

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FILED

LAWRENCE E. JAFFE, Pension Plan )  
and on behalf of all others )  
similarly situated, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
HOUSEHOLD INTERNATIONAL, INC. )  
ARTHUR ANDERSEN, L.L.P., )  
 )  
Defendants. )  
\_\_\_\_\_ )

JUN 19 2003

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

No. 02 C 5893

Judge Ronald A. Guzman

JUN 24 2003

NOTICE OF FILING

To: Counsel on the Attached Service List

PLEASE TAKE NOTICE that on June 19, 2003, we filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Chicago, Illinois, the following documents:

*Plaintiffs' Response to Household Defendants' Motion to Dismiss [Corrected] Amended Consolidated Class Action Complaint* ✓

*Plaintiffs' Response to the Motion to Dismiss the [Corrected] Amended Consolidated Class Action Complaint by Defendants Goldman Sachs & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith, Inc.* ✓

*Plaintiffs' Response to Arthur Andersen LLP's Motion To Dismiss Counts I, III and IV of Plaintiffs' [Corrected] Amended Consolidated Complaint* ✓

*Plaintiffs' Opposition to Defendant Arthur Andersen LLP's Motion to Strike Paragraphs 180 and 181 of Plaintiffs' [Corrected] Amended Consolidated Complaint* ✓

*Plaintiffs' Request for Judicial Notice* ✓

*Compendium of Exhibits in Support of Plaintiffs' Request for Judicial Notice* ✓


*Compendium of Authorities* ✓

copies of which are hereby served upon you.

100

Dated: June 19, 2003

Respectfully submitted,

By:   
Marvin A. Miller  
Jennifer Winter Sprengel  
Lori A. Fanning  
**MILLER FAUCHER and CAFFERTY LLP**  
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**DECLARATION OF SERVICE BY MAIL**

I, the undersigned, declare:

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

2. That on June 19, 2003, declarant served the following documents by depositing a true copy thereof in a United States mailbox at San Francisco, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List, except as otherwise noted thereon:

*Plaintiffs' Response to Household Defendants' Motion to Dismiss [Corrected] Amended Consolidated Class Action Complaint*

*Plaintiffs' Response to the Motion to Dismiss the [Corrected] Amended Consolidated Class Action Complaint by Defendants Goldman Sachs & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith, Inc.*

*Plaintiffs' Response to Arthur Andersen LLP's Motion To Dismiss Counts I, III and IV of Plaintiffs' [Corrected] Amended Consolidated Complaint*

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*Plaintiffs' Request for Judicial Notice*

*Compendium of Exhibits in Support of Plaintiffs' Request for Judicial Notice*

*Compendium of Authorities*

I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of June, 2003, at San Francisco, California.

  
DEBORAH R. DASH

HOUSEHOLD INTERNATIONAL (LEAD)

Service List - 6/17/2003 (02-0377)

Page 1 of 2

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Service List - 6/17/2003 (02-0377)

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FILED  
JUN 22 2003

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

LAWRENCE E. JAFFE PENSION PLAN, On )  
Behalf of Itself and All Others Similarly )  
Situating, )  
  
Plaintiff, )  
  
vs. )  
  
HOUSEHOLD INTERNATIONAL, INC., et al., )  
  
Defendants. )  

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Lead Case No. 02-C-5893  
(Consolidated)  
  
CLASS ACTION  
  
Judge Ronald A. Guzman  
Magistrate Judge Nan R. Nolan

**PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE**

FILED  
JUN 22 2003

1. Plaintiffs respectfully request that this Court take judicial notice of the following publicly available documents:

- Exhibit 1: Household International Inc.'s Proxy Statement Pursuant to Section 14(A) of the Securities Exchange Act of 1934, filed on March 19, 2003 ("Proxy Statement");
- Exhibit 2: *In the Matter of Household International, Inc.*, Securities and Exchange Commission Administrative Proceeding File No. 3-11072, Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934, dated March 18, 2003 ("Consent Decree");
- Exhibit 3: *Luna v. Household Finance Corp.*, United States District Court, District of Washington at Seattle, Case No. C02-1635 RSL, Declaration of Melissa Rutland-Drury, filed on February 21, 2003 ("Drury Decl."); and
- Exhibit 4: *Luna v. Household Finance Corp.*, United States District Court, District of Washington at Seattle, Case No. C02-1635 RSL, excerpts from the Deposition of Charles L. Cross, III taken on December 19, 2002 and February 4, 2003 ("Cross Deposition Transcript"), attached as Exhibit C to the Declaration of Lori K. Rath, filed March 24, 2003.

