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' RESPONSE TO HOUSEHOLD DEFENDANTS' OBJECTION TO MAGISTRATE JUDGE NOLAN'S NOVEMBER 13, 2006 ORDER

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I. INTRODUCTION

In its April 18, 2005 Order, Magistrate Judge Nan R. Nolan (the "Magistrate") held that "discovery of [lead plaintiff] PACE's investment history is irrelevant to any class-wide liability issues."[1] Dkt. No. 225 at 7 ("April 2005 Order"). Close to two (2) years after the Magistrate issued this Order, defendants now present an untimely objection to the substance of that Order. Although defendants' objection is packaged as one to the November 13, 2006 Order ("November 2006 Order"), the November 2006 Order is again based on the same subject matter, *i.e.*, depositions of plaintiffs and their investment advisors, and was issued on a belated motion for reconsideration of the April 2005 Order. Because defendants' objection is untimely pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(a), it cannot be the basis of any modification to either the April 2005 Order or the November 2006 Order. This Court should not indulge defendants' improvident use of judicial resources any further. Accordingly, the Class respectfully submits that defendants' objection should be summarily rejected as untimely and denied.

Even if the Court were to be generous enough to entertain defendants severely tardy objection, it would find as the Magistrate did, that defendants have failed to offer a single justifiable basis demonstrating that the November 2006 Order is clearly erroneous. The individualized discovery defendants demand remains irrelevant to any legal theory or defense impacting class-wide issues. Although defendants insist the discovery sought is necessary for summary judgment, they have not and cannot demonstrate how. Nor can they explain why the arguments they now make were not made in early 2005. The argument that defendants now present, *i.e.*, that deposing lead plaintiffs and their investment advisors will reveal information necessary to support defendants'

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[1] "PACE" refers to lead plaintiff PACE Industry Union Management Pension Fund. All emphasis added, unless otherwise noted.

fraud on the market defense, is founded on a significant misconception of the law. Furthermore, this argument is no different that the one defendants made almost two years ago that individual depositions are needed to defeat class-wide reliance. As the Magistrate already has held, however, discovery of the information individual plaintiffs considered when making their investment decisions is relevant only to individualized reliance questions. April 2005 Order at 7. Such discovery is not proper at this time. *Id*. Defendants cannot establish a truth on the market defense through snapshots of what individual investors knew. In order to prevail on that defense, defendants will have to prove that based on the ***totality*** of information on the market, no reasonable investor could have relied on defendants' false statements. *Ganino v. Citizens Utility Co.*, 228 F.3d 154, 167 (2d Cir. 2000). Short of discovery from every single plaintiff, or a majority of them, defendants cannot prevail on their truth on the market defense through the use of individual plaintiff's investment histories.

Further, defendants have not offered any explanation as to why depositions of lead plaintiffs and their advisors are necessary to obtain the public information they seek. By definition, the information relevant to a truth on the market defense is "on the market." During the Class Period (July 30, 1999 through October 11, 2002), moreover, Household meticulously tracked the very information they now claim to seek. *See* Ex. 1.[2] Lead plaintiffs' knowledge of what information was on the market and when, as well as the knowledge of their investment advisors, is irrelevant to class-wide issues.

Finally, defendants vaguely allude to the fairness provisions of the Private Securities Litigation Reform Act ("PSLRA") to obtain the individualized discovery they seek. However, the PSLRA provided some structure to the process of the selection of the lead plaintiff as well as severely limited the discovery that plaintiffs obtained while there was a motion to dismiss pending.

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[2] All exhibits are attached hereto unless otherwise noted.

See, generally, 15 U.S.C. §78u-4 *et seq.* The PSLRA does not address post-class certification discovery and defendants have not pointed to a single specific provision in the PSLRA that supports their position. The Magistrate, thus correctly rejected defendants' arguments.

In addition to being procedurally defective, defendants' objections on the merits are unpersuasive, and should be denied.

