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 JANUARY 10, 2007 STATUS CONFERENCE
BEFORE HON. RONALD A. GUZMAN

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The Household Defendants respectfully submit this Status Report to advise the Court of the status of discovery, identify the pending motions that may have an impact on the scope and timing of the final round of fact discovery, and to explain the bases of their disagreement with the unrealistic and unbalanced pre-trial schedule suggested by Plaintiffs in their "Status Conference Statement to Honorable Ronald A. Guzman In Advance of the January 10, 2007 Status Conference."

As Plaintiffs rejected our requests for an advance copy of their Proposed Schedule, we did not have sufficient time to discuss it with them in the interest of trying to negotiate a proposed joint schedule that will better reflect the realities of this litigation and achieve the goals of efficiency and fairness. Plaintiffs' proposal is premature in any event, because the outcome of certain motions pending here and before Magistrate Judge Nolan will influence the scope and timing of remaining fact discovery (for example, by determining whether Defendants may take depositions of the Named Plaintiffs, and whether and by when Plaintiffs must answer key contention interrogatories). It would therefore make sense to establish the timetable for subsequent proceedings after the final dimensions of fact discovery and Plaintiffs' contentions have been defined. The parties should be instructed to meet and confer at that point in order to resolve or at least narrow any differences as to the order and timing of subsequent proceedings.

1. The State of the Case

In a highly asymmetrical discovery program over the past almost three years, Plaintiffs have accumulated a vast quantity of information about Household, including close to five million pages of documents, answers to 86 interrogatories and over 300 requests to admit, dozens of depositions in the course of over 50 days of testimony, with several more scheduled before the fact discovery cut-off on January 31, 2007, and still more deferred pending the outcome of Plaintiffs' Objections to various discovery rulings of Magistrate Judge Nolan.

Plaintiffs requested and were given ample time to evaluate all this information in order to articulate the basis of their securities fraud case, and Magistrate Judge Nolan ordered them to answer contention interrogatories on December 1, 2006, so that Defendants would finally understand, among other things, what products and revenues Plaintiffs claim were implicated in the supposed "illegal predatory lending scheme" that is the lynchpin of their Complaint, and when they claim the market learned the truth about the allegedly misleading or omitted disclosures. One month later, Plaintiffs still have not complied. As a result of their stonewalling, Defendants and the Court remain in the dark as to what evidence Plaintiffs contend satisfies the elements of their securities fraud claim.

Instead, Plaintiffs continue to do everything in their power to avoid committing to a substantive position on any aspect of their claims. Based upon objections to this Court that Magistrate Judge Nolan has somehow miscounted the number of interrogatories posed by Defendants, they have refused to explain their theory of loss causation or indicate what disclosures should have been made by Defendants to avoid these claims in the first instance. They

further refuse to answer interrogatories about loss causation, or produce witnesses on the subject of truth on the market, on the ground that those issues are more appropriate for expert testimony. Yet now they propose a case management plan that would require Defendants to brief their summary judgment motion without knowing Plaintiffs' contentions, seeing a shred of expert evidence from Plaintiffs, or even knowing what types of experts Plaintiffs intend to produce. Thus, as they would have it, another several weeks would go by with all of the burden and expense and task of substantive analysis imposed on Defendants, with no insight from Plaintiffs about the elements of their case.

In the meantime, Plaintiffs continue to insist on receiving increasingly detailed material about Household's consumer lending operations and alleged branch level abuses, but in defense of their defiance of an express Order to state their contentions about the alleged meaning of these details, they argue that such questions have no place in a securities fraud suit. These are only examples of Plaintiffs' persistent unwillingness to adopt a substantive position — the usual hallmark of a defective claim.

The most appropriate remedy for this utter lack of good faith is dismissal, and a motion is pending before Magistrate Judge Nolan for a recommendation of dismissal as a sanction for Plaintiffs' contempt of her Order to answer certain contention interrogatories. Other available solutions include an order pursuant to Rule 16 of the Federal Rules of Civil Procedure requiring Plaintiffs to give the Court a clear and detailed explanation of their claims, so that each of them can be vetted through *in limine* procedures to weed out inadmissible aspects, allowing what remains to be tested through the summary judgment process. It is not

acceptable, however, for Plaintiffs to set in motion a highly oppressive and one-sided discovery program while escaping any obligation to finally explain what case they supposedly plan to try. From what Defendants know of the evidence, they are confident that they can defeat Plaintiffs' securities fraud claims, but they cannot continue to aim at a moving target, and the time is long since past for Plaintiffs to justify this long and expensive ordeal.