2. This Court may take judicial notice of facts not subject to reasonable dispute that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Judicial notice may be taken at any stage of the proceeding. See Fed. R. Evid. 201(f). In the Seventh Circuit, courts "may take judicial notice of the following without converting a motion to dismiss to a summary judgment notion [sic]: 'matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint.'" *Grimes v. Navigant Consulting, Inc.*, 185 F. Supp. 2d 906, 913 (N.D. Ill. 2002) (quoting *General Electric Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1080 (7th Cir. 1997) (internal quotation omitted)).

3. Exhibits 1-4 are all matters of public record, capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and are therefore properly subject to judicial notice. See Fed. R. Evid. 201(b). "This court ... has the power, in fact the obligation, to take judicial notice of the relevant decisions of courts and administrative agencies, *whether made before or after the decision under review.*" See *Opoka v. INS*, 94 F.3d 392, 394 (7th Cir. 1996)(emphasis added). Each of the exhibits here is highly relevant to the subject

matter of plaintiffs' Complaint<sup>1</sup> and would have been incorporated therein had it been available at the time the Complaint was filed. The Consent Decree was finalized on March 18, 2003, and the Proxy Statement was filed with the Securities and Exchange Commission ("SEC") on March 19, 2003, thus neither was available until after plaintiffs' Complaint was filed on March 13, 2003. Similarly, the Cross Deposition Transcript was not filed in the *Luna* action until March 24, 2003. The Drury Decl. was filed under seal in the *Luna* litigation and was not unsealed until April 9, 2003.<sup>2</sup>

4. In securities cases, statements made either prior to or subsequent to the class period are relevant "to confirm what a defendant should have known during the class period." *In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 72 (2d Cir. 2001); *Rothman v. Gregor*, 220 F.3d 81, 92 (2d Cir. 2000) (post-class period evidence is relevant to show fraud); *Novak v. Kasaks*, 216 F.3d 300, 312-13 (2d Cir. 1999) (write-off inventory after the class period reasonably suggests inventory over-valued during the class period). These cases are based on the common-sense notion that "[a]ny information that sheds light on whether class period statements were false or materially misleading is relevant." *Scholastic*, 252 F.3d at 72.

#### **The Proxy Statement Is Judicially Noticeable**

5. "The Court may take judicial notice of documents filed with the SEC without converting a motion to dismiss into a motion for summary judgment." *In re Allscripts Secs. Litig.*, No. 00 C 6796, 2001 U.S. Dist. LEXIS 8897, at \*6 n.2 (N.D. Ill. June 28, 2001). The Proxy Statement is highly relevant to plaintiffs' Complaint. It incorporates by reference a number of prior Household International Inc. ("Household") SEC filings, including its Forms 10-K/A for FY01 and FY02, and Forms 10-Q for 1Q02 and 2Q02. Exhibit 1 at 8-9. Plaintiffs allege that financial results in these filings were false and misleading because, among other reasons, they contain misrepresentations and omissions regarding defendants' reaping policies during the period from October 23, 1997 to October 11, 2002. ¶¶311, 313, 324, 328, 333, 342.

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<sup>1</sup>The Complaint refers to the [Corrected] Amended Consolidated Class Action Complaint for Violation of the Federal Securities Laws, filed March 13, 2003. All paragraph ("¶") references are to the Complaint.

<sup>2</sup>Exhibits referenced in the Drury Decl. remain sealed.



6. In taking judicial notice of SEC filings, the Second Circuit reasoned that where "the documents are required by law to be filed with the SEC ... no serious questions as to their authenticity can exist. Second, the documents are the very documents that are alleged to contain the various misrepresentations or omissions and are relevant not to prove the truth of their contents but only to determine what the documents stated." *Kramer v. Time Warner, Inc.*, 937 F.2d 767, 774 (2d Cir. 1991). Accordingly, judicial notice of Household's Proxy Statement is proper.

#### **The Consent Decree Is Judicially Noticeable**

7. The Court may take judicial notice of relevant, indisputable facts on a motion to dismiss. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-90 (9th Cir. 2001).