II. ARGUMENT

A. Defendants Have Waived Their Right to Object to the Magistrate's Ruling Preventing Them from Deposing Lead Plaintiffs and Their Investment Advisors

The April 2005 Order issued by the Magistrate prevents defendants from taking individual depositions of lead plaintiffs and their investment advisors before determination of class-wide liability issues. April 2005 Order. Pursuant to Rule 72(a), defendants had ten days to bring an objection to the District Court. Fed. R. Civ. P. 72(a). The Court's November 2006 Order explicitly notes defendants' failure to appeal this ruling to the District Court. November 2006 Order at 1. Defendants neither objected to the April 2005 Order, nor did they seek reconsideration from the Magistrate, but rather sat on their hands for close to two years. *Ploog v. Homeside Lending, Inc*., No. 00 C 6391, 2001 U.S. Dist. LEXIS 15697, at *14 (N.D. Ill. Sep. 28, 2001) (Guzman, J.) (refusing to address untimely objections). Defendants offer no justification for this delay. *See Espinoza v. Northwestern Univ*., No. 02 C 7563, 2004 U.S. Dist. LEXIS 1203, at *7 (N.D. Ill. Jan. 28, 2004) (A party whose objections are not timely filed "must demonstrate sufficient cause for failing to timely object.").

Although defendants have packaged their objection as one to the November 2006 Order on their oral motion for reconsideration, a belated or successive motion to reconsider an order does not extend the time for appellate review of that order. *Gary v. Sheahan*, 188 F.3d 891, 893 (7th Cir. 1999). Normally, a motion for reconsideration is brought within ten days of the challenged order.

See, e.g., Rule 59(c). In their motion for reconsideration, defendants offered no excuse at all for waiting over 18 months to seek reconsideration of the Court's April 2005 Order. The Magistrate found that defendants had no "acceptable basis for reconsideration" of the Court's April 2005 Order and defendants' reliance on the "court's purported error in distinguishing the facts of *In re Harcourt Brace Jovanovich, Inc. Sec. Litig.*, 838 F. Supp. 109 (S.D.N.Y. 1993)" involved "no new facts, arguments, or law, and ***could easily have been raised back in 2005***." November 2006 Order at 6.[3] Similarly, defendants' objection here has no basis other than defendants' desire to divert Class and judicial resources in the final months of discovery. Accordingly, defendants' objection should be summarily dismissed as untimely.

B. Defendants' Objection Must Be Overruled Because It Does Not Meet the Standard of Review Under Fed. R. Civ. P. 72(a)

Under Rule 72(a), the district judge "shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be ***clearly erroneous or contrary to law***." Fed. R. Civ. P 72(a); *Ocean Atlantic Woodland Corp. v. DRH Cambridge Homes, Inc.*, No. 02 C 2523, 2004 U.S. Dist. LEXIS 4698, at *9 (N.D. Ill. Mar. 22, 2004) (Guzman, J.); *see also For Your Ease Only, Inc. v. Calgon Carbon Corp.*, No. 02 C 7345, 2003 u.s. Dist. LEXIS 4698, at *9 (N.D. Ill. June 20, 2003); 12 Charles Alan Wright, *et al*., *Federal Practice and Procedure 2d*, §3069 (2006). The Seventh Circuit has interpreted the clear error standard to mean that, "the district court can overturn the magistrate judge's ruling only if the district court is left with the definite and firm conviction that a mistake has been made." *Weeks v. Samsung Heavy Indus. Co., Ltd.*, 126 F.3d 926, 943 (7th Cir. 1997); *see also Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985). The application of a legal standard to a particular set of facts is also reviewed under the "clearly

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[3] All emphasis added unless otherwise noted.

erroneous" standard. *McFarlane v. Life Ins. Co. of North America*, 999 F.2d 266, 267 (7th Cir. 1993).

