffs' Motion to Compel the Household Defendants to Comply With the Court's August 10 and 22 Orders and For Appropriate Sanctions for Non-Compliance should be denied in full. As set forth above, Defendants respectfully request this Court to require Plaintiffs to seek permission prior to filing any future discovery motions.

Dated: September 26, 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 September 26, 2006, he caused to be served copies of the HOUSEHOLD DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL THE HOUSEHOLD DEFENDANTS TO COMPLY WITH THE COURT'S AUGUST 10 AND 22 ORDERS and DECLARATION IN SUPPORT THEREOF, to the parties listed below via the manner stated.

/s/ Adam B. Deutsch
Adam B. Deutsch

Via E-mail and Fed-Ex

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

Via E-mail and Fed-Ex

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