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 DEFENDANTS' MOTION FOR SANCTIONS AND TO COMPEL RESPONSES TO "ADDITIONAL" INTERROGATORIES ALLOWED BY THE COURT'S AUGUST 10, 2006 ORDER

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I. INTRODUCTION

The Class respectfully submits this response to defendants' motion for sanctions and to compel responses to the "additional" interrogatories allowed by the Court's August 10, 2006 Order ("8/10 Order"), Dkt. No. 631.

The Class urges the Court not only to deny Defendants' Motion,[1] but also to order defendants to cease and desist from wasting both the Court and Class' time and resources by filing frivolous motions that have no merit other than providing yet another billing opportunity for defense counsel. As detailed below and as is apparent from the Class' answers to the five additional interrogatories allowed by the Court's 8/10 Order ("Additional Interrogatories"), the Class has answered the interrogatories. *See* Mehdi Decl., Ex. 1.[2] At a time when the Class is focused on working diligently to complete fact discovery and the remaining 15 depositions by January 31, 2007, Defendants' Motion is a transparent ploy to divert the Class from the substantive task of completing fact discovery within the Court-ordered deadline.

Significantly, this is the fourth motion for sanctions that defendants have brought – each of the prior three were denied or withdrawn by the defendants. *See* Dkt. Nos. 314, 477, 619. Accordingly, the Class respectfully submits that defendants should be required to obtain leave of Court before filing any more motions for sanctions so that the burden of dealing with such frivolous motions is not foisted upon the Court and the Class.

Additionally, because the Class has more than adequately answered all the 15 questions posed by the Additional Interrogatories, despite defendants' non-compliance with the 8/10 Order, Defendants' Motion should be denied for that reason as well.

II. BACKGROUND

On August 10, 2006, the Court awarded defendants "five additional interrogatories and more specific interrogatories" to compensate for defendants' inartful drafting. *See* 8/10 Order at 16-17. In

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[1] All references herein to "Defendants' Motion" or "Defs' Mot. at __" are to defendants' Memorandum of Law in Support of the Household Defendants' Motion for Sanctions Including a Recommendation of Dismissal for Failure to Respond and to Compel Responses to Defendants' Court Authorized Supplement to Defendants' Second Set of Interrogatories.

[2] All references herein to "Mehdi Decl., Ex. __" are to the Declaration of Azra Z. Mehdi In Support of the Class's Response to Defendants' Motion for Sanctions and to Compel Responses to "Additional" Interrogatories Allowed by the Court's August 10, 2006 Order, and the attached exhibits.

its 8/10 Order, the Court found that if defendants were seeking information regarding products that used predatory practices and revenues derived therefrom, their interrogatory nos. 10-14 "as written do not clearly request [this information]." *Id*. at 17. The Class' original response served on October 24, 2006 identified products by reference to Household International, Inc.'s ("Household") own documents. During a telephonic meet and confer on November 10, 2006, defendants demanded additional details. Mehdi Decl., Ex. 2 at 2-20. Although the Class believed their original responses were adequate, in an effort to avoid motion practice, the Class voluntarily agreed to supplement their responses by December 1, 2006. Dkt. No. 858-2, Ex. 7.

On December 1, 2006, plaintiffs' counsel Cameron Baker informed David Owen that "as a result of Magistrate Judge Nolan's comments and directives made during yesterday's court hearing, due to the press of other business the Class will not be able to supplement its interrogatory responses within the time frame previously indicated in my November 13 letter to you. We will provide the supplemental responses as soon as possible." Mehdi Decl., Ex. 8. Rather than simply extending the professional courtesy, which defendants had on prior occasions simply granted themselves, defense counsel launched into a protracted and unnecessary email exchange. Mehdi Decl., Ex. 9. Unnecessary, because Lead Plaintiffs had voluntarily agreed to supplement responses that they thought were adequate simply to avoid motion practice. Additionally, Lead Plaintiffs were not under any Court order relating to this supplementation despite defendants' assertions to the contrary. *Id.* The only possible explanation – as defense counsel have constantly reminded Lead Counsel – is that defense counsel gets paid by the hour for each attorney they have on this matter. Understandably then, defense counsel are incentivized to unnecessarily prolong these proceedings by filing frivolous motions, which also explains why four lawyers from defense counsel always attend every deposition. The Court should, therefore, summarily deny defendants' melodramatic request for sanctions and a recommendation for dismissal because the Class has submitted complete and comprehensive responses to the Additional Interrogatories.