2. Discovery to Date

As is typical in securities fraud class actions, discovery in this matter has been highly asymmetrical. Plaintiffs have received close to five million pages of documents, responses to more than 300 requests for admission and 86 interrogatories, and have been authorized to take 55 depositions. To date they have completed 40 depositions, encompassing more than 50 total days of testimony.

In contrast, Defendants have received fewer than 40,000 pages of documents and have taken only one deposition. (During the pre-class certification stage, they examined a representative of a Named Plaintiff who claimed to have no knowledge of her company's investment in Household International Inc.) Although Plaintiffs' pending Objection regarding the proper counting of interrogatories implies that Defendants have posed over a hundred questions (a conclusion that was expressly rejected by Magistrate Judge Nolan), the fact is that Plaintiffs have answered many fewer than the allotted 85. In fact, their resistance to providing good faith, substantive answers has been the subject of several motions to compel compliance,

including two motions that are pending before Judge Nolan now. One of these motions seeks a recommendation of dismissal in view of Plaintiffs' defiance of an express Order requiring them to identify the Household products and revenues implicated in the supposed "predatory lending scheme" that is the cornerstone of their Complaint.

3. Pending Motions That May Impact the Scope of Remaining Fact Discovery

(a) Plaintiffs' Objection to the July 6, 2006 Order of Magistrate Judge Nolan protecting privileged audit letters and other attorney work product from production.

Judge Nolan has indicated that if this Objection has not been resolved in advance of the January 31, 2007 cut off for fact discovery, she will allow Plaintiffs to defer their planned depositions of two former Arthur Andersen employees. This issue is fully briefed.

(b) Plaintiffs' Objection to the September 20 [sic], 2006 Order of Magistrate Judge Nolan that rejected Plaintiffs' over-counting of Defendants' interrogatories.[1]

Although several months ago Judge Nolan overruled Plaintiffs' argument that Defendant had exceeded the 85-question limit, Plaintiffs have refused to answer any further interrogatories — even those expressly endorsed by Judge Nolan — on the ground that their counting objection is pending before this Court. Once this stay is lifted (which we urge the Court to do immediately), Plaintiffs will have numerous additional interrogatories to answer,

[1] There is no doubt that the Order in question was entered and distributed by hand to the parties on September 19, 2006, but Plaintiffs' Objection (which was one day late) re-dated it to the following day.

not counting previous interrogatories as to which their vague and evasive "answers" are the subject of motions pending before Judge Nolan. The unanswered interrogatories seek to discover Plaintiffs' contentions on such key areas as the components of the alleged predatory lending scheme and the facts Plaintiffs say Defendants should have disclosed to avoid deceiving investors. This issue is fully briefed.

(c) Defendants' Objection to Magistrate Judge Nolan's November 13, 2006 Order precluding Defendants from taking depositions of the Named Plaintiffs and certain of their investment advisors.

If this Objection is sustained, the fact discovery schedule would require adjustment for the limited purpose of allowing Defendants to take depositions of the three named plaintiffs and certain of their investment advisors. Defendants submitted their reply brief in further support of their Objection on January 9, 2007; thus this issue is now fully briefed.

(d) Defendants' Objection to Magistrate Judge Nolan's December 6, 2006 Order insofar as it requires production (under the so-called "fiduciary exception") of certain Ernst & Young communications otherwise held to be subject to protection under the attorney client privilege and attorney work product doctrine.

Magistrate Judge Nolan has indicated that the depositions of Ernst & Young personnel may have to be deferred until after January 31, 2007, depending on when a ruling on this Objection is received. Plaintiffs have indicated that they will file a response to this Objection this week, following which Defendants will promptly file any necessary reply.

(e) Plaintiffs' Objection to Magistrate Judge Nolan's December 6, 2006 Order insofar as it sustained Defendants' privilege objections with respect to communications with its outside counsel, Wilmer Cutler.

Magistrate Judge Nolan has indicated that Plaintiffs may defer a single deposition — that of the firm now known as WilmerHale — pending the disposition of this Objection. Defendants anticipate filing their response to this Objection on January 10, 2007.

* * * *

As noted, Defendants are seeking enforcement of certain contention interrogatories and a related Order in motions currently pending before Judge Nolan. If Plaintiffs should file objections to Judge Nolan's eventual rulings on those motions, and refuse to provide answers in the meantime (as experience teaches they may), Defendants will seek assurances from Judge Nolan that the January 31, 2007 cut-off date will not prejudice their right to obtain full and fair answers to their outstanding interrogatories.

