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' OBJECTIONS TO MAGISTRATE JUDGE NOLAN'S DECEMBER 6, 2006 ORDER

TABLE OF CONTENTS

Page

I. INTRODUCTION

The Household Defendants have filed an objection to Magistrate Judge Nan R. Nolan's December 6, 2006 Order compelling defendants to produce documents to the Class pertaining to Household's International consultations with the Ernst & Young accounting firm ("E&Y") regarding Household's non-compliance with state predatory lending laws during the Class Period of this litigation (July 30, 1999 through October 11, 2002). *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2006 U.S. Dist. LEXIS 88826 (N.D. Ill. Dec. 6, 2006). At issue are certain documents that defendants claim were inadvertently produced as well as others that were withheld based on claims of privilege.

The Magistrate Judge first held that the E&Y documents were protected by the attorney-client and work product privileges but concluded that fiduciary duty and substantial need exceptions to those privileges applied and justified disclosure of the E&Y documents to the Class. *Id*. at *13-*34. Specifically, the Magistrate Judge held that the Class had made a sufficient factual showing of good cause to invoke the fiduciary duty exception to the attorney-client privilege fashioned by *Garner v. Wolfinbarger*, 430 F.2d 1093 (5th Cir. 1970):

> where the corporation is in suit against its stockholders on charges of acting inimically to stockholders' interests, protection of those interests as well as those of the corporation and of the public require that the availability of the privilege be subject to the right of the shareholders to show cause why it should not be invoked in the particular instance.

Id. at 1103-04. Similarly, as to the work product doctrine the Magistrate Judge held that defendants had failed to make a factual showing that the E&Y documents were opinion work production and that the Class had made a sufficient factual showing of good cause to warrant production over the limited protection afforded factual work product. Defendants challenge these factual findings as well as the Magistrate Judge' reliance upon the *Garner* exception. As discussed below, these

challenges are meritless and this Court should affirm Magistrate Judge Nolan's ruling on these points.

II. STANDARD OF REVIEW

In reviewing the magistrate's fact-findings, review is deferential. The findings cannot be overturned unless they are clearly erroneous. Fed. R. Civ. P. 72(a); *Weeks v. Samsung Heavy Indus. Co.*, 126 F.3d 926, 943 (7th Cir. 1997). Additionally, while pure questions of law are reviewed *de novo*, "an application of a legal standard to a particular set of facts" is reviewed deferentially for clear error. *McFarlane v. Life Ins. Co. of North America*, 999 F.2d 266, 267 (7th Cir. 1993). "Under this review standard, a judge will not overturn a magistrate judge's ruling unless 'the district court is left with the definite and firm conviction that a mistake has been made.'" November 22, 2006 Order at 6 (Dkt. No. 785) (case citations omitted).

III. STATEMENT OF FACTS

In November of 2001, Household was sued by the California Department of Corporations for overcharging its loan customers. As part of the settlement in January of 2002, Household engaged its then-auditors Arthur Andersen LLP to determine the refunds owed to these customers. Subsequently, Household retained the same group of individuals, who were now at E&Y, to do a compliance study as to its lending practices in 11 states. *See* Baker Decl., Ex. A at 1.[1] Household described the E&Y project in the following terms:

---

[1] "Baker Decl." refers to the Declaration of D. Cameron Baker in Support of the Class' Motion to Compel Production of Documents Pertaining to Household's Consultation with Ernst & Young. (Dkt. No. 709) Household has not identified Ex. A as privileged or inadvertently produced. On May 6, 2005, in a production of some 2,000 documents, Household produced three separate copies of this document.

The Class understands that defendants have provided the Court with a set of the briefing before the Magistrate Judge underlying this objection. However, for the convenience of the Court, a courtesy copy of the specific documents referenced in this response are being provided to the Court under separate cover.

> The Ernst & Young engagement is designed to monitor the company's compliance with certain company policies and state regulation. In addition, Ernst & Young shall (i) identify the root causes of noncompliance; and (ii) recommend process improvements to enhance controls over compliance.

Baker Decl., Ex. F at 5 (public document produced by the Washington Attorney General Office.); *see also* Baker Decl., Ex. A at 2, 5. This compliance study was to be completed by September 30, 2002. *Id.* at 3.[2]

In preparation for the compliance study, E&Y interviewed a number of Household officers and employees. *See* Baker Decl., Ex. B (internal documents showing that there were a series of interviews to support this project). Additionally, Household had its Technology & Services Department of the Consumer Lending Business Unit prepare special data sets for E&Y. *See* Baker Decl., Ex. C at 5, 13; Baker Decl., Ex. D at 12.