Determinations of a magistrate judge in the discovery context are entitled to considerable deference because "[t]he Federal Rules of Civil Procedure grant magistrate judges broad discretion in resolving discovery disputes." *Ocean Atlantic Woodland Corp.*, 2004 U.S. Dist. LEXIS 4698 at *9, and "[t]he magistrate judge has a much higher familiarity with the parties and the conduct of discovery than does this court". *Whittaker v. NIU Board of Trustees*, No. 00 C 50447, 2004 U.S. Dist. LEXIS 3989 (N.D. Ill. Mar. 12, 2004).

As defendants have noted in numerous briefs to this Court, the Magistrate has been "supervising discovery matters in this action for the past two years" and has "a detailed understanding of the context of this dispute" and the "discovery needs" of parties. *See* Dkt. Nos. 593, 623, 732. The District Court will not overturn a Magistrate's well-reasoned opinion merely because it would have chosen the other view. *American Motors Corp. v. Great American Surplus Lines Ins. Co.*, No. 87 C 2496 1988 U.S. Dist. LEXIS 173, at *4 (N.D. Ill. Jan 5, 1988) ("Ordinarily, under clearly erroneous review, if there are two permissible views, the reviewing court should not overturn the decision solely because it would have chosen the other view."). Here, the reasoning for rejecting defendants' objection is even more compelling since the Magistrate considered those arguments not once, but on two different occasions. In addition to being untimely, defendants have failed to demonstrate that the Magistrate's Order is clearly erroneous.

Further, defendants' contention that the November 2006 Order made improper findings on admissibility or imposed standards of undue prejudice or need, is not just inaccurate, it is plainly absurd. First, the Magistrate made a proper factual finding that there was "no need to depose the individual named plaintiffs in order to determine what information was on the market." November 2006 Order at 3. As detailed in §II.C., *infra*, there is no error in this factual finding. Moreover, the

Magistrate was not making a finding on the so-called admissibility of information under standards or undue prejudice or need. Indeed, it was the defendants who raised the specter of "fairness" under the PSLRA to justify their belated and inappropriate demand for individualized discovery – the Magistrate was merely addressing defendants' own fairness arguments. Because defendants cannot demonstrate clear error in either the April 2005 Order or the November 2006 Order affirming the earlier order, defendants' objection must be overruled.

C. The Magistrate Appropriately Rejected Defendants' Purported Bases for Individualized Discovery Prior to Determination on Common Class-Wide Issues.

On October 8, 2004, defendants stipulated to class certification ***after*** deposing the PACE witness Maria Wieck. Nonetheless, defendants are attempting to relitigate what essentially amounts to class certification issues by raising individualized issues. Despite their attempt to re-package these individualized issues as class-wide liability issues, defendants arguments failed to convince the Magistrate, not once, but two different times. *See* April 2005 Order and November 2006 Order. Defendants' purported basis that the Magistrate should reconsider the April 2005 Order were based on: (1) the truth on the market defense; and (2) to further fairness goals of the PSLRA. The Magistrate appropriately rejected each of these purported basis, which are addressed in turn by the Class.

1. The Magistrate Properly Rejected the Truth on the Market Defense as a Valid Basis for Allowing Individualized Depositions Prior to a Determination of Class-Wide Liability

The Magistrate properly found that "the truth on the market defense is not a valid basis for allowing Defendants to depose the named plaintiffs prior to a determination of class-wide liability." November 2006 Order at 4.

First, it is significant that for all their bluster, defendants' 30(b)(6) notices served on lead plaintiffs do not specify the truth on the market as a deposition category and the 30(b)(6) notices

served on the institutional advisors do not identify any deposition topics, casting serious doubt on this purported basis.

