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 THE DECEMBER 15, 2006 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

The Household Defendants respectfully submit this Status Report to summarize matters that Defendants believe should be discussed at the December 15, 2006 status conference and to provide the Court with the context in which these matters arise. Defendants believe that the Court's consideration, and, where appropriate, resolution of these matters, will substantially assist the parties in concluding fact discovery by the January 31, 2007 cut-off. Defendants also are compelled to raise with the Court an incident that occurred at a recent deposition in this action that evidences a troubling breach of ethics on the part of Plaintiffs. (*See* Point 5 below.)

1. Plaintiffs' Failure to Respond to Defendants' Interrogatories

As the Court will recall from Defendants' November 27, 2006 Status Report and the discussion at the November 30 Status Conference, Plaintiffs were scheduled to respond on December 1 and December 4 to four sets of interrogatories served by Defendants. Regrettably the concerns we expressed in the Report and at the Conference have been validated to an even greater extent than we anticipated. Of the four required sets of interrogatory responses, Plaintiffs provided only one, namely their response to the contention interrogatories contained in Defendants' Second Set of Interrogatories. However, of the other three responses by Plaintiffs that were due on December 1 and 4, two have not been served at all and the third contained only objections and no substantive answers.

In particular, Plaintiffs have still failed to provide a response of any kind to the contention interrogatories contained in Defendants' *Third* Set of Interrogatories, notwithstanding the Court's Order of September 19, 2006 Order categorizing Interrogatories in Defendants' Third Set as contention interrogatories. As such, those Interrogatories "must be answered no later than two months prior to the close of fact discovery," as set forth in the Court's earlier Order of

August 10, 2006, which established the same due date for the contention interrogatories in Defendants' Second Set. Inexplicably, Plaintiffs claimed, in a December 4 e-mail (attached as Ex. B to Defendants' December 5 letter to the Court), not to be "in violation of any Court order." At the December 15 Conference, Defendants will renew their request that the Court set a near term date for substantive responses to these Interrogatories and for any relief appropriate for Plaintiffs' unexcused disregard of the Court's deadline.

With respect to another set of responses that were previously ordered by the Court, Plaintiffs' deficient responses and disregard for deadlines are again a source of delay. By way of background, Defendants' *Second* Set of Interrogatories included certain non-contention interrogatories that Plaintiffs did not answer because they purported not to understand that Defendants were seeking key information about which Household products and revenues were implicated in the "illegal predatory lending scheme" Plaintiffs allege. (Although this is not a consumer lending action, such information is critical to understanding Plaintiffs' position on materiality and other aspects of their securities fraud claim.) In its Order of August 10, 2006, this Court granted Defendants leave to reframe those interrogatories to specify that Plaintiffs were to provide "which specific products and revenues Plaintiffs claim derived from those illegal practices." Defendants served those five supplemental Interrogatories on September 15, 2006. In October, Plaintiffs purported to answer this Court-Authorized Supplement, but their "response" consisted almost entirely of objections (including many previously overruled by the Court), and was virtually devoid of substantive information.

In response to Defendants' urging at a November 10 meet and confer session, Plaintiffs wrote on November 14 that they "would supplement" their responses to Defendants' Court-Authorized Supplement on December 1 "at the same time as providing responses to the

contention interrogatories." However, in a December 1 e-mail (attached as part of Exhibit B to Defendants' December 5 letter to the Court), Plaintiffs said that "due to the press of other business the Class will not be able to supplement its interrogatory responses" to Defendants' Court-Authorized Supplement by December 1. Despite several subsequent requests by Defendants, Plaintiffs have still failed to set any date by which they will provide these supplemental responses. Therefore, at the December 15 Conference, Defendants will renew their request that the Court set a near term date for these responses.

