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

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

I. INTRODUCTION

The Class respectfully submits this reply brief in support of its Supplement to the Class' Objection to the Magistrate Judge's June 15, 2006 Order on Post-Class Period Discovery, filed September 29, 2006 (Docket No. 692) (the "Supplement"). As discussed below, the Class' Supplement is procedurally sound. Further, defendants fail to proffer any substantive arguments against the Supplement. In these circumstances, the Court should sustain the Class' Objection[1] *in toto* and order defendants to provide the discovery at issue.

In their Opposition[2], defendants do not contest the substance of the Class' Supplement, namely that the "post-Class Period objection" has no merit as to Interrogatory No. 42, subparts (c) and (d) (the discovery at issue in the Supplement). Defendants' unwillingness to support their "post-Class Period objection" as to this interrogatory demonstrates that there is no merit to this objection as to any discovery such that this Court should sustain the Class' Objection in its entirety.

Instead, defendants' sole argument is that the Supplement is untimely under Fed. R. Civ. P. 72. This argument fails as it rests upon a misrepresentation of what occurred before the Magistrate and ignores the pending Objection to the June 15, 2006 Order. We address these points *seriatim* below.

II. LEGAL ARGUMENT

We commence by reiterating the issues presented by the Class' Objection to the Magistrate's June 15, 2006 Order, which defendants concede is procedurally proper. In the June 15, 2006 Order, the Magistrate denied the Class' motion to compel specific discovery based upon defendants'

---

[1] "Objection" refers to the Class' Objection to the Magistrate Judge's June 15, 2006 Order on Post-Class Period Discovery, filed June 29, 2006 (Docket No. 548).

[2] "Opposition" refers to the Household Defendants' Opposition to Plaintiffs' Supplement to the Class' Objection to the Magistrate Judge's June 15, 2006 Order on Post-Class Period Discovery, filed October 13, 2006.

contention that the discovery sought was unduly burdensome because it related to events outside the Class Period. The Magistrate sustained this "post-Class Period objection" without requiring defendants to present any evidence of burden, and despite the relevance of the discovery sought. As the Class has shown, this is plain legal error requiring this Court to reverse the Magistrate on this issue.

The Supplement filed by the Class repeated these arguments in the context of Interrogatory No. 42. The Class again noted that defendants had proffered no affidavit establishing any burden as to production of the simple information responsive to Interrogatory No. 42, subparts (c) and (d), information that the Magistrate herself found relevant. *See* August 10, 2006 Order at 13 (these statistics are "relevant to whether Household was engaging in the unlawful predatory practices"). Defendants do not contest these arguments factually or legally. This unwillingness or inability to present any substantive arguments on these points establishes that the Class' Objection to the June 15, 2006 Order should be sustained and defendants ordered to respond to all of the discovery at issue.

Defendants' only argument as to the Supplement is a procedural challenge based on Fed. R. Civ. P. 72. This argument rests upon a mischaracterization of the Magistrate's ruling with respect to Interrogatory No. 42. The Magistrate did ***not*** deny the Class' motion to compel a response to these subparts based on a "post-Class Period objection." To the contrary, the August 10, 2006 Order found that Interrogatory Nos. 40-42 sought relevant information and required defendants to respond to these interrogatories, including the subparts at issue. *See id*. at 12-13.

The Magistrate's oral statements at the August 22, 2006 hearing do not change this procedural posture. At the August 22, 2006 hearing, the Magistrate did not reconsider her prior August 10, 2006 ruling nor did she find that defendants had provided a basis for reconsideration (and indeed, they did not). *See* August 22, 2006 hearing transcript ("August 22, 2006 Transcript") at 9-

10. Nor did the Magistrate make any conclusive finding on August 22, 2006 that these subparts of Interrogatory No. 42 were "post-Class Period." Defendants cite a passage on page 10 of the August 22, 2006 Transcript, where the Magistrate noted that she considered this discovery to be "hybrid" while post-Class Period discovery asked "what did you do differently" after the Class Period. The "what did you do differently" standard shows Interrogatory No. 42 not to be "post-Class Period" because it does not ask about how lending practices changed after the class period but rather about refunds and contractual modifications made to loans originated under the lending practices used during the Class Period. *See id*. at 9-10 (statement of Mr. Baker). Significantly, the Magistrate stated elsewhere: "I don't know as I'm sitting here if it is within the class period or it's not within the class period." *Id*. at 8.

Defendants' further argument that the Class "expressly acknowledged" the Magistrate had ruled against the Class and that the Class had to file an objection with this Court, *see* Opposition at 2, rests upon an egregious misrepresentation of the August 22, 2006 Transcript. There is no statement by Class counsel acknowledging that the Magistrate had ruled against the Class nor a statement to the effect that the Class had to file an Objection. *Compare* August 22, 2006 Transcript at 11 with Opposition at 2.