During the project, E&Y authored a number of documents, including excel spreadsheets. Household withheld some of these documents from its production on March 20, 2006 based on an assertion of privilege. *See* Baker Decl., Ex. E (list of electronic documents authored by E&Y and withheld from March 20, 2006 production); *see also* Baker Decl., Ex. N (spreadsheet including E&Y refund analysis).[3] To date, despite the requirements of the Federal Rules of Civil Procedure and the Magistrate Judge's explicit instructions to log all withheld documents on a privilege log, defendants have not provided a privilege log supporting their withholding of all the E&Y documents.

As part of subsequent negotiations between Household and a multi-state group of Attorneys General over allegations of predatory lending, Household General Counsel, Ken Robin, wrote to the group and stated "As discussed at our September 4 meeting, [E&Y] has been retained to audit our

---

[2] Although defendants claim that the E&Y project was not completed until 2004 (Defs' Objection at 1, Dkt. No. 841), just as with other facts, they offer no evidence to support this claim.

[3] Baker Decl., Ex. N is one of the disputed documents.

compliance with laws and policies. The [E&Y] engagement is designed to monitor the company's compliance with certain company policies and state regulation. . . . We are to sharing these audit results with the parties to the Settlement Agreement. . . ." Baker Decl., Ex. F at 5.

In the course of document production, Defendants produced documents identifying the E&Y studies. Based on these documents, the Class subpoenaed E&Y on May 23, 2006. E&Y objected to production of any documents on the grounds of privilege. *See* Baker Decl., Ex. I.

On June 29, 2006, defendants asserted that all its consultations with E&Y were privileged under various privileges, including the attorney-client privilege and the attorney work product doctrine. At that point, defendants requested a recall of certain documents related to E&Y as inadvertently produced. In correspondence, the Class challenged the assertion of privilege and requested a supporting privilege log. On August 14, 2006, Household stated that it would provide a privilege log supporting its assertions and provide redacted versions of the relevant documents. By letter dated September 29, 2006, Household provided the redacted versions, but no privilege log was provided.

On October 16, 2006, the Class filed with Magistrate Nolan its motion seeking to compel the production of the E&Y documents ("Class' Motion") (Dkt. No. 708). This Motion was discussed with the Court on October 19, 2006 at which time the Court set a briefing schedule. In support of their opposition, defendants submitted a declaration from Mr. Robin. Via Order dated December 6, 2006, Magistrate Judge Nolan granted the Class' Motion and ordered defendants to produce the remaining E&Y documents.

On December 7, 2006, the Class deposed Mr. Robin on this and other topics. At his deposition, Mr. Robin asserted that he had little or no involvement in the E&Y compliance review. On December 21, 2006, defendants filed this objection.

IV. LEGAL ARGUMENT

Defendants' objections to the December 6, 2006 Order are principally challenges to the Magistrate Judge's factual findings. Defendants make these factual challenges, but failed to provide the Magistrate Judge with any contrary evidence. Moreover, they have failed to support their objections here with any evidence, offering instead conclusory and unsupported statements as a basis for their factual challenges. The only legal challenges made by defendants rest upon the erroneous arguments that *Garner* and its numerous successor cases, both within and outside this Circuit, are not longer good law and that the fiduciary duty exception is limited to derivative cases, which the Magistrate Judge correctly rejected. The Class discusses defendants' legal contentions first and then their factual assertions. For the reasons discussed below, defendants' objection to the December 6, 2006 Order should be summarily denied.

A. The *Garner* Exception to the Attorney-Client Privilege Applies in This Circuit

Defendants' sole legal challenges to the Magistrate Judge's December 6, 2006 Order are: (i) that *Garner* and the many following cases, including by the Seventh Circuit, are not good law, and (ii) that the fiduciary exception is limited to derivative actions. The Magistrate Judge correctly rejected these flawed legal contentions.