III. ARGUMENT

A. The Class Has Answered the Interrogatories Propounded Despite Defendants' Violation of the August 10, 2006 Order Allowing Five Additional Interrogatories by Propounding 15 Interrogatories

The Court's 8/10 Order allowed defendants to serve "up to five additional and more specific interrogatories." 8/10 Order at 17. Instead, defendants packed three interrogatories into one, each of

which are structurally identical. For example, Interrogatory Nos. 114-116[3] relating to "discount points" state:

> Pursuant to the August 10, 2006 Order of the Court requiring Plaintiffs to identify "which specific products and revenues Plaintiffs claim [were] derived from those illegal practices," if Plaintiffs do not include all uses of 'discount points' within the alleged illegal practices, identify the Household products utilizing 'discount points' that Plaintiffs contend were part of any alleged illegal practices, including any revenues illegally derived thereby.

See Mehdi Decl., Ex. 1 at 7.[4] The three questions posed are:

(i) The contention interrogatory embedded in the phrase "if Plaintiffs do not include all uses of 'discount' points within the alleged illegal practices," which plaintiffs understood to mean: "Do plaintiffs include all uses of 'discount points' within the alleged illegal practices?" *Id*. at 9. During meet and confers, defendants confirmed plaintiffs' understanding of defendants' questions was correct.

(ii) The second question, asks plaintiffs to "identify the Household products utilizing 'discount points' that Plaintiffs contend were part of any alleged illegal practices . . . ." *Id*.

(iii) The third question asks plaintiffs to identify any "revenues illegally derived" from any products in the second interrogatory. *Id.*

The Class has answered each of these 15 interrogatories. Each is addressed in turn below.

1. The Court Ruled in Its August 10, 2006 Order that the Class Had Answered the Contention Portion of the Interrogatories

In its 8/10 Order, the Court held: "As for Plaintiffs' answers to interrogatory nos. 9-14, the court finds that ***no further response is required***." 8/10 Order at 16.[5] Specifically, the Court found that plaintiffs had identified the practices they contend constituted illegal predatory lending – namely, "discount points, single premium credit life insurance, prepayment penalties, use of E-Z

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[3] As the Court is aware, defendants have served multiple sets of interrogatories, which they refuse to count because they claim those were served as part of class certification. Additionally, due to the compound nature of many of their prior interrogatories, defendants' numbering of the individual interrogatories is also erroneous. Accordingly, the Class has renumbered the interrogatories at issue as Nos. 114-128 to reflect the number of interrogatories previously propounded. In this opposition, the Class will use this numbering.

[4] *See also id*. at 11 (relating to single premium credit life insurance); at 15 (relating to prepayment penalties); at 19 (relating to EZ Pay); and at 23 (relating to second loans at rates in excess of 20%).

[5] Unless specified otherwise, all emphasis is added.

Pay, and origination of second loans at interest rates in excess of 20%" – and stated that "[defendants'] ***request for further responses to interrogatory nos. 10-14 as written … is denied***." *Id*. at 16-17. Defendants, however, persist in their obstinance in disregarding the plain language of the 8/10 Order:

> Mr. Owen: . . . the fundamental defects of these responses, you can't tell from your responses, whether you are saying that all single premium credit life insurance is part of the illegal predatory lending scheme. . . . That to us is a vital question I think we need a clear statement from the class whether or not single premium credit life insurance is part of the alleged illegal predatory lending scheme, I mean if it's -- can you tell me that right now?
>
> Mr. Baker: . . . the more fundamental question is, are you entitle to that information, because we read the court order saying no, you don't get that information, further more we understand that the court gave you five interrogatories in total -- in total to the usage you just chose, (indiscernible) and to identify products and revenue, now you have drafted your interrogatories in such a way that they are really are multiple interrogatories, there is a contentious part, which is now what you are talking about and then there is the separate product and revenue part, which can be construded too, which -- which part you want []?
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> * * *
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> Mr. Owen: . . . Do you think we are not entitle to know whether or not your claiming that all single premium credit life insurance is part of the illegal scheme, we entitle to know that or not.
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> Mr. Baker: You previously request that the court order us to provide that, that was the thrust of your motion to compel, based on these interrogatories, and the court said we had already answered those sufficiently, I think if you go back and you read the court's order on this point, it's pretty clear, if you wanted to file a motion for reconsideration you should have done it, if you wanted to file objection, you should have done it so that parts already done . . . . If you can point to some language in a court order, that shows that, we are missing something here, then you know, we are happy to reconsider it, but you just basically making arguments that doesn't [comport] with the order.

Mehdi Decl., Ex. 2 at 7-10.

Indeed, the only reason that the Court generously awarded defendants the Additional Interrogatories is because they had failed initially to ask the question – which products used

predatory sales practices and what revenue was derived from the use of such practices. 8/10 Order at 16-17. Instead of asking the question the Court permitted them to ask, defendants now preface their Additional Interrogatories with questions that the Court has already ruled upon and indeed have been previously answered by plaintiffs. The Court previously denied defendants' request for further responses on this portion of the interrogatories. *Id*. Thus, defendants' motion to compel responses must be denied with respect to this first question embedded in each of the Additional Interrogatories.

2. The Class Has Answered the Additional Interrogatories by Specifying "Products" that Utilized Predatory Sales Practices

As to the identification of "products," for example, Interrogatory No. 115 asks plaintiffs to '"identify the Household products utilizing 'discount points' within the alleged illegal practices . . . ."' *See* Mehdi Decl., Ex. 1 at 7. The Class' response identifying products having discount points was as follows:

> Household products utilizing 'discount points' that were part of Household's illegal practices include, but are not limited to, all those products charging finance charges that bore no relation to interest rates charged; products that failed to disclose the existence or amount of up-front finance charges; products that failed to offer any option of the amount of points to be pre-paid, providing borrowers with a range of discount points but almost always charging the high end of the range; products failing to provide correct good faith estimates of known charges from points and fees; and products failing to disclose to customers that finance charges would be added to the amount of total debt owed. ***Additionally, such products would include Household's real estate products, such as mortgages, second loans, rewrites and refinances***.

Id. at 10. Similarly, plaintiffs identified the following products as having prepayment penalties:

> Household products utilizing "prepayment penalties" that were part of Household's illegal practices include, but are not limited to, all loans that included prepayment penalties that were not disclosed or which were actively concealed, or whose existence or imposition was misrepresented in some fashion, as well as prepayment penalties that were in violation of state or federal law. ***Additionally, such products would include Household's real estate products, such as mortgages, PHLs, second loans, rewrites and refinances***.

Id. at 18.[6] Notwithstanding these detailed responses identifying products, defense counsel make blatant misrepresentations to the Court. For example, in complaining that plaintiffs have not answered the Additional Interrogatories identifying products containing prepayment penalties, defense counsel have ***intentionally omitted*** the emphasized portion of the Class' response above, which provides the very information that defendants are moving to compel. *See* Defs' Mot. at 7. Courts in Illinois find that such omissions to the Court constitute grounds for discipline. For example, Illinois Rules of Professional Conduct Rule 3.3 addresses a lawyer's duty of candor towards a tribunal requiring lawyers to play fair with the court and is designed to protect the integrity of the decision-making process. *See also* Local Rules to the United States District Court Northern District of Illinois Rule 83.53.3 (prohibits a lawyer from making a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false). *See also Guillen v. City of Chicago*, 956 F. Supp. 1416, 1421 (N.D. Ill. 1997) (Acts or omissions by an attorney admitted to practice before this Court . . . that violate the Rules of Professional Conduct for the Northern District of Illinois shall constitute misconduct and shall be grounds for discipline); *Stevenson v. Employers Mut. Ass'n*, Case No. 96 C 4414, 1997 U.S. Dist. LEXIS 5817 (N. D. Ill. Apr., 22, 1997) (although the court refrained from finding attorney's omission of quotation of a statute intentional, it nonetheless sanctioned the attorney).

