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

DEFENDANTS' STATUS REPORT FOR OCTOBER 4, 2006 WORKING STATUS CONFERENCE

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

Pursuant to the Court's September 19, 2006 Order and the discussion at the September 19, 2006 status conference, Defendants hereby submit their Status Report to apprise the Court and Plaintiffs of the matters that Defendants believe should be discussed at the October 4, 2006 working status conference.

A. Matters Raised by Defendants at Meet and Confer

During a meet and confer that was held on Thursday, September 28, 2006 at Defendants' request, Defendants raised a number of issues, which are set forth below, together with Defendants' understanding of Plaintiffs' positions on these issues, as expressed by Plaintiffs during the meet and confer. Defendants believe the parties are at an impasse as to these matters and would appreciate the Court's assistance in resolving them.

1. The Proper Counting of Plaintiffs' Depositions

Defendants advised Plaintiffs that, with the depositions that they are seeking in the calendar annexed as Exhibit I to their September 12, 2006 status report on state agency documents (in addition to other depositions they have previously prioritized or are seeking through motion papers), Plaintiffs are over the limit of 55 depositions established by the Court. Plaintiffs claim they are not over the limit. The dispute between the parties hinges primarily on how the eight depositions taken by Plaintiffs pursuant to their three Rule 30(b)(6) Notices of Household should be counted. Defendants believe that each of these depositions should be counted as a single deposition, for a total of eight depositions.[1] Plaintiffs, however, believe that all of the eight Rule 30(b)(6) depositions of Household should be counted as only one deposition.

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[1] So counted, Plaintiffs have taken or are seeking 66 depositions. A list of all depositions taken or currently being requested by Plaintiffs is attached as Exhibit A.

Even under Plaintiffs' counting methodology, they are currently seeking depositions that exceed the 55 deposition limit.[2] Defendants explained during the meet and confer that because of the immense breadth of Plaintiffs' Rule 30(b)(6) Notices, Household had no alternative but to have eight separate witnesses and it was not reasonable for Plaintiffs to expect that only one individual would be able to properly respond to the broad categories as to which Plaintiffs were requesting information. As a result, and especially given the significant variance Plaintiffs have already been granted in being allowed to take 55 depositions, Defendants believe it would be unfair to treat all eight 30(b)(6) depositions of Household as only one deposition. Similarly, Defendants believe that the two 30(b)(6) depositions of KPMG should be counted as two depositions.

In an effort to reach a compromise on how to count the Rule 30(b)(6) depositions, Defendants proposed during the meet and confer that, since Plaintiffs served three separate Rule 30(b)(6) Notices on Household, the eight depositions taken by Plaintiffs pursuant to these three Notices should be counted as three depositions for purposes of the 55 deposition limit. Plaintiffs said they would consider this proposal. Even if Plaintiffs agree to this compromise, the deposition-counting issue still will need to be resolved by the Court because Plaintiffs are over the limit no matter which counting method is used.[3]

2. Plaintiffs' Reimbursement of Travel Costs for Cancelled Hueman Deposition

Defendants scheduled a deposition of Dennis Hueman, a former Household employee, who was to be deposed in San Diego where he currently resides. On the Sunday

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[2] If all eight Household witnesses who testified pursuant to Rule 30(b)(6) are only counted as one deposition, then Plaintiffs will have taken or are seeking to take 59 depositions.

[3] With the compromise, Plaintiffs will have taken or requested 61 depositions.

before the Tuesday deposition, Plaintiffs cancelled Mr. Hueman's deposition on the spurious ground that it involved state agency documents to which Plaintiffs did not yet have access — something Plaintiffs should have known and acted on, if this was a genuine concern, days or weeks before the scheduled date. Counsel from Cahill Gordon in New York, who were representing Household and the witness, did not learn of this unilateral cancellation until they were just about to board a flight to California. However, in-house counsel for Household who was to participate in the deposition was airborne and en route from Chicago to San Diego before he learned of the cancellation. Plaintiffs now want to reschedule Mr. Hueman's deposition. (He is one of the individuals on Plaintiffs' September 12 calendar of proposed depositions.) Defendants, however, believe that it is only fair that Plaintiffs reimburse the travel costs of the Household in-house counsel who traveled to San Diego for the cancelled deposition before Plaintiffs proceed with their rescheduled deposition of Mr. Hueman.