The Seventh Circuit and district courts within it follow *Garner* and apply the fiduciary exception. In 2002, the Seventh Circuit cited *Garner* with approval stating that "a corporate attorney has no right or obligation to keep otherwise confidential information from shareholders." *In Re Witness Before Special Grand Jury 2000-2*, 288 F.3d 289, 294 (7th Cir. 2002). And the Seventh Circuit reaffirmed its position with respect to the fiduciary exception in 2005. *See Bland v. Fiatallis North America, Inc.*, 401 F.3d 779, 787 (7th Cir. 2005) (recognizing existence of fiduciary duty exception to the attorney-client privilege). District courts in this District also apply the fiduciary duty exception first articulated in *Garner*. *E.g. In re General Instrument Corp. Sec. Litig.*, 190

F.R.D. 527 (N.D. Ill. 2000); *Ferguson v. Lurie*, 139 F.R.D. 362 (N.D. Ill. 1991); *J.H. Chapman Group Ltd. v. Chapman*, No. 95 C 7716, 1996 U.S. Dist. LEXIS 5866, at *4-*7 (N.D. Ill. May 1, 1996); *Heyman v. Beatrice Co.*, No. 89 C 7381, 1992 U.S. Dist. LEXIS 14298, at *10-*11 (N.D. Ill. Sept. 22, 1992).

Defendants' citation of the Supreme Court's decisions of *Upjohn Co. v. United States*, 449 U.S. 383 (1981) and *Swidler & Berlin v. United States*, 524 U.S. 399 (1998) is completely unavailing. Neither case mentions *Garner*, nor addresses the fiduciary duty exception. Further, the Seventh Circuit has continued to rely on *Garner* and the fiduciary duty exception subsequent to these Supreme Court cases. Indeed, as noted above in 2002 and again in 2005, well after the Supreme Court cases cited by defendants, the Seventh Circuit relied upon the fiduciary duty exception and cited *Garner* for the proposition the Class advances, namely that "a corporate attorney has no right or obligation to keep otherwise confidential information from shareholders." *Witness before Special Grand Jury*, 288 F.3d at 294. Similarly, this Court has applied *Garner* to find an exception to the attorney-client privilege subsequent to the Supreme Court decisions cited by defendants. *General Instrument*, 190 F.R.D at 590. Thus, *Garner* and the fiduciary duty exception are good law.[4]

As to the purported limitation of *Garner* to derivative cases, the Seventh Circuit has not limited the fiduciary duty exception to derivative cases. *See Witness Before Special Grand Jury*, 288 F.3d at 293-94 (applying fiduciary duty exception to case against Governor of Illinois); *Ferguson*, 139 F.R.D. at 362 (limited partners suing for securities fraud could invoke the *Garner* exception); *Donovan v. Fitzsimmons*, 90 F.R.D. 583 (N.D. Ill. 1981) (Secretary of Labor suing on behalf of beneficiaries of pension fund could invoke *Garner*). Similarly, the Second, Fifth and Sixth

[4] The Class provided Magistrate Judge Nolan with a treatise prepared by the well-known Chicago firm of Jenner & Block that discussed *Garner* and the fiduciary duty exception at length. *See generally* Jenner & Block, *Protecting Confidential Legal Information* at 104-110 (2005), Baker Decl., Ex. M.

Circuits have declined to limit *Garner* to derivative suits because "nothing in the language or reasoning of *Garner* so limits its holding." *In re Bairno Corp. Sec. Litig.*, 148 F.R.D. 91, 97-98 (S.D.N.Y. 1993); *Ward v. Succession of Freeman*, 854 F.2d 780, 786 (5th Cir. 1988); *Fausek v. White*, 965 F.2d 126, 130-31 (6th Cir. 1992). Accordingly, as correctly decided by the Magistrate Judge, defendants' attempt to limit *Garner* should be rejected.[5]

Having dissected defendants' meritless legal contentions, we now turn to their equally flawed factual arguments.

B. Defendants Present No Facts Disputing the Evidence Submitted by the Class on Which the Magistrate Judge Based Her Findings, Including the Finding that the Class Includes a Substantial Majority of Household Shareholders

Defendants challenge the Magistrate Judge's factual finding that the Class had demonstrated good cause to invoke the *Garner* exception based on the factors discussed in that case and relied upon by Courts in this District. *See Garner*, 430 F.2d at 1103; *General Instrument*, 190 F.R.D. at 529. Significantly, defendants did not even present arguments on the application of the *Garner* factors to the Class' Motion. Instead, defendants relied entirely upon the argument that *Garner* was not good law or inapplicable. *See* Defs' Opp. at 9-10[6] (no discussion of *Garner* factors or their application). The Class' factual showing on this issue was, thus, undisputed. Further, as explained below, the Magistrate Judge's factual finding of good cause to invoke the *Garner* exception is a reasonable one based on the evidence before the Court.