Moreover, the Class' responses are adequate and no further detail should be required because defendants themselves in internal reports described and tracked their products in the same manner as the Class' responses. *See e.g.*, Mehdi Decl., Ex. 3 at HHS 02892594 (including Real Estate (RE), Non-Real Estate (NRE), Personal Homeowner Loans (PHL), closed-end and revolving products for Sales Finance under "Product Listing"); *id*., Ex. 4 at HHS 03069474-82 (monthly results memo to defendant CFO Joe Vozar tracking results by RE, PHL, NRE and SC); *id*., Ex. 5 HHS 02819552-61 (report tracking the loan-to-value on RE loans when there was a second loan); *id.*, Ex. 6 at HHS 00284117-19 (report tracking restructure statistics for RE products, PHL products, unsecured branch and non-branch products under the HFC and Beneficial brands).

Not surprisingly, defendants are still dissatisfied with the Class' responses. The reason defendants are dissatisfied they claim is because they are seeking the following response: '"Products

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[6] The Class has also answered and provided similar product details with respect to single premium credit life insurance (*id*. at 14); EZ Pay or any bi-weekly payment plan (*id*. at 22) and second loans at interest rates in excess of 20% (*id*. at 26).

containing discount point of X are illegal in Jurisdiction Y where they were sold, producing revenues of Z"' and citing to documents from which such contentions could be explained. Defs' Mot. at 8. But defendants did not ask the question: "What discount points are illegal in the State of Illinois and how much revenue did Household generate by charging points over the legal limit?" If defendants really were interested in finding out by jurisdiction the products sold and revenues generated that were attributable to Household's improper sales practices, then they would have propounded ***that*** question directly. But defendants did not ask that question and are now trying to fit more than 40 different interrogatories (based upon the number of states in which Household did business) into each question. This is the third time defendants have served interrogatories seeking one thing only to turn around on a motion to compel and ask for something different. This Court cannot tolerate defendants' blunders just so they can rack up their clients' bills, harass the Court and the Class by continuing to grant them additional interrogatories to make up for their inartful drafting.

As is quite apparent, plaintiffs have fully answered defendants' interrogatories asking for the identification of products that incorporated the use of certain predatory sales practices. Thus, defendants motion to compel responses relating to the second question in each of the Additional Interrogatories should also be denied.

3. The Class Has Answered the Interrogatories by Specifying "Revenues" Derived from Predatory Sales Practices

Just like their complaints about the product identification, defendants' attacks on the Class' responses on revenues are without merit. The Class has answered the third part of the Additional Interrogatories propounded by defendants relating to revenues derived from the predatory sales practices. For example, in connection with "discount points," the Class' response states that "in connection with the Attorneys General settlement, Household calculated $1.087 billion in restitutionary payments would be required to ***refund improper discount point revenues generated by Household's real estate products***." Mehdi Decl., Ex. 1 at 10, citing to HHS 03070934; *id.*, Ex. 7. The Class' response further states:

> This $1.087 billion figure is specifically labeled the "[t]otal refund." *Id.* The internal calculations supporting the $1.087 billion figure are specifically based upon Household's assumption that only a subset of all discount points were subject to refund. *See id*. That Household anticipated a refund of over a billion dollars in discount point revenues demonstrates an internal awareness and acknowledgement that such revenues were not obtained legally. Further, the electronic file path for this document includes the description "Special Requests\AG Costs," which further corroborates that it was created to measure the financial impact of Households' predatory lending practices as asserted by the Attorneys General. *Id*. This internal

> refund estimate is conservative as the Office of Thrift Supervision, Federal Depository Insurance Corporation and the state agency documents (with which defendants are intimately familiar) evidence refunds of improper discount point revenues attributable to predatory lending practices, which refunds are separate from, and in addition to, all of the refunds calculated in connection with the Attorneys General settlement.