At the parties' meet and confer, Plaintiffs rejected this proposal on the ground that they had not requested reimbursement of costs for two other depositions that did not go forward as scheduled through no fault of Defendants. One was the deposition of Louis Levy, who is in his 70's and a former member of Household's board of directors, who became quite ill prior to his scheduled deposition and was placed under a doctor's care days before the scheduled date — which Defendants immediately told Plaintiffs. The deposition of Ms. Cunningham in Chicago had to be rescheduled because Defendants' counsel (from Cahill Gordon in New York) were literally unable to travel to Chicago due to a massive snowstorm that closed all New York City airports for several days. There is absolutely no fair comparison between adjournments necessitated by an elderly witness's serious illness and an unforeseen snowstorm of the century on one hand and Plaintiffs' unilateral decision to defer a deponent at the last minute for strategic

reasons that they could have and should have focused on before counsel were already enroute. The parties are at an impasse on this subject and would appreciate the Court's guidance.

3. Deposition Schedule for Witnesses Sought by Household

At the meet and confer, Defendants sought Plaintiffs' agreement to allow the depositions of the named Plaintiffs and several of their investment advisors to proceed before the January 31 fact discovery cut-off, or shortly after this date, as was discussed at the September 19 status conference. Defendants explained that these depositions were necessary for an effective presentation on summary judgment or at trial of the various defenses asserted by Defendants. Plaintiffs, however, claimed that the requested depositions all go to individual issues, as opposed to class-wide issues, and therefore should wait until after liability is determined. Defendants believe it is imperative that they be allowed effective discovery in this matter, including merits depositions of the named Plaintiffs. This issue also will need to be resolved by the Court.

B. Matters Raised by Plaintiffs During Meet and Confer

During the September 28 meet and confer, Plaintiffs raised the following issues set forth below, together with Defendants' positions on the issues as stated during the meet and confer.

1. Plaintiffs' Deposition Schedule

Plaintiffs took the unreasonable position (which was squarely at odds with the Court's express instructions to the parties at the last conference) that they will not lock in dates for any of the witnesses listed in the calendar annexed as Exhibit I to their September 12 status report on state agency issues until Defendants have provided them with acceptable dates for all

such witnesses and in the order shown on their calendar. Defendants pointed out that Plaintiffs had failed to respond to Defendants' two most recent letters, of September 22 and September 26, offering dates for about ten of the witnesses requested by Plaintiffs. Plaintiffs claimed they were considering those letters (as of the September 28 meet and confer), but, as noted above, wanted to have dates for all the witnesses on their calendar before they would consent to going forward with any single witness. Defendants reminded Plaintiffs that the parties had until now scheduled depositions on a rolling basis (as Plaintiffs "prioritized" particular depositions) as soon as they received available dates from the witnesses and also explained what should have been obvious that obtaining dates for each of about 20 witnesses at the same time, and in the exact order requested by Plaintiffs would be extremely unwieldy and impractical.

After Defendants sent Plaintiffs another letter offering deposition dates for additional individuals on Plaintiffs' calendar, Plaintiffs finally responded in a September 28 letter and accepted dates for three witnesses. However, as to a number of other witnesses, Plaintiffs' letter requires confirmation that the deposition will occur only in the order selected by Plaintiffs. For example, Plaintiffs write: "we are prepared to proceed on November 14 [for Mr. Makowski] if you will confirm the proposed depositions dates for Mr. Pantelis in the prior week." And, Plaintiffs still want deposition dates for all of the witnesses on their September 12 calendar at the same time. It is quite burdensome for the various proposed witnesses — many of whom are senior executives of Household and other companies — to hold open the several alternative dates which have been provided to Plaintiffs. Plaintiffs' refusal to cooperate with Defendants' good faith and effective efforts to get them a range of available dates for the Exhibit I witnesses, except on Plaintiffs' facially unreasonable terms not only contravenes the Court's instructions to the parties to block out a schedule through at least early November, but casts

serious doubt about their willingness to comply with the Court's firm deadline for the close of fact discovery.