---

[5] There is a further listing of cases in the *Jenner & Block* treatise, including a reference to the Restatement, which "favors an expansive application of the *Garner* doctrine." Baker Decl., Ex. M at 109.

[6] "Defs' Opp." refers to the Household Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion to Compel the Production of Documents Pertaining to Household's Consultations with Ernst & Young (Dkt. No. 764).

The Magistrate Judge's finding of good cause was based on the *Garner* factors, including each of the following:

1) the Class represents a substantial majority of Household's shareholders towards the end of the three year Class Period (July 31, 1999 through October 11, 2002), the time frame for which they seek E&Y documents;

2) the Class' claims are colorable as shown by this Court's denial of the motion to dismiss, and its rejection of related dispositive motions, and most recently by the denial of defendants' motion to appeal under 28 U.S.C. §1292(b);

3) the information sought from E&Y is not available elsewhere;

4) the information relates to past actions and knowledge not present or future management decisions;

5) there is no indication that trade secrets would be revealed, and a protective order is in place in any event;

6) Household's predatory conduct is unlawful as shown by the various state investigations; and

7) the information sought is limited to the E&Y investigation of Household's predatory lending practices which relate directly to plaintiff's fraud claims – and are not a fishing expedition requiring wholesale production of unspecified documents.

Jaffe, 2006 U.S. Dist. LEXIS 88826, at *27-*30; *see also* Baker Decl., Ex. M at 105 (setting forth the various *Garner* factors). Based upon her evaluation of these factors, the Magistrate Judge correctly found that "[o]n the limited facts of this case, the court finds that the fiduciary exception

applies to the communications between E&Y and Household."[7] *Jaffe*, U.S. Dist. LEXIS 88826, at *27-*28. The Magistrate Judge's finding here is supported by *General Instrument.* In that case, this Court found good cause to invoke the fiduciary duty exception in similar circumstances. *General Instrument*, 190 F.R.D. at 529.

As Magistrate Judge Nolan noted, defendants did not dispute the Class' showing on these factors before the Magistrate Judge. *Jaffe*, U.S. Dist. LEXIS 88826, at *27-*28 (showing was "undisputed"). Indeed, although the Class briefed the *Garner* factors at length in its opening papers, defendants in their opposition did not even make any arguments with respect to the *Garner* factors, relying instead totally on the flawed legal contention that *Garner* was inapplicable. *Compare* Class' Motion at 6-7 & n.5 with Defs' Opp. at 9-12. Even now, defendants present no contrary evidence to support a finding by this Court that the Magistrate Judge' factual findings were clearly erroneous. Instead, defendants contest in conclusory fashion the Magistrate Judge's reasoned findings.

First, they assert that the Magistrate Judge improperly relied upon Class' evidence as to one of the factors, the percentage of shareholders represented by the Class. Significantly, this is but one of several factors to be considered and is "of equal weight" with the rest. *See* Baker Decl., Ex. M at 105.

In any event, the Magistrate Judge correctly relied upon the Class' evidence on this point to find that the Class represents a substantial majority of shareholders given the huge volume of trading

---

[7] The Class notes that the Magistrate Judge found good cause here even though she "view[ed] the non-derivative nature of the [Class'] claim as a strong factor to consider in determining whether to prevent invocation of the attorney-client privilege." *Jaffe*, U.S. Dist. LEXIS 88826, at *27-*28. The Seventh Circuit and this Court have not previously viewed the non-derivative nature of the claim to be a factor militating against good cause. *See, e.g., Witness Before Special Grand Jury*, 288 F.3d at 293-94; *Ferguson*, 139 F.R.D. 362. That a litigant has a personal financial interest in the suit will generally be the case and, thus, there should be no penalty to shareholders suing on behalf of themselves as opposed to on behalf of the corporation. In any event, this point shows that the Magistrate Judge made her good cause determination despite employing a general protective approach on this issue and other privilege issues. *See infra* at 11-14 (discussion of other privilege issues).

in Household shares over the three year Class Period. That evidence, ***which defendants still do not dispute***, shows that 1.9 billion Household shares were traded during the Class Period, a trading volume more than four times the average outstanding shares of 466 million. Baker Supp. Decl., Ex. 5.[8] Even if 50% of the trades were repeat sales, the multiple of shares traded over outstanding shares is still two. The Magistrate Judge reasonably relied upon this trading volume to find the Class represents a majority of the shares held by Household investors.