Finally, on December 4, Plaintiffs served their "Responses and Objections to Defendants' Fourth Set of Interrogatories," consisting of only nine items. The title is a misnomer. There were no responses, only objections — to each and every interrogatory. (Attached at Tab A is a representative selection from Plaintiffs' Responses and Objections containing the initial Interrogatory in the set and Plaintiffs' bad faith "response".) At the December 15 Conference, Defendants will urge the Court to require Plaintiffs to provide by a specific near term date good faith, substantive responses to Defendants' Fourth Set of Interrogatories.

Defendants have been severely prejudiced by Plaintiffs' cavalier approach to their compliance obligations under Rule 33. Interrogatories are the only effective means for Defendants to understand the basis of Plaintiffs' claims and prepare appropriate defenses, and there is very little time remaining to pursue timely follow-up of Plaintiffs' uninformative and evasive responses. If Plaintiffs are allowed to disregard the Court's deadlines and admonitions on this subject with impunity, they will have evaded any meaningful discovery in this matter. It is no answer for Plaintiffs to point to more than one hundred pages of document lists (which served as their purported response to contention interrogatories in Defendants' Second Set of

Interrogatories), because listing Bates ranges for hundreds of document that show individual consumer level or branch level anecdotes but no evidence of securities fraud does not begin to explain how Plaintiffs plan to connect such random information to any essential element of a securities fraud claim. As Plaintiffs demonstrated by their creative interpretation of documents in their recent brief regarding Andrew Kahr, having a huge list of documents Plaintiffs consider somehow relevant to their allegations is no substitute for a good faith interrogatory answer defining which practices Plaintiffs include in the universe of alleged "illegal predatory" conduct, which portion of revenues they consider attributable to illegal or predatory application of sales practices, and what disclosures Household should have made to avoid misleading investors about its business. It is outrageous that Plaintiffs are still stonewalling on these basic answers, especially after the Court has given them a generous extension of time to respond.

Having so effectively evaded compliance to date (including by falsely reassuring the Court in their letter of December 5 that they were in full compliance with Defendants' interrogatories), Plaintiffs may hope that another round of motion practice about their defaults and deficiencies will run the clock and deprive Defendants of any real opportunity to explore their theories before the January 31, 2006 discovery cut-off. We will of course brief these subjects again if the Court wishes, but in the interest of basic fairness, we urge the Court to give Plaintiffs a peremptory deadline to provide good-faith, substantive answers to all contention interrogatories (including those purportedly answered by means of an undifferentiated document dump) under pain of being precluded from introducing evidence on any unexplained allegation.

2. The Court's December 6, 2006 Order

Defendants have carefully reviewed the Court's Memorandum Opinion and Order dated and filed on December 6, 2006 (and entered on the Court's docket on December 7), denying Plaintiffs' motion to compel concerning Wilmer Cutler documents but granting Plaintiffs' motion concerning certain Ernst & Young ("E&Y") documents. Defendants respectfully believe that, in deciding that the E&Y materials were subject to disclosure under the reasoning of *Garner* v. *Wolfinburger*, 430 F. 2d 1093 (5th Cir. 1970), notwithstanding that they are protected by the attorney-client privilege, the Court's decision departs from controlling authority and threatens the attorney-client privilege in the context of this and other federal securities actions. For that reason, Defendants intend to file a formal Objection to that aspect of the ruling within the 10-day period allowed by Fed. R. Civ. P. 72(a) and, because we cannot preserve our legal challenge to the decision if we are required to disclose the documents before a ruling by Judge Guzman, we will be asking this Court for a stay of the decision until such time as Judge Guzman can consider it. *See, e.g.*, *In re Lott*, 139 Fed. App. 658, 662-63 (6th Cir. 2005) (as a result of "the irreparable harm resulting to the petitioner if privileged information is disclosed, and the important public interest at stake, this Court finds the issuance of a stay appropriate"); *United States* v. *Philip Morris Inc*., 314 F. 3d 612 (D.C. Cir. 2003). We will be prepared to discuss this subject at the December 15, 2006 Conference, or to submit a written stay application if the Court should prefer.