Defendants also claim that the Magistrate incorrectly assumed that reliance is the only possible issue on which defendants might question plaintiffs or their investment advisors; but that the "truth on the market defense" is another key issue that they wish to explore with the individual depositions. Defs' Obj. at 8.[4] In reality, it is defendants who reverted back to individualized issues of reliance based on their own faulty comprehension that truth on the market is a defense to the fraud on the market theory. The truth on the market defense in securities fraud class actions, if proven, serves to rebut the fraud on the market presumption. In other words, defendants have necessarily reverted back to the arguments underlying the April 2005 Order, *i.e.*, that individual depositions can be used to rebut the class-wide presumption of reliance. "[A] rebuttal of reliance by a particular class member must necessarily be on an individual basis because there can be no class presumption of nonreliance." 7 Alba Conte and Herbert B. Newberg, *Newberg on Class Actions*, §22.61 at 285 (4th ed. 2002). Short of discovery from every single plaintiff, or a majority of them, defendants cannot rebut the presumption of fraud on the market on a class-wide basis through the use of individual plaintiff's investment histories.

Incredibly, highlighting defendants' lack of comprehension of the law, they contend that "[i]f PACE's claim has a defect for want of proving reliance, then not only does PACE's claim fail, but defendants will argue that the class that PACE represents cannot rely on the fraud on the market theory." Dkt. No. 201 at 10. As the Court held in the April 2005 Order, discovery of lead plaintiffs' "investment history is ***irrelevant to any class-wide liability issues***." April 2005 Order at 7. This

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[4] "Defs' Obj." refers to the Household Defendants' Objections to Magistrate Judge Nolan's November 13, 2006 ruling Denying Motion for Leave to Depose Named Plaintiffs and Certain Investment Advisors.

holding is in line with the weight of authority holding that individualized issues should be adjudicated at a later stage after class-wide issues have been determined. *See In re Lucent Techs. Inc. Sec. Litig*., Civil Action No. 00-621 (JAP), 2002 U.S. Dist LEXIS 8799, at *6 (D.N.J. May 7, 2002) ("The discovery sought by Lucent instead may be appropriate at a later stage in the case, in which individualized rebuttal proceedings may be pursued to determine whether a claimant may recover, once the matter of liability has been adjudicated.");[5] *Eisenberg v. Gagnon*, 766 F.2d 770 (3d Cir. 1985) (court recognized that individual questions as to reliance lurk in every 10b-5 action and, rather than eliminate securities class actions, it would be more efficient to order separate trials, if necessary, limited to the issue of reliance); *Biben v. Card*, 789 F. Supp. 1001 (W.D. Mo. 1992) (court ordered that the ***first phase of trial should address liability*** and the true value of the shares and the second proceeding should determine individual class member's damages and to hear any evidence rebutting the presumption of reliance individually as to each class member); *Seidman v. Stauffer Chem. Corp*., Civil No. B-84-543 (TFGD), 1986 U.S. Dist. LEXIS 30264, at *17 (D. Conn. Jan. 17, 1986) (the court is free to hold separate trials on the issues of reliance and damages).[6]

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[5] Defendants now attempt to distinguish the circumstances in *Lucent*, by claiming that the discovery sought there was not from lead plaintiffs (because it was already obtained), but from certain other named plaintiffs. Defs' Obj. at 13. This distinction is a red herring. There was nothing preventing defendants from obtaining this discovery from the lead plaintiffs during the class certification stage of discovery when these precise issues were being tested. Significantly, defendants not only agreed to class certification but, indeed, suggested certification by stipulation and entered into the stipulation after deposing the PACE Fed. R. Civ. P. 30(b)(6) witness, Maria Wieck.

[6] Defendants misrepresent the Order in arguing that the Magistrate incorrectly found that information in the possession of the named plaintiffs or their investment advisors was "irrelevant." Defs' Obj. at 7. The Magistrate's Order states that "if the market as a whole was privy to corrective information at the time of the alleged fraud, it is irrelevant whether any individual plaintiff was also aware of that information." November 2006 Order at 3-4. The Magistrate's articulation of the truth on the market standard is accurate and defendants' reliance on the Court's reference to *Vivendi* does nothing to detract from the Magistrate's correct articulation of the standard in class actions. *In re Vivendi Universal, S.A. Sec. Litig.*, 381 F. Supp. 2d 158, 181-182 (S. D.N.Y. 2003), citing *Ganino*, 228 F.3d at 167. Moreover, the Magistrate found that the Supreme Court's decision in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), only confirms the theory that "misleading