Defendants' primary challenge to this factual finding of the Magistrate Judge is that the Class' evidence was submitted in reply. Although a district court is not required to consider arguments or facts raised for the first time in reply, it has discretion to consider them. *Jackson v. Doria*, 851 F. Supp. 288, 290 n.3 (N.D. Ill. 1994); *Simon v. Pay Tel Mgmt., Inc.*, 782 F. Supp. 1219, 1230 n.19 (N.D. Ill. 1992); *W.E. O'Neil Constr. Co. v. National Union Fire Ins. Co.*, 721 F. Supp. 984, 999-1000 (N.D. Ill. 1989). Defendants offer no basis for this Court to reconsider Magistrate Judge Nolan's proper exercise of her discretion to consider this evidence. Such reconsideration is not part of what this Court does in reviewing a magistrate judge's discovery rulings and is particularly inappropriate here, where defendants did not dispute during briefing before the Magistrate Judge that the Class represented a majority of the shareholders.

Further to the point, to the extent that defendants are arguing that the Magistrate Judge erred by drawing an unreasonable inference from the evidence presented by the Class, this argument fails. First, defendants cannot demonstrate that the Magistrate Judge's finding was so illogical as to warrant a conclusion that her factual finding was plain error. All defendants offer here are contrary

---

[8] "Baker Supp. Decl." refers to the Supplemental Declaration of D. Cameron Baker in Support of the Class' Reply in Support of Motion to Compel Production of Documents Pertaining to Household's Consultations with Ernst & Young LLP (Dkt. No. 778).

speculations, which are less plausible than those adopted by Magistrate Judge Nolan. Such speculative and conclusory assertions are insufficient to support an objection as to a discovery order.

Second, defendants neglect to note that the Magistrate Judge drew numerous inferences in defendants' favor on a number of issues where defendants presented little or no evidence despite their having the burden on proof on the issue. This Court could sustain the Magistrate Judge's ruling based on a different outcome on one or more of these issues. For example, although defendants have the burden of establishing non-waiver via reasonable efforts to prevent inadvertent production, the Magistrate Judge declined to find waiver even though defendants provided no evidence as to the steps taken during production to prevent inadvertent disclosure and no credible explanation as to why it was only in June of 2006 that defense counsel learned of the alleged privilege nature of the E&Y compliance review. Instead, the Magistrate Judge relied solely upon the total volume produced in this case.[9] *Jaffe*, U.S. Dist. LEXIS 88826, at *35-*36.

Similarly, the Magistrate Judge concluded that the E&Y communications were privileged under the attorney-client privilege despite the evidence establishing that E&Y was retained to generate its own conclusions regarding refunds owed to Household's loan customers (and not to assist counsel) and despite the evidence that E&Y was directed by Household's business officers and not lawyers. *Id.* at *15-*20. Although Mr. Robin declared in conclusory fashion that E&Y operated under his direction, contemporaneous internal documents establish that the scope of the E&Y compliance review was determined by non-lawyers and E&Y was subject to the direction of non-lawyers. *Compare* Robin Decl., Ex. 1 with Baker Decl., Exs. B, K; Baker Supp. Decl., Ex. 3.

---

[9] The Magistrate Judge "agree[d] that "Defendants have been somewhat careless in their document production." *Id.* at *36. Given the history of this case, which includes several motions and status conferences devoted to the numerous instances where defendants have claimed "inadvertent production" of documents, including documents labelled as privileged on their face, the description of defendants as "somewhat careless" is a distinct understatement.

These points are likewise true with respect to defendants' even weaker contention that the Magistrate Judge erred by finding the contested material relevant and not otherwise available to the Class. *See* Defs' Objection at 12. As noted above, defendants did not even contest these points before the Magistrate Judge although the Class presented abundant evidence regarding the relevance and unavailability of similar evidence. *See* Class' Motion at 8 and Baker Decl., Ex. B. Moreover, although defendants now sweepingly assert that such evidence is available elsewhere, they do not point to any specific source or specific document. This lack of specificity is not coincidental – there is no other source.

In sum, defendants have offered no basis for this Court to conclude the Magistrate Judge was clearly erroneous and thus, the Magistrate Judge's factual finding of good cause to invoke the *Garner* exception should be upheld.

C. Defendants Cannot Make Any Temporal Distinction

Defendants also challenge the Magistrate Judge's finding that they must produce all the E&Y documents regardless of when they were provided to defendants. Once again, defendants bring to this Court a factual argument that they never presented to the Magistrate Judge. This issue is thus waived.