3. Defendants' Privileged Documents

Defendants wish to apprise the Court of the status of the two issues relating to privileged documents that were discussed during the November 30 Status Conference. The first

issue concerned documents inadvertently produced by Defendants. This alleged mountain turned out to be a small molehill that can be easily resolved. The second issue — arising from Plaintiffs' apparent misconception that "hundreds" of privileged documents are unaccounted for — is under active discussion by the parties and to the best of our knowledge requires no judicial intervention. The details are as follows:

On November 30, after the Status Conference and as directed by the Court, Defendants appointed one of their counsel, Ira Dembrow, as their Privileged Documents' Coordinator, who will be available by telephone during the December 15 Conference. Mr. Dembrow immediately contacted Plaintiffs' counsel, Ms. Ryan, to schedule a meet and confer to discuss the two privileged documents issues. The following day, December 1, Plaintiffs provided Defendants with a list of 11 recalled documents which currently are being challenged by Plaintiffs on the ground that the documents are not subject to any privilege. At a meet and confer on December 5, the parties discussed the 11 recalled documents and a handful of others Plaintiffs challenged during the call. The upshot is that Plaintiffs filed a motion on December 6, that seeks production of only eight of the challenged documents, containing a total of 15 pages. Although the motion is not yet fully briefed (Defendants will file their response on or before December 13 and Plaintiffs' reply is due by December 19), Defendants will be prepared to discuss their position at the December 15 conference if the Court wishes.

The second privileged documents' issue, as Plaintiffs have presented it to Defendants, is broader than the "skip sheet" issue discussed during the November 30 conference and in the Court's November 30 Order. Plaintiffs assert that a substantial number of documents withheld as privileged do not appear on Defendants' privilege logs (the logs have been provided to Plaintiffs on an ongoing basis as soon as practicable after additional batches of documents are

produced by Defendants). On December 4, Plaintiffs provided Defendants with two voluminous lists of documents: (i) a 24-page list of Bates numbers that Plaintiffs termed "Withheld Documents That Do Not Appear On Defendants' Privilege Log"; (ii) and a 29-page list of Bates numbers titled "Redacted Documents That Do Not Appear on Defendants' Privilege Log." The so-called Withheld Documents list contained about 1,000 entries and the so-called Redacted Documents list about 1,300 entries. Defendants immediately assigned personnel to undertake the incredibly painstaking task of reviewing these lists. During the meet and confer on December 5, a little over 24 hours after Defendants initially received these two lists, Defendants provided their preliminary observations about certain errors and misconceptions reflected in the lists. For example, we noted that the Redacted Documents list fails to reflect the fact that many originally redacted documents on the list had subsequently been provided in complete versions (*i.e.*, without any redactions) using the same Bates numbers to avoid confusion. It appears that Plaintiffs may not have deleted the initial redacted versions of these documents from their databases to reflect the substitution. Both parties agreed that they would continue to investigate the documents on these two lists and try to resolve any discrepancies.

In an e-mail on December 7, we informed Plaintiffs that, based on our review up to that point, it appears that (i) a large portion of pages 1-11 on their list of "Redacted Documents" lists non-privileged documents that Plaintiffs already have in their entirety, and (ii) a large portion of pages 1-5 and 12-18 of their list of "Witheld Documents" likewise lists non-privileged documents that Plaintiffs already have in their entirety. Although Plaintiffs have not yet provided Defendants with any corrections of or further comments on these two lists, as they promised to do during the December 5 meet and confer, Defendants are continuing to review the two lists and will provide more specific information as soon as it can be obtained. Defendants

expect to be in a position to provide a further update on this subject during the Status Conference. As noted, however, the lists provided by Plaintiffs appear to be riddled with errors requiring Defendants to devote considerable time and resources to do work that Plaintiffs should have done in the first place, at a time when Defendants can ill afford this distraction.