Next, as is apparent, defendants have recycled their original arguments already rejected by the Magistrate in issuing the April 2005 Order. Defs' Obj. at 11-14. First, these arguments should be rejected on procedural grounds because defendants have waived their objection by waiting close to two years to file a written objection. Second, even if the Court evaluates this objection on the merits, the Magistrate's reasoning in the April 2005 Order withstands scrutiny. The Magistrate found that although "there may be circumstances when discovery into a single plaintiff's investment history is appropriate after class certification and before a determination of class-wide liability, the Court believes this is not such a situation." April 2005 Order at 6. The Magistrate analyzed the case at hand and compared it to *Lucent* as well as distinguished it from *Easton & Co. v. Mut. Benefit Life Ins. Co.*, Civ. No. 91-4012 (HLS), 1994 U.S. Dist. LEXIS 12308 (D.N.J. May 18, 1994), finding that "discovery of PACE's investment history is irrelevant to any class-wide liability issues, and thus, not essential at this time." *Id*. at 7.

Defendants claim individual depositions are necessary to "help identify what public information was ***known to the market***." Defs' Obj. at 9-10 (emphasis in original). This is the same argument defendants made in 2005. Lead plaintiffs' knowledge regarding "the nature of and risks inherent in Household's business" (*id.*) is completely irrelevant to defendants' alleged truth on the market defense (or any other question of class-wide liability). Defendants admitted as much in their brief: "***Whether or not Plaintiffs relied on any of that information is not the point***." Dkt. No. 742 at 6. This is because in order to prevail on their truth on the market defense, defendants will have to prove that "the corrective information [was] conveyed to the public 'with a degree of intensity and credibility sufficient to counter-balance effectively any misleading information created by' the

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statements in a fraud on the market case defraud investors even in the absence of direct reliance." November 2006 Order at 7.

alleged misstatements." *Ganino*, 228 F.3d at 167. Deposing lead plaintiffs, their investment advisors or any other single investor will do nothing to further this defense.

Defendants fail to cite even a single case indicating that testimony of individual class members is probative of a truth on the market defense. To the contrary, the cases cited by defendants, *Cooke v. Manufactured Homes, Inc*., 998 F.2d 1256 (4th Cir. 1993), and *In re Andrx Corp. Sec. Litig*., 296 F. Supp. 2d 1356 (S.D. Fla. 2003), confirm that information known to individual investors is irrelevant to the truth on the market defense. In *Cooke*, for example, certain of plaintiffs' securities fraud claims were dismissed because a combination of ***newspaper articles***, company ***press releases*** and other indicia of financial distress "overwhelmed [the market] with information questioning the financial integrity of [defendant]." 998 F.2d at 1262. Similarly, in *Andrx*, the court relied on "numerous ***analyst reports*** and ***press releases***" in granting summary judgment based on the truth on the market defense. 296 F. Supp. 2d at 1367. Neither *Cooke* nor *Andrx* (nor any other case cited by defendants) relied on ***a single shred of evidence*** provided by the plaintiffs in concluding that the truth was on the market. This is because the knowledge of a single investor has no bearing on whether the truth was "transmitted to the public with a degree of intensity and credibility sufficient to effectively counterbalance any misleading impression created by [defendants'] one-sided representations." *Provenz v. Miller*, 102 F.3d 1478, 1493 (9th Cir. 1996).