Additionally, defendants' factual arguments are wrong. The Magistrate Judge could reasonably find that the Class continued to represent a majority of the shareholders after the Class Period ended on October 11, 2002. Further, that claims were filed by the Class against defendants in August is not pertinent since those claims did not relate to the predatory lending issues that were the subject of the E&Y study. The Class' claims as to the predatory lending issues were advanced by the lead plaintiffs in the consolidated complaint filed in March 2003.

D. The Magistrate Judge Correctly Found A Substantial Need for Work Product

Defendants' third factual argument, that the Magistrate Judge incorrectly found good cause to overcome any claim of fact work product, is equally meritless. First, with respect to the nature of the work product, the E&Y documents were prepared by non-lawyers, and do not reflect attorney opinion. Defendants did not present facts to the contrary and thus, failed to meet their burden of showing opinion work-product. *In re Powerhouse Licensing, Inc.*, 441 F.3d 467, 473 (6th Cir. 2006); *In re Walsh*, 623 F.2d 489, 493 (7th Cir. 1980).

To support their objection on this point, defendants offer only the unsupported conclusion that "[a]n analysis of documents created in connection with [the E&Y engagement] . . . would undoubtedly reveal to Plaintiffs the nature and focus of the work being conducted at the request of Household's attorneys." Defs' Objection at 14. This is type of self-serving assertion is insufficient to meet defendants' burden even on its face, much less warrant overruling Magistrate Judge Nolan's factual finding. Equally importantly, this assertion is plainly false. Exhibit N to the Baker Decl., one of the disputed documents, reflects E&Y's work on this project and reveals no attorney opinion being a simple numerical study of refunds owed by Household.

The Magistrate Judge was therefore correct that as "fact" work-product, the E&Y documents were discoverable upon a showing of substantial need and undue hardship. Her following conclusion that the Class showed both is equally correct. *Jaffe*, U.S. Dist. LEXIS 88826, at *33-*34.

To develop this showing, the Class presented Magistrate Judge Nolan with evidence of the preparations made by Household to facilitate the E&Y study, including making employees available for interviewing and creating special computer data sets. *See* Baker Decl., Exs. B, C at 5, 13, D at 12. The Class showed how given these points, it could not recreate the E&Y study in this case. The Class further established how the E&Y documents are sufficiently critical given their bearing on the knowing and material falsity of Household public statements relating to revenues and earnings

derived from its predatory lending practices. These points justify the Magistrate Judge's finding of good cause.

Defendants' contrary arguments are not well considered. The Magistrate Judge is aware of the status of discovery in this case, including the lack of possible alternative sources for the E&Y information and its relevance. Moreover, in making her findings on these points, Magistrate Judge Nolan rejected the same sweeping and unsupported assertions that defendants make here. Defendants do not (and indeed cannot) point out why the Magistrate Judge's rejection of such unsupported assertions is clear error. The Magistrate Judge's Order for disclosure of fact work-product should be upheld.

V. CONCLUSION

For the foregoing reasons, the defendants' objections should be rejected.

DATED: January 11, 2007

Respectfully submitted,

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
PATRICK J. COUGHLIN (90785466)
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154452)
MONIQUE C. WINKLER (90786006)
LUKE O. BROOKS (90785469)
JASON C. DAVIS (4165197)
BING Z. RYAN (228641)

s/ Azra Z. Mehdi
AZRA Z. MEHDI

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

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

Lead Counsel for Plaintiffs

MILLER LAW LLC
MARVIN A. MILLER
LORI A. FANNING
101 North Wacker Drive, Suite 2010
Chicago, IL 60606
Telephone: 312/525-8320
312/525-8231 (fax)

Liaison Counsel

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

Attorneys for Plaintiff

T:\CasesSF\Household Intl\BRF00037988.doc

DECLARATION OF SERVICE BY EMAIL AND BY U.S. MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on January 11, 2007, declarant served by electronic mail and by U.S. Mail to the parties the: **THE CLASS' RESPONSE TO HOUSEHOLD DEFENDANTS' OBJECTIONS TO MAGISTRATE JUDGE NOLAN'S DECEMBER 6, 2006 ORDER**. The parties' email addresses are as follows:

TKavaler@cahill.com PSloane@cahill.com PFarren@cahill.com LBest@cahill.com DOwen@cahill.com	NEimer@EimerStahl.com ADeutsch@EimerStahl.com Marvin_miller_hp@yahoo.com FanningLori@hotmail.com

and by U.S. Mail to:

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

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

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of January, 2007, at San Francisco, California.

s/Pamela Jackson
PAMELA JACKSON