But for the limited exceptions outlined above (Plaintiffs' depositions of Ernst & Young, WilmerHale, and Arthur Andersen personnel, and Defendants' requested depositions of Plaintiffs and certain of their investment advisors and quest for full and fair answers to contention interrogatories), the parties are on track to complete fact discovery by January 31, 2007. While compliance has created logistical challenges for both sides (and for several non-party witnesses whom Plaintiffs subpoenaed fairly recently), this is due almost entirely to Plaintiffs' decision to wait until the tail end of a lengthy discovery period to put a serious deposition program in place, goaded by Judge Nolan's effective enforcement of January 31 as a serious deadline.

4. Plaintiffs' Proposed Schedule Is Premature and Unacceptable

Contrary to the proposed schedule they submitted to Magistrate Judge Nolan in August, 2006 (a copy of which is annexed to this Report at Tab A), Plaintiffs' current proposal would relieve them of any duty to disclose the opinions of their expert witness(es) until after Defendants' planned motion for summary judgment is fully submitted. Plaintiffs do not say whether they will refrain from offering expert evidence in opposition to Defendants' motion, and they do not try to reconcile the backwards order they now propose with their repeated opposition to Defendants' discovery on the ground that certain core issues (such as damages, loss causation and truth on the market) are more properly the subject of expert discovery.[2] The belated expert discovery phase they now propose also suffers from the same unbalanced allocation of time (in Plaintiffs' favor) to which Defendants objected in connection with Plaintiffs' earlier proposal.[3] Moreover, without having any information at all about the number and areas of expertise of Plaintiffs' proposed expert witness(es), the Court is being asked to evaluate this aspect of Plaintiffs' proposal in a vacuum.

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2 *See, e.g.*, Lead Plaintiffs' Objections and Responses to Defendants' Fourth Set of Interrogatories at Interrogatory Response Nos. 41-43; *see also* Plaintiffs' Response to Defendants' Objection to Magistrate Judge Nolan's November 13, 2006 Order at 11 (arguing that the discovery Defendants seek is "properly the subject of expert discovery").

3 During the August 10 Status Conference, Defendants expressed concern that the time Plaintiffs proposed the Court allot for Defendants' expert discovery was considerably shorter than the time Plaintiffs proposed be allotted for *their* expert discovery. The Court recognized this disparity and did not adopt at that time (nor since) a schedule following the completion of fact discovery, which it set for January 31, 2007.

Plaintiffs' proposal also gives inadequate consideration to the parties' need for the Court's early guidance on certain *in limine* issues that will have a strong impact on preparation for summary judgment and/or any trial or mediation of this matter. A key example is the admissibility of unadjudicated, anecdotal allegations of lending abuses at the branch level, which have been a major focus of Plaintiffs' discovery efforts. Another is the admissibility of certain settlements that Plaintiffs consider important to the predatory lending and reaging aspects of their fraud claims. Any reasonable schedule should build in ample lead time for the briefing and resolution of such pivotal issues.

In view of the uncertainties surrounding the timing and ultimate scope of fact discovery, the continued lack of contention interrogatory answers from Plaintiffs, and the need for more information on such subjects as the number and subject matter of the expert reports Plaintiffs plan to submit, Plaintiffs' proposal is simply not ripe for consideration. Defendants respectfully submit that the most logical and useful course of action at this point would be to instruct the parties to meet and confer — after the resolution of motions that will dictate final discovery timing, and after Plaintiffs have explained their contentions in key areas — to try and work out a reasonable schedule up to the filing of the pre-trial order (if needed), with the goal of making a joint proposal to the Court that highlights any remaining areas of disagreement.

Needless to say, if the Court would prefer to have Defendants submit a counter-proposal for immediate consideration, they will of course comply.

5. Plaintiffs Are Not Serious About Mediation

Plaintiffs' statement that they are "amenable to mediation" cannot be taken seriously in view of the total lack of realism they demonstrated at the parties' prior mediation, and the fact that Plaintiffs have not evinced any interest in having a serious discussion since that time, despite the serious blow dealt to their theory of loss causation by the Supreme Court's decision in *Dura Pharmaceuticals* v. *Broudo*, 544 U.S. 336 (2005), and the fact that their extensive and expensive discovery has apparently achieved nothing more than a huge inflation of their lodestar. In any event, while Defendants remain open to mediation at the appropriate time, the procedural posture of the case, including Plaintiffs' refusal to explain their contentions, and expected reliance on experts, suggests that mediation would be more productive following expert discovery.