Defendants also contend that the Magistrate erred in failing to offer a "principled reason" for proposing depositions of stock analysts, but not of plaintiffs and the investment advisors on the basis that such advisors have a fiduciary duty to research an evaluate investment decisions. Defs' Obj. at 10. The appropriate time for defendants to have considered these arguments was at the pre-class certification stage when they could have raised such arguments. Notwithstanding defense counsel's abject failure to do their own due diligence and research regarding their fiduciary duties to their clients (the defendants here) as the Magistrate noted in the April 2005 Order, defendants had "failed

to cite any case indicating that even if reliance is rebutted as to a single plaintiff, it necessarily invalidates the class-wide presumption." April 2005 Order at 8. Significantly, as the judge overseeing the discovery in this matter for the last two and a half years, the Magistrate's decision that "the most efficient and expeditious manner of managing this litigation is to delay discovery into individualized issues until after class-wide liability has been determined," must be given deference. *Id*. at 9, citing 7 Alba Conte and Herbert Newberg, *Newberg on Class Actions*, §22.61 (4th ed. 2002) (noting that in securities fraud actions "rebuttal of individual reliance. . . may be resolved after trial on common issues").

Defendants claim that another area they wish to explore with individual depositions is information that accounted for the level and movement of Household's stock price. Defs' Obj. at 8. However, defendants already have the information they purport to seek. Household, like most large corporations, closely tracked public information concerning the Company. Household's investor relations department collected and reviewed analyst reports and media coverage of the Company on a continuing basis throughout the Class Period. This information was summarized in investor relations reports and media summaries provided to senior management and the board of directors. *See* Ex. 1. Household is thus aware of and has in its possession the information defendants claim they need from lead plaintiffs.

In any event, the level of detail that defendants seek from individual depositions is properly the subject of expert testimony. *See Gebhardt v. ConAgra Foods, Inc.*, 335 F.3d 824, 832 (8th Cir. 2003) (declining "to attach dispositive significance to the stock's price movements absent sufficient facts and expert testimony"). Indeed, defendants themselves have refused to respond to lead plaintiffs' discovery seeking information relating to stock price movements on the grounds that it called for an expert opinion. *See* Ex. 2. Lead plaintiffs propounded Requests for Admissions seeking admissions that certain price changes in Household's stock were statistically significant. *Id*.

Defendants refused to fully respond on the grounds that: "the determination of statistical significance of stock price increases, if it is to be of assistance to the fact finder, requires expert analysis and testimony." *Id*. Thus, given defendants' own refusal to provide such information based on their reliance on expert analysis, their demand for such information from lay persons, is nothing short of hypocritical.

Not surprisingly, defendants now lament their decision to stipulate to class certification made over two years ago and wish to waste previous resources at this late stage of fact discovery. Defendants motivation is transparent. Defendants' proposed discovery is intended to interrupt proper discovery by the plaintiffs, thereby wasting valuable Class resources and burdening the Class as a whole. For example, although defendants already deposed lead plaintiff PACE regarding its investment decisions prior to stipulating to class certification, they seek yet another deposition of PACE on the exact same issues. Defendants have not explained why this second deposition is warranted. Indeed, defendants have not made ***any*** showing that the information they seek through further depositions will give rise to a cognizable legal theory. Indeed, they cannot.[7] It is clear, then, that rather than seeking information relevant to the defense of their case, defendants are intent on sidetracking the prosecution of plaintiffs' case with duplicative and unnecessary discovery. Because there is no valid purpose for defendants' subpoenas and deposition notices, the discovery sought by defendants will result in undue delay and constitutes harassment. *Builders Ass'n of Greater Chicago v. City of Chicago*, 215 F.R.D. 550, 554 (N.D. Ill. 2003) ("A subpoena is obviously unduly

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[7] Defendants claim that although they stipulated to class certification, it is unfair and prejudicial for the Court to disallow their proposed discovery because they expressly reserved "all substantive arguments concerning the claims of the named plaintiffs and/or the Class." Defs' Obj. at 12-13. All this provision does is articulate rights defendants already have, it neither dictates the time when they make these substantive arguments, nor does it give them *carte blanche* to derail class-wide discovery based on some fishing expedition.

burdensome if the information is wholly irrelevant under any reasonable legal theory; if the subpoena was issued for the purpose of harassment or if the party issuing the subpoena did not, in good faith, believe, after reasonable inquiry, that the subpoena was not unreasonable or unduly burdensome or expensive for the reasons indicated.")