Mehdi Decl., Ex. 1 at 10-11. Similarly, the Class identified $1.253 billion in refunds on just those real estate loans originated between January 1999 through June 2002 that were misleading based upon an EZ Pay sales scam. *Id*. at 22; *see id.*, Ex. 7 at HHS 03070935. *See also id.*, Ex. 1 at 14 (identifying $460 million as the amount of premium refunded and a decrease in net income of $46.3 million or $77 million on a pre-tax basis as a result of eliminating single premium credit life insurance); *id.*, Ex. 1 at 18 (identifying $161 million due to refunds based upon prepayment penalty revenues); *id.*, Ex. 1 at 26 (identifying $217 million in improper revenues refunded generated from second loans).

Recognizing that the refunds calculated by Household based upon the predatory practices at issue were conservative, the Class also identified as an additional source of the internal refund estimates that were separate and in addition to the refunds mandated by the AG Settlement. *Id.*, Ex. 1 at 11, 15, 19, 22-23, 27. These amounts include refunds mandated by state and federal regulatory agencies. Given these responses and identification of specific dollar amounts by the Class, including reference to Household's internal documents, defendants' accusations that the Class avoids taking a position, are simply absurd.[7]

Defendants demand details that are more typical of consumer fraud cases in order to ascertain the total amount of damages to which consumers would be entitled. In this securities fraud action, the Class only need demonstrate that Household's financial statements were materially false and misleading because the revenues earned by the Company were subject to refund or other contingencies, thereby reducing income. The question of what amounts are material and whether the Class has carried its burden of demonstrating materiality is a complex question left to the trier of fact. *See TSC Indus. v. Northway, Inc.*, 426 U.S. 438, 450 (1976) ("The determination [of materiality] requires delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him, and these assessments are

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[7] During the parties' meet and confer, when Class counsel asked why Household would refund money if it wasn't obtained illegally, defense counsel had no answer. Ex. 2 at 14-15.

peculiarly ones for the trier of fact."). Here, based merely on the fact that Household anticipated at least over $3 billion in refunds, the Class believes that they have taken a definite position on a substantial portion of the amount of revenues derived from predatory sales practices.

As to defendants' assertion that the Class is relying on inadmissible documents in providing answers to these Additional Interrogatories, defendants provide no authority for this assertion. Dkt. No. 858 at 9. Absent bold, unsupported assertions, they cannot provide any such authority, because it does not exist. On the contrary, these documents constitute admissions of a party opponent, and are admissible. *See* Fed. R. Evid. 801(d)(2). Contrary to defendants' unsupported contentions, the documents that the Class refers to are not settlement documents, do not describe settlement negotiations, but rather are purely factual documents, and are thus, admissible. *Brooks v. Grandma's House Day Care Ctrs., Inc.*, 227 F. Supp. 2d 1041, 1044 (E. D. Wis. 2002)(counsel letter that made no mention of settlement but, instead, provided purely factual material in support of defendant's position, was admissible); *Roy v. Austin Co.*, Case No. 94 C 740, 1998 U.S. Dist. LEXIS 13374 (N. D. Ill. Aug. 20, 1998). In any event, "[s]ettlement negotiations, however, are admissible to explain another dispute and to assist the trier of fact in understanding the case." *MCI Commc'ns Corp. v. Am. Tel. & Tel. Co.*, 708 F.2d 1081, 1152 (7th Cir. 1983).