* * * *

Defendants will be prepared to discuss these and any other issues the Court may wish to address at the January 10, 2007 Status Conference.

Dated: January 10, 2007
Chicago, Illinois

Respectfully submitted,

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Tab A

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' PROPOSED DISCOVERY PLAN

1. As discussed at the June 15, 2006 Status Conference, the Class proposes the following discovery plan that includes a schedule for the conclusion of fact discovery, and a schedule for expert discovery, mediation and summary judgment motions, should any be filed.

2. This plan is based on the discovery taken to date, which includes 20 fact witness depositions and one of Household International, Inc. ("Household") itself, as well as currently scheduled depositions (an additional seven fact witnesses, including one of third-party KPMG LLP). The Class has also considered the parties' previous Rule 26(f) Discovery Plan with respect to the pre-trial schedule. *See* Docket No. 148. The Class has provided a copy of this discovery plan to the Household defendants and will be prepared to discuss it at the August 10, 2006 Status Conference.

3. The Class' proposed schedule is as follows:

Defendants Complete Production of Responsive Documents and Verify the Completion Under Oath	September 15, 2006
Fact Discovery Cut-Off	January 31, 2007
The Class' Initial Expert Disclosures	March 19, 2007
Household Defendants' Expert Disclosures	April 10, 2007
The Class' Rebuttal Expert Disclosures	May 10, 2007
Expert Discovery Cut-Off	June 22, 2007
Mediation	July 20, 2007
Summary Judgment Filing Date	August 20, 2007
Presentment Hearing for Summary Judgment Motions	September 7, 2007
Final Pre-Trial Conference	60 days after rulings on Summary Judgment
Pre-Trial Order Filing Date	45 days after the Final Pre-Trial Conference
Trial Date	TBD

The Class discusses this schedule and the supporting reasons for its adoption below.

FACT DISCOVERY

4. As the Court is aware, the parties commenced fact discovery at the end of June 2004, when the Court lifted the Private Securities Litigation Reform Act mandatory discovery stay. The Court has authorized the Class to take 55 depositions. At present, the Class has taken 20 of those depositions and has currently scheduled an additional seven depositions. At the current rate of depositions, the Class anticipates that it will be able to complete its factual witness depositions by the end of January 2007. This period is based on an estimate of the time needed to schedule and complete depositions as well as the need to sequence depositions in the Class' preferred order. This schedule also considers the inevitable disruptions caused by witness schedules and holidays. This schedule is consistent with what the Class informed the Court on June 15, 2006.

5. In order to ensure that the Class' proposed schedule for fact discovery completion is accomplished, the Class proposes that defendants be required to provide deposition dates for requested witnesses no later than one week after the Class has identified deponents. This will minimize delays associated with scheduling depositions and allow the Class to complete fact discovery within the deadline set forth.

EXPERT DISCOVERY

6. In their prior submission to the Court, the Class and the Household defendants proposed sequencing the expert disclosures based on an initial disclosure by the Class, a disclosure by the Household defendants and a rebuttal disclosure by the Class. The Class has retained this sequencing and the general timing of the original proposals. For example, the original proposals called for a 45-day period between the close of factual discovery and the Class' initial disclosure. Additionally, the Class has retained from the time period from the original proposal, *i.e.*, 30 days from the final disclosures for completion of expert depositions.

MEDIATION

7. Following the completion of expert discovery, the parties should be prepared to participate in mediation. At this juncture, both parties will be aware of the strengths and weaknesses of their respective cases. Accordingly, the Class proposes that the Court should order the parties to mediation. Further, to ensure that the mediation has the highest probability of success, the Court should order the participation of senior Household management with authority to settle the case as well as the participation, as appropriate, of insurance carriers. The Court has the inherent authority to take these steps and should do so.

SUMMARY JUDGMENT

8. Should mediation be unsuccessful, the Class has proposed a date for the filing of any summary judgment motions. The Class recommends that the presentment hearing for these motions be set 15 days after the filings or longer, depending on the Court's schedule. This will allow the parties and the Court ample time to consider the issues raised by the motion(s) and to meet and confer as to a briefing schedule. The Court can then set an appropriate briefing schedule.

DATED: August 7, 2006

Respectfully submitted,

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