4. The Status of Defendants' Compliance with Plaintiffs' Discovery

As instructed by the Court on November 15, Defendants have certified again in writing that they have complied with Plaintiffs' First, Second and Third Document Demands. With respect to Plaintiffs' demand for a list of the Company's transactions in its own securities during the relevant period, although the nature and volume of such transactions in a given year were provided to Plaintiffs long ago in the form of Household's fully-produced public filings, details such as the date and volume of particular trades were not readily accessible because underlying data had been archived. We neverless continue to retrieve and review such material and will provide the required list as soon as practicable.

On this subject, Defendants wish to reiterate for the record that they did not knowingly disobey the Court's Order (incorporated in a minute order received on December 7) to compile the list by December 6. The transcript of the November 15 Conference contains no reference to a date certain for compliance, and we have been working diligently to provide the requested data, which was not as simple a process as Plaintiffs apparently envisioned. Although Defendants nevertheless apologize for any misunderstanding, they again urge the Court to consider Plaintiffs' complaints regarding this belatedly-requested material of uncertain relevance in the context of their continued defiance of the Courts Orders to them to provide substantive, good faith interrogatory answers.

Defendants are also in the process of responding to several letters by Plaintiffs referring to difficulties and/or problems they claim to have encountered in reviewing documents previously produced by Defendants, such as purported "gaps" in the documents produced, alleged overlap in some Bates numbers, difficulty reading the complete Bates number on a particular document, etc. These appear to be one-off incidents regarding documents that were produced months if not years ago, and despite the burden, Defendants are responding to each such complaint as promptly as possible. Any assertion to the contrary by Plaintiffs should be considered a transparent attempt to distract the Court from the unfairness and genuine prejudice arising from Plaintiffs' inadequate compliance.

5. Unethical and Possibly Illegal Surveillance by Plaintiffs' Counsel of Conversations Between Defendants and Their Counsel

Defendants learned last Thursday, December 7, 2006, at the deposition of Household's General Counsel Kenneth Robin that Plaintiffs' counsel had used open audio and video feeds to monitor the witness and defense counsel during off the record breaks in the deposition. This came to light in the closing minutes of the deposition when Plaintiffs' counsel, Mr. Baker, conveyed a false insinuation by Ms. Mehdi — who was not present at the deposition — regarding something she believed she had observed during a break when defense counsel were speaking privately with their witness. All that was said at the beginning of the deposition about Ms. Mehdi's participation was that she was "on line," from which Defendants reasonably believed that Ms. Mehdi would be receiving on her computer a real time transcription of whatever was said on record at the deposition (questions, answers and colloquy between counsel). Defendants were not told, were not aware, and could not have been aware without an explicit statement by Plaintiffs, that Ms. Mehdi also was receiving a live audio and visual "feed" from the deposition room and that this feed continued even when the deposition was recessed for

"breaks" (*i.e.*, that Ms. Mehdi could see and hear what was occurring in the deposition room even during the time that the witness was not being questioned and Plaintiffs' counsel were not physically present).

The fact that Ms. Mehdi was secretly monitoring an adversary's private and privileged conversation was and is shocking. Such conduct is plainly unethical by any standard, and may even have violated Illinois law against unauthorized eavesdropping. (*See* 720 Ill. Comp. Stat. Ann. 5/14-2(a) (2006)) (prohibiting knowing and intentional eavesdropping without the consent of all parties to a conversation.)

While Defendants evaluate what additional recourse may be appropriate in this context, we respectfully ask the Court's assistance in making sure that Plaintiffs' surveillance of privileged conversations (or attempts thereto) will not be repeated. At a minimum, Plaintiffs should be directed to cease all audio and video monitoring of future depositions during breaks and to announce the presence of all persons who are monitoring the deposition from a remote location (and the manner in which the monitoring is taking place, *i.e.*, audio, visual, etc.). And, in order to allow Defendants to assess the extent of Plaintiffs' unannounced surveillance to date, Plaintiffs should be required to identify for Defendants all depositions that Plaintiff's counsel or consultants monitored through live audio and/or video feed without announcing the same to Defendants.

Dated: December 12, 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