8. This Court may take judicial notice of the Consent Decree for three reasons. First, the Consent Decree's contents are unquestionably a matter of public record, *see* Ex. 1, ¶1 ("The Securities and Exchange Commission deems it appropriate that *public* cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 against Household International, Inc.")(emphasis added). Second, the Consent Decree is the decision of an administrative agency, the SEC. *See Fornalik v. Perryman*, 223 F.3d 523, 529 (7th Cir. 2000) ("it is well-established that executive and agency determinations are subject to judicial notice"); *McGee v. UPS*, No. 01 C 9099, 2002 U.S. Dist. LEXIS 4803, at \*\*5-6 (N.D. Ill. Mar. 21, 2002) ("the court may take judicial notice of matters of public record, including records of administrative bodies"). Finally, the Consent Decree is incorporated by reference into the Proxy Statement which, as discussed in ¶¶5-6 *supra*, is properly noticeable.

9. Courts in this District have held that consent decrees are judicially noticeable on a motion to dismiss when they are related to the subject matter of the litigation. *See Johnson v. Fairman*, No. 95 C 5416, 1997 U.S. Dist. LEXIS 3516 (N.D. Ill. Mar. 19, 1997)(where plaintiff alleged he suffered unconstitutional conditions while in jail, court took judicial notice of consent decree entered in a separate class action covering conditions at the jail revealing that three inmates are placed in two-man cells for sleeping to free up space for daytime activities, not to punish inmates); *Corcoran v. Chicago Park Dist.*, No. 88 C 0234, 1988 U.S. Dist LEXIS 3863, at \*\*9-10

(N.D. Ill. Apr. 20, 1988)(relying on a consent decree in determining plaintiff's job was one in which political affiliation could be taken into consideration).

10. The SEC's findings, documented in the Consent Decree, corroborate plaintiffs' allegations that defendants manipulated Household's delinquency rates and credit loss reserves by improperly reaging delinquent accounts. ¶¶2, 12-14, 24-25, 50, 107-133. Plaintiffs do not request that this Court take judicial notice of the truth of the SEC's findings contained in the Consent Decree; rather, they seek judicial notice of the existence of the Consent Decree and the fact that the SEC made the findings contained therein. *See, e.g., Opoka*, 94 F.3d at 394 ("[A] court may take notice of another court's order only for the limited purpose of recognizing the "judicial act" that the order represents or the subject matter of the litigation.") (quoting *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994)).

11. Thus, judicial notice of the Consent Decree is proper.

**The Drury Declaration and Cross Deposition Transcript Are Judicially Noticeable**

12. Both the Drury Decl. and Cross Deposition Transcript are relevant to, and corroborate, allegations in plaintiffs' Complaint. Both are part of the court record in *Luna v. Household Finance Corp.*, United States District Court, District of Washington at Seattle, Case No. C02-1635 RSL. As such, they are judicially noticeable. *See Henson v. CSC Credit Servs.*, 29 F.3d 280, 284 (7th Cir. 1994) (confirming that court documents from a related state proceeding are judicially noticeable); *Opoka*, 94 F.3d at 394 ("Determinations to be judicially noticed include proceedings in other courts, both within and outside the federal judicial system, if the proceedings have a direct relation to matters at issue.") (quotations omitted).

13. The Complaint alleges that Melissa Drury was the former branch manager in Bellingham, conducted her job in accordance with her training and company guidelines and used sales pitches that were both approved and provided by Household. ¶90. Charles Cross is the author of the Washington Department of Financial Institutions Expanded Report of Examination for Household Finance Corporation III, which is referred to repeatedly throughout the Complaint. ¶¶18, 21, 53, 58, 62, 65, 74, 80, 84, 87, 330. Both the Drury Decl. and Cross Deposition Transcript corroborate the Complaint's allegations of Household's nationwide predatory lending scheme, ¶¶2,

51-82, and defendants' knowledge of, and participation in, that scheme. ¶¶2, 21, 23, 51-82, 83, 86, 90, 92, 93, 98-99, 300, 301, 317, 320, 329, 341. In addition, the Drury Decl. describes document shredding at Household that is highly probative of defendants' scienter. See Exhibit 3 at ¶¶132-134, 141-151.

14. Again, plaintiffs seek only judicial notice of the existence and content of the Drury Decl. and Cross Deposition Transcript, not the truth of the matters asserted therein. See *Opoka*, 94 F.3d at 394. Thus, judicial notice of both the Drury Declaration and excerpts of the Cross Deposition Transcript is proper.

#### **Conclusion**

15. For the foregoing reasons, plaintiffs respectfully request that this Court take judicial notice of Exhibits 1-4.

DATED: June 19, 2003

Respectfully submitted,



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See Case  
File For  
Exhibits