

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN, On )	Lead Case No. 02-C-5893
Behalf of Itself and All Others Similarly )	(Consolidated)
Situated, )	
	) <u>CLASS ACTION</u>
Plaintiff, )	
	) Judge Ronald A. Guzman
vs. )	Magistrate Judge Nan R. Nolan
	)
HOUSEHOLD INTERNATIONAL, INC., et )	
al., )	
	)
Defendants. )	
_____ )	

**SUPPLEMENT TO THE CLASS' MOTION TO COMPEL PRODUCTION OF ERNST &  
YOUNG LLP DOCUMENTS AND FOR SANCTIONS FOR DEFENDANTS'  
CONTINUING VIOLATIONS OF JUDGE GUZMAN'S FEBRUARY 1, 2007 ORDER  
AND THIS COURT'S DECEMBER 6, 2006 ORDER**

1. The Class respectfully submits this Supplement to inform the Court of a serious development that has occurred since the Class filed its motion to compel and for sanctions last week regarding the Ernst & Young LLP (“E&Y”) documents. Dkt. No. 974.

2. **Today** defendants revealed for the first time that they are in possession of **425 boxes** of E&Y work papers that relate to the July 1, 2002 “Compliance Engagement,” investigating Household’s predatory lending practices. *See* Ex. 1.

3. Defendants never even told the Class about the **existence** of these documents. *See* Ex. 2. Only after pushing E&Y to produce responsive documents did the Class learn from recently-appointed E&Y counsel that such documents exist and that **Household specifically requested their return in October of 2004**. *See* Ex. 3. By August 2004, the firm of Cahill Gordon & Reindel LLP was already representing Household. Hence, they cannot feign ignorance of this fact.

4. Household had a duty to investigate and produce these documents, or at a minimum, to disclose their existence to the Class by listing them on a privilege log. In fact, at the October 19, 2006 status conference, just two days after the Class filed the original motion compelling the production of the E&Y documents, the Court instructed defendants that they had two weeks to assert privilege over any productions “even if they had to work around the clock” because, as the Court recognized, “we’re running out of time.” *See* Ex. 4 at 110-112.

5. No fewer than 31 outstanding document requests cover the 425 boxes, including, for example, requests in the Class’ **very first document request** served on May 17, 2004:

“All documents and communications concerning or relating to Household’s lending practices and policies related to loans secured by real property (as described in the Complaint), including, but not limited to, correspondence, analyses, statistics, presentations, training materials, public statements, memoranda and notes.”

6. The Class vigorously asserted throughout the summer of 2006 that all E&Y documents must be produced. And in June of 2006, defense counsel represented “[o]ur firm is **currently in the process of gathering information about all Ernst & Young engagements for**

***Household during the class period.***” See Ex. 5. Yet, defendants never disclosed the existence of the 425 boxes.

7. In response to the Class’ E&Y motion, on November 3, 2006, defendants’ General Counsel, Kenneth Robin submitted a sworn, four-page declaration providing detail on the E&Y documents, his personal involvement in the Compliance Engagement, and concluding “***[a]t all times, the Office of the General Counsel has taken care to hold the results of the Compliance Engagement and related privileged material in strictest confidence.***” See Ex. 6.

8. Only three weeks later, in connection with his deposition, defendants certified that Mr. Robin had produced all documents responsive to the Class’ requests. See Ex. 7.

9. Both this Court and Judge Guzman have ordered defendants to produce these documents. Dkt. Nos. 806, 940. In defendants’ scramble to damage control this issue, they have hastily filed papers today ***admitting*** that the 425 boxes relate to the “Compliance Engagement,” but claiming that defendants did not discover the documents until last week. Dkt. No. 986.<sup>1</sup>

10. After concealing the documents for over two years, defendants still refuse to produce the 425 boxes, and blame the Class for their contumacious conduct. See Ex. 1. Defendants’ blame game is nonsensical given their assertion that they did not become aware of the documents until this week despite the fact that ***they*** possess the documents.

11. Given defendants’ history of delay in this case, they ***should be ordered to produce all 425 boxes of E&Y work papers no later than Wednesday, February 28, 2007 by 5:00 P.M. EST.*** Further, the Class urges the Court to sanction the defendants for their flagrant disregard of the Federal Rules and the Court’s orders.

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<sup>1</sup> The Class wishes to more fully respond to defendants’ opposition filed today, should the Court find it necessary to have this issue briefed.

12. In addition, as the Court is aware, documents relating to Arthur Andersen and E&Y have delayed the depositions of Mr. Keller and Mr. Bianucci. The Class should not be penalized now for E&Y and Household's wanton disregard for court orders and clear notice by the Class that document production must be completed in advance of the depositions. *See* Ex. 8.

13. E&Y's newly-appointed counsel, Ms. Lucia Nale, now urges the Court to allow neither deposition to proceed. *See* Ex. 9. Ms. Nale represents both E&Y (who is resisting discovery) and Arthur Andersen (who is obligated pursuant to the settlement agreement entered by Judge Guzman, to cooperate with the Class in all facets of discovery). Messrs. Bianucci and Keller were the chief auditors at Arthur Anderson, a company that audited Household's books during the Class Period.

14. The Class must have these depositions take place in order to file expert reports on time. The Class urges the Court to order all currently scheduled depositions to go forward and allow the Class to recall any previously deposed witnesses for additional examination after the Class has time to review the 425 boxes that defendants have been concealing for over two years. The Court should order defendants to pay all fees and expenses associated with the production and review of the 425 boxes, and with any related depositions. The Court simply cannot countenance such flagrant violations at this late stage in discovery, particularly where they seriously prejudice the Class.

DATED: February 26, 2007

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 February 26, 2007, declarant served by electronic mail and by U.S. Mail to the parties the: **SUPPLEMENT TO THE CLASS' MOTION TO COMPEL PRODUCTION OF ERNST & YOUNG LLP DOCUMENTS AND FOR SANCTIONS FOR DEFENDANTS' CONTINUING VIOLATIONS OF JUDGE GUZMAN'S FEBRUARY 1, 2007 ORDER AND THIS COURT'S DECEMBER 6, 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 26th day of February, 2007, at San Francisco, California.

s/ Pamela Jackson  
\_\_\_\_\_  
PAMELA JACKSON