In sum, there was no order from the Magistrate as to Interrogatory No. 42 on which to premise an objection under Fed. R. Civ. P. 72 nor any direction from the Magistrate that an objection under Fed. R. Civ. P. 72 was required. Instead, the August 22, 2006 Transcript demonstrates that the Magistrate referred this issue to this Court without ruling definitively in response to defendants' August 22, 2006 oral arguments.

Defendants' technical "waiver" argument under Fed. R. Civ. P. 72 makes no sense in this context. First, as noted immediately above, there was no order to trigger the ten-day period of Fed. R. Civ. P. 72(a). *See* Fed. R. Civ. P. 72(a) (ten-day period triggered by service of the Magistrate's

order); Advisory Committee Notes, 1983 Addition (Subdivision (a) of Fed. R. Civ. P. 72 "calls for a written order" or "an oral order read into the record"). To the contrary, the Magistrate simply referred the parties to raise the issue with this Court.

Second, the Magistrate's referral was predicated on the fact that this Court already had before it the Class' Objection to the June 15, 2006 Order. *See* August 22, 2006 Transcript at 10. Indeed, at oral argument, defendants' counsel expressly argued that the issues presented by Interrogatory No. 42 were understood by defendants "to be covered by" the June 15, 2006 Order. *Id*. at 6 (statement of Ms. Farren). Federal Rule of Civil Procedure 72 does not require a party to file multiple objections to the same order and thus, the Class' pending Objection to the June 15, 2006 Order suffices.

Third and finally, the Seventh Circuit has not adopted the rigid ten-day rule argued by defendants. Indeed, in *Hunger v. Leininger,* 15 F.3d 664 (7th Cir. 1994), and *United States v. Robinson,* 30 F.3d 774 (7th Cir. 1994), the Seventh Circuit has not found waiver for failure to object to a Magistrate's ruling within ten days as long as the objecting party was not egregiously late and the opposing party was not prejudiced. *Id*. at 777. Significantly, in *Hunger,* the Seventh Circuit deemed filing objections after three weeks not to be "egregiously late." 15 F.3d at 668. Moreover, here, defendants point to no prejudice to them.

In these circumstances, defendants' waiver argument premised upon Fed. R. Civ. P. 72 fails.

III. CONCLUSION

For the foregoing reasons, and for the reasons identified in the Class' prior briefing, the Court should sustain the Class' objection to the June 15, 2006 Order and order defendants to respond to all of the discovery at issue, including Interrogatory No. 42, subparts (c) and (d).

DATED: October 24, 2006

Respectfully submitted,

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
PATRICK J. COUGHLIN (90785466)
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154452)
MONIQUE C. WINKLER (90786006)
LUKE O. BROOKS (90785469)
MARIA V. MORRIS (223903)
BING Z. RYAN (228641)

s/ D. Cameron Baker
D. CAMERON BAKER

100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
WILLIAM S. LERACH
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Lead Counsel for Plaintiffs

MILLER FAUCHER AND CAFFERTY LLP
MARVIN A. MILLER
30 North LaSalle Street, Suite 3200
Chicago, IL 60602
Telephone: 312/782-4880
312/782-4485 (fax)

Liaison Counsel

LAW OFFICES OF LAWRENCE G. SOICHER
LAWRENCE G. SOICHER
110 East 59th Street, 25th Floor
New York, NY 10022
Telephone: 212/883-8000
212/355-6900 (fax)

Attorneys for Plaintiff

T:\CasesSF\Household Intl\REP00036071.doc

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 October 24, 2006, declarant served by electronic mail and by U.S. Mail **THE CLASS' REPLY BRIEF IN SUPPORT OF SUPPLEMENT TO THE CLASS' OBJECTION TO THE MAGISTRATE JUDGE'S JUNE 15, 2006 ORDER ON POST-CLASS PERIOD DISCOVERY**. The parties' email addresses are as follows:

TKavaler@cahill.com
PSloane@cahill.com
PFarren@cahill.com
LBest@cahill.com
DOwen@cahill.com
NEimer@EimerStahl.com
ADeutsch@EimerStahl.com
MMiller@millerfaucher.com
LFanning@millerfaucher.com

and by U.S. Mail to:

Lawrence G. Soicher, Esq.
Law Offices of Lawrence G. Soicher
110 East 59th Street, 25th Floor
New York, NY 10022

David R. Scott, Esq.
Scott & Scott LLC
108 Norwich Avenue
Colchester, CT 06415

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of October, 2006, at San Francisco, California.

s/ Monina O. Gamboa
MONINA O. GAMBOA

T:\CasesSF\household Intl\!DeclService_Email_Mail.doc