At bottom, the truth on the market defense is nothing more than a feeble excuse conjured up by defendants in an effort to circumvent the Court's well-reasoned April 2005 opinion.

2. The Magistrate's Rejection of Defendants' Reliance on the PSLRA as a Valid Basis for Allowing Individualized Depositions Prior to a Determination of Class-Wide Liability Is Also Proper

The Magistrate also found that "defendants have not demonstrated any unique circumstances, undue prejudice, or due process concerns that would justify allowing them to depose the named plaintiffs and their financial advisors prior to a determination of class-wide liability." November 2006 Order at 5. The Class notes as an initial matter, that the PSLRA contains no provision requiring lead plaintiffs to offer testimony regarding individualized issues after class certification and before a determination of class-wide liability. Rather, the PSLRA provided some structure to the process of the selection of the lead plaintiff as well as severely limited the discovery that plaintiffs obtained while there was a motion to dismiss pending. 15 U.S.C. §78u-4 *et seq*.

Defendants are correct that "***potential class representatives***" are required to certify that they are willing to serve as a representative party and provide testimony "***if necessary***." Defs' Obj. at 14 (citing 15 U.S.C. §78u-4(a)(2)(A)(iii)). Lead Plaintiffs have provided the required certification at the inception of this action and made themselves available for deposition in 2004. Defendants opted

not to take those depositions (other than PACE) and, instead, stipulated to class certification.[8] Lead plaintiffs have satisfied their obligations under the PSLRA to date, and will continue to do so. Sitting for repeated, fruitless and frivolous depositions is not among those obligations.

Defendants do not cite a single case supporting their theory that the PSLRA requires lead plaintiffs to submit to depositions under these circumstances. The case that defendants relied upon in the underlying briefing in support of this dubious proposition, *AOL Time Warner*, is completely off point, and was rejected by the Magistrate. April 2005 Order at 4-5; citing *In re AOL Time Warner, Inc. Sec. Litig.*, No. 06 Civ. 0695, 2006 U.S. Dist. Lexis 49162 (S.D.N.Y. July 13, 2006). (Case was not a class action.)

Defendants would like the Court to believe they have been prohibited from taking discovery in this action. This is far from the truth. In reality, defendants have served more than 100 interrogatories, in seven different sets, including numerous contention interrogatories to which the Class has already responded. Additionally, each of the lead plaintiffs has produced to defendants all documentation of their trades in Household securities from January 1, 1997 to December 31, 2003 as well as documents relating to Household's predatory lending activities obtained from third-party sources. Household also has deposed the 30(b)(6) designee for PACE. After deposing PACE and reviewing documents produced by the lead plaintiffs, defendants stipulated to class certification. *See* Dkt. No. 183 at 1. Further depositions are not necessary, and certainly not required by any provision of the PSLRA.

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[8] Defendants' argument that they are being punished for stipulating to class certification is absurd. Defs' Obj. at 3. As the Magistrate already has found, defendants suffer no prejudice because the depositions they seek are not probative of issues related to class-wide liability. April 2005 Order at 10.

III. CONCLUSION

For all the foregoing reasons as well as the reasons outlined in lead plaintiffs' briefs (Dkt. Nos. 205 and 755) attached hereto as Exs. 3 and 4, the Magistrate's November 13, 2006 Order should be affirmed.

DATED: December 18, 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 December 18, 2006, declarant served by electronic mail and by U.S. Mail to the parties the: **THE CLASS' RESPONSE TO HOUSEHOLD DEFENDANTS' OBJECTION TO MAGISTRATE JUDGE NOLAN'S NOVEMBER 13, 2006 ORDER.** 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 18th day of December, 2006, at San Francisco, California.

s/ Monina O. Gamboa
MONINA O. GAMBOA