B. Defendants' Demands For Sanctions And A Recommendation of Dismissal Are Themselves Sanctionable Conduct

Lead Counsel is much too sophisticated and experienced in real litigation strategy to bother to waste the Court's and the Class' precious resources at this late stage on defendants' transparent smear campaign.[8]

Hence, rather than expend energy responding to defendants' inflammatory rhetoric, Lead Counsel directs this Court to the Court's March 22, 2004 Order on defendants' motion to dismiss the Complaint (which was denied under the stringent pleading standards of the PSLRA) (Dkt. No. 135); the Court's April 24, 2006 Order denying defendants' motion for judgment on the pleadings

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[8] Defendants' recent smear campaign against Lead Counsel amounts to nothing more than dirty litigation tactics, and should be disregarded. Dkt. No. 858 at 3; *see also* Dkt. No. 817 (falsely accusing Lead Counsel of unethical conduct). The *Enron* court found that the plaintiffs' case against Alliance Capital Management was ***not*** frivolous, without merit and/or brought in bad faith at the time the case was brought, through depositions and for the period of discovery thereafter. *See In re Enron Corp. Sec., Derivative "ERISA" Litig.*, No. MDL-1446, Civ. A. H-01-3624, 2006 WL 3474980, at *13 (S.D.Tex. Nov. 30, 2006). The Court simply thought that summary judgment briefing was unnecessary. *Id.* Notably though, rather than appeal the Court's ruling, parties waived all costs and agreed to bear their own costs of summary judgment.

finding that plaintiffs had adequately pled loss causation (Dkt. Nos. 493, 494) and then a denial of defendants' request for 28 U.S.C. §1292(b) certification for interlocutory appeal. Dkt. No. 816. In contrast, Lead Counsel have been diligently taking depositions and engaging in other discovery preparing their case for summary judgment and trial.

Moreover, when ordering the sanctions of default judgment or dismissal of the case under Fed. R. Civ. P. 37(b), the court must find that the party against whom these sanctions are imposed displayed willfulness, bad faith or fault. *In re Thomas Consol. Indus.*, 456 F.3d 719, 724 (7th Cir. 2006). Cases cited by defendants are simply inapplicable to the circumstances here. For example, in *In re Indus. Gas Antitrust Litig.*, No. 80 C 3479, 1985 U.S. Dist. LEXIS 15646 (N.D. Ill. Sep. 24, 1985), as well as in *Thomas Consol. Indus.*, 456 F.3d at 724, plaintiff never answered the interrogatories. In contrast, the Class has provided answers to the Additional Interrogatories. The mere fact that defendants are dissatisfied with these responses does not, without more, provide a basis for the relief they seek. Accordingly, the Court should not permit the defendants to further burden the Court and the Class with frivolous motions without any demonstration of how the information they purportedly seek is useful in this securities fraud case.[9]

IV. CONCLUSION

For all the foregoing reasons, defendants' frivolous motion should be denied. Further, defendants should be required to obtain prior leave of court before filing any more motions for sanctions.

DATED: December 29, 2006

Respectfully submitted,

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s/Azra Z. Mehdi
AZRA Z. MEHDI

[9] Ironically, defendants have somehow arrived at the conclusion that plaintiffs in this litigation must be held to a different standard than they are. So, while their responses to the Class' discovery have comprised entirely of objections, they absurdly believe they are entitled to refuse to answer or provide any discovery. *Compare* Defs' Mot. at 6 to Mehdi Decl., Ex. 2 at 4.

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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 29, 2006, declarant served by electronic mail and by U.S. Mail to the parties the: **THE CLASS' RESPONSE TO DEFENDANTS' MOTION FOR SANCTIONS AND TO COMPEL RESPONSES TO "ADDITIONAL" INTERROGATORIES ALLOWED BY THE COURT'S AUGUST 10, 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 29th day of October, 2006, at San Francisco, California.

s/ Monina O. Gamboa
MONINA O. GAMBOA