Defendants urge the Court to direct Plaintiffs to respond to Defendants' letters offering deposition dates for individuals requested by Plaintiffs on a rolling basis, without requiring all deposition dates to be locked in at one time, and in the order mandated by Plaintiffs. Plaintiffs should be required to firm up offered deposition dates, especially in the near term. Plaintiffs' refusal to commit to deposition dates will severely jeopardize the parties' ability to complete all fact discovery by the Court-ordered January 31, 2007 cut-off and defer even further Defendants' right to seek judgment on Plaintiffs' insubstantial claims.

2. Additional Documents for Deponents

As a further excuse for failing to respond to Defendants' notification of available dates for many of the witnesses on Schedule I, Plaintiffs argued at the meet and confer that Household should produce every remaining document for all remaining witnesses immediately, instead of one week before a deposition, as the parties had previously agreed. We pointed out during the meet and confer, and cannot emphasize strongly enough here that this excuse is a classic example of a "red herring." Plaintiffs' statements make it seem (as it may to the Court) that they do not receive any documents pertaining to a witness until seven days prior to that witness's deposition. That is wholly false, as Plaintiffs know. Household produced over four million pages of documents, including vast amounts of documents pertaining to the individuals Plaintiffs currently want to depose, in response to Plaintiffs' First, Second and Third Document Demands to the Company. The vast majority of this production was made months ago. However, pursuant to an agreement with Plaintiffs, when a particular individual is confirmed and

scheduled for a deposition, Defendants do a "belt and suspenders" check with that individual to be sure there are no additional responsive documents in that person's possession. More often than not, Plaintiffs are advised seven days before the deposition that there are no additional documents. Defendants believe it is appropriate to continue with this procedure.

* * *

There were a number of other issues raised by Defendants or by Plaintiffs during the September 28 meet and confer that the parties are still discussing and which, as a consequence, are not yet ripe for this Court's guidance or resolution. To the extent that an impasse should develop on any of these issues, they may necessarily become the subject of discussion at a future status conference.

C. Future Schedule in this Action

The Court's September 19 Order stated: "Parties will be prepared to discuss, among other things, a deposition schedule, the order of expert discovery and summary judgment and the possibility of a settlement conference." The first item, the deposition schedule, was the subject of considerable discussion at the September 28 meet and confer and is described in Points A(1) and B(1) above.

As to the other matters raised in the Court's September 19 Order, Defendants assume that the starting point will be Plaintiffs' August 7, 2006 Proposed Discovery Plan, submitted to the Court prior to the August 10 status conference. Defendants will be prepared to discuss this Plan at the October 4 conference and the items on the Plan that Defendants believe are unfair or prejudicial to them.

However, to a significant extent, Defendants believe that it is premature at this time to establish specific dates for the post-fact discovery phase of the case, and in particular for the expert reports and discovery. After Plaintiffs submit their expert reports, Defendants (according to Plaintiffs' proposed schedule) are given three weeks to submit their reports, but Plaintiffs give themselves a month to submit reply or rebuttal reports. This time allotment is unfair on its face. However, until Defendants know the number of experts Plaintiffs plan to use, the subject matter on which they will opine and the scope of their reports, Defendants will not be able to properly estimate how much time they will need to prepare their reports evaluating the conclusions of Plaintiffs' experts. As Plaintiffs have repeatedly said that much of their case will be presented by experts (as they did in their responses and objections to various sets of interrogatories propounded by Defendants), it must be assumed that the expert reports will be quite voluminous. Defendants should be given ample opportunity to review, consider and have their own experts respond to Plaintiffs' reports. Setting an appropriate schedule should await Plaintiffs' submission of these reports or explanation of how many reports they contemplate, on which subjects.

Similarly, as Plaintiffs' report that much of their case will be premised on expert testimony, it would be sensible to complete the expert reports and discovery phase of the case before considering or planning for a mediation or settlement conference. While Defendants appreciate the Court's willingness to assist in this regard, Defendants are in no position to commit to or even consider these matters until they know the full scope of Plaintiffs' case. (The Court will recall that Defendants will not even receive Plaintiffs' responses to Defendants' contention interrogatories until November 30, 2006.)

D. Other Matters

In addition to the matters raised and discussed during the September 28 meet and confer (Points A and B above), and the items set forth in the Court's September 19 Order (Point C above), Defendants would also like to discuss at the October 4 working conference the following matters, as to which Defendants also would appreciate comments and guidance from the Court.

1. Plaintiffs' Violations of Protective Order

Plaintiffs continue to defy the express requirements of the Protective Order. At the September 19 status conference, Defendants withdrew their motion for sanctions regarding Plaintiffs' open disregard of Protective Order requirements only because the Court made clear in no uncertain terms that it expected Plaintiffs to observe the dispute-resolution mechanism in the Order — including requesting from Defendants, and if they refuse, from the Court, decertification of documents they believe to be non-confidential or non-privileged, rather than engaging in self help. What Defendants did not realize when they withdrew that motion is that the voluminous motion papers Plaintiffs filed the night before (on September 18) which Defendants hadn't yet been able to review in detail, included a motion in effect asking the Court to rescind certain confidentiality designations with absolutely no prior consultation with Defendants about their alleged dispute with those designations. (The motion itself is duplicitous: its caption states that it seeks leave to file certain exhibits under seal, but its text argues that some or all of the documents in question are not really confidential.)

Bringing this issue directly to the Court without any prior consultation with Defendants is another direct breach of the Protective Order and a thoroughly unnecessary

imposition on the Court's time and resources. If Plaintiffs continue to evade the duty to confer with Defendants under the Protective Order about designations they dispute, and instead ask the Court to rescind confidentiality designations and/or privilege designations in a context where Defendants ordinarily have no opportunity to be heard, Defendants' rights under the Protective Order will be nullified and this Court will be forced to spend increasing amounts of time and effort on wasteful motion practice.

At the October 4 conference, Defendants will again ask the Court to admonish Plaintiffs to observe the letter and the spirit of the Protective Order. Defendants know that Plaintiffs will respond by citing random examples of alleged over-designation, but the issue is not whether a particular document slipped through but rather whether Plaintiffs will be allowed to continue defying their obligations to confer with Defendants when they disagree, as required by the Protective Order — a system that worked well in the past — rather than cutting Defendants completely out of the process.[4]

2. Plaintiffs' Refusal to Abide by the Court's Other Directives

At the September 19 status conference, the Court instructed Plaintiffs' counsel to show defense counsel the letter they proposed to send to state authorities to invite their participation in the briefing schedule. Plaintiffs' counsel did show defense counsel a draft that day, but when defense counsel pointed out what they considered to be a number of substantive problems with the draft — especially its telling the states that if they do not participate the Court may order Defendants to produce restricted information (which is something the Court expressly declined to decide at the conference) — Plaintiffs' counsel informed defense counsel that their

[4] The documents attached to Plaintiffs' motion to seal were all produced as part of the SEC production to Plaintiffs pursuant to the Court's Interim Protective Order, which permitted the production to be stamped confidential in its entirety at the time.

only obligation was to *show* us the letter, not to consider our views. Over our objection they sent their potentially misleading version to the state agencies, with none of the changes defense counsel had requested. Defendants believe it was the clear intent of the Court that the proposed letter be shown to defense counsel *and* for defense counsel's comments to be considered and included in the letter. Here again, Plaintiffs should be admonished to abide by the letter and spirit of the Court's directives. Defendants regret burdening the Court with such complaints, but as virtually all the above entries demonstrate, Plaintiffs have increasingly shown a lack of respect for this Court's wishes and Defendants' rights in this matter, and unless they are admonished again to adhere to the Court's express instructions, the oppression they have deliberately imposed on Defendants and the Court will continue unabated.

* * *

The above items are those that Defendants would like to discuss at the October 4 working status conference, as well as the items Defendants believe Plaintiffs will wish to discuss, *i.e.*, items Plaintiffs raised during the September 28 meet and confer. Defendants, however, will be prepared to discuss any other items that may be raised in Plaintiffs' Status Report, and any items the Court may wish to raise.

Dated: September 29, 2006
Chicago, Illinois

Respectfully submitted,

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 29, 2006, he caused to be served a copy of the DEFENDANTS' STATUS REPORT FOR OCTOBER 4, 2006 WORKING STATUS CONFERENCE, 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)