

**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.)	
_____)	

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS'
MOTION *IN LIMINE* TO PRECLUDE PLAINTIFFS FROM ADVANCING CERTAIN
STATEMENTS AS A BASIS FOR ANY DEFENDANT'S LIABILITY**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ARGUMENT	2
A. Defendants' Pre-Class Period Statements Are Actionable	2
B. Defendants' False and Misleading Statements Are Not Puffery and Therefore Actionable	3
1. Defendants Statements About Their Business Were Material to Investors and Are Actionable.....	3
2. Defendants Denials of Predatory Lending Were Material to Investors and Are Actionable.....	5
C. Statements Made by Company-Authorized Spokespersons to Reporters Are Actionable	8
III. CONCLUSION.....	12

I. INTRODUCTION

On March 19, 2004, this Court denied defendants' motion to dismiss plaintiffs' [Corrected] Consolidated Complaint, concluding that plaintiffs sufficiently plead the "who, what, when and where" of their §10(b) and Rule 10b-5 claims. *See Jaffe v. Household Int'l, Inc.*, No. 02 C 5893, 2004 U.S. Dist. LEXIS 4659, at *24-*25 (N.D. Ill. Mar. 22, 2004). Defendants' current motion to not allow plaintiffs to present the same type of statements to the jury is nothing more than a shallow attempt to bring back from the dead the same arguments about defendants' false statements this Court rejected almost five years ago. But nothing has changed in the last five years – defendants' arguments were unconvincing then, just as they are now.

Each of the false statements plaintiffs intend to present to the jury at trial is actionable. The July 22, 1999 press release is actionable for those who purchased Household stock from July 30, 1999 to August 15, 1999 as a result of defendants' failure to correct on July 30, 1999 the false statements made in the July 22, 1999 press release. Statements made in Household's press releases are also actionable since they are clearly material – they contain specific financial results, including figures for net income, net chargeoff and managed delinquency ratios, which defendants do not dispute, are clearly not pure "hype" or statements of optimism. Defendants other statements about Household's business that were part of the same quarterly press releases were also material to investors and must be considered in the context of the overall press release issued each fiscal quarter. When analyzed in that context, they clearly are not "soft" statements but material statements that investors were relying on. Defendants' vehement predatory lending denials in press releases are also actionable, as a jury could easily find it important that Household's commitment to "ethical lending practices" was nothing but a sham, even in the absence of a universal definition for the term "predatory lending." Finally, quotes of Household representatives denying predatory lending are actionable as the articles contain quotes directly attributable to defendant Gilmer and Household's

authorized spokespersons and there is no evidence that the quoted statements were inaccurate when published. Defendants' motion to preclude plaintiffs' from relying on these statements at trial should be denied.

II. ARGUMENT

A. Defendants' Pre-Class Period Statements Are Actionable

On February 28, 2006, Judge Guzman granted defendants' motion to shorten the Class Period to begin on July 30, 1999 – a date identified by defendants notwithstanding the fact that Household made no public statement on that day. *See* Docket No. 245 (arguing to reduce the October 1997 through October 2002 Class Period because it “necessarily include[ed] purchases for which relief can no longer be sought because they occurred prior to July 30, 1999”). The first alleged false and misleading public statements after that date were made on August 16, 1999, when defendants filed Household's Form 10-Q for the quarter ended June 30, 1999. The anomaly in this case is that a result of the Court's order (and at defendants' request), the first day of the current Class Period begins on a date where there is no public statement by defendants.

Plaintiffs contend that on July 30, 1999, defendants had a duty to correct the false and misleading July 22, 1999 press release. Thus, the only real issue is whether defendants' pre-Class Period statement of its second quarter results on July 22, 1999 can be used by those purchasers of Household stock in the two week period of July 30, 1999 through August 16, 1999. The Court has yet to resolve this issue. In the event this Court finds a duty to correct the July 22, 1999 statements, the statements made on that date are actionable as to those who purchased Household stock from July 30, 1999 to August 15, 1999. On the other hand, accepting that this Court might find no duty to correct on that date, the Class Period would instead start with defendants' August 16, 1999 statements that caused Household's stock to be artificially inflated on that day. Accordingly, plaintiffs should not be precluded from advancing the July 22, 1999 press release until or unless the

Court finds defendants had no duty to correct on that date. Because the Court has not yet ruled as such, defendants motion to preclude plaintiffs' from advancing this statement should be denied.

B. Defendants' False and Misleading Statements Are Not Puffery and Therefore Actionable

1. Defendants Statements About Their Business Were Material to Investors and Are Actionable

Defendants first seek to preclude statements in Household's earnings press releases. Strategically cherry-picking only the most generalized language from the press releases, defendants contend the statements are nothing more than "unspecified expression of enthusiasm" and "pure hype." Memorandum of Law in Support of Defendants' Motion *in Limine* to Preclude Plaintiffs from Advancing Certain Statements as a Basis for Any Defendant's Liability ("Defs' Mem.") at 4. The materiality of defendants' false and misleading statements cannot be analyzed in isolation, as defendants so attempt. Rather, Household's press releases must be viewed in totality. When they are, it becomes immediately clear that the statements contained therein would be considered material to any reasonable investor.¹

For example, defendants misleadingly cite only a narrow portion of Household's January 19, 2000 press release, in which defendants announced: "[w]e are very pleased to report another record quarter, the culmination of an absolutely outstanding year for Household. Growth and profitability in the quarter were excellent and exceeded our expectations. Revenues were particularly strong." Kavalier Decl., Ex. 5, ¶5. This excerpt represents only a small snippet of the information disclosed to

¹ Additionally, it is well-established that a 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 *peculiarly ones for the trier of fact.*" *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 450 (1976) (emphasis added). The jury should be entitled to hear each of the statements plaintiffs allege are false and misleading and determine on its own whether the statements are material. Defendants' motion should therefore be denied.

the investors and the market in the January 19, 2000 press release. The entireties of the statements plaintiffs allege are false and misleading are as follows:

January 19, 2000 Household Press Release entitled “Household International Reports Best Quarter and Year in Its History”: Household “reported that fourth quarter earnings per share increased 30 percent to a record \$.92 from \$.71 a year ago. Fourth quarter net income rose 25 percent to a record \$438.8 million, compared with \$349.9 million a year ago. For the full year, Household reported record earnings per share of \$3.07, which was 33 percent over 1998 operating earnings per share. Net income totaled \$1.5 billion, or 29 percent above the prior year’s operating net income.”

* * *

“We are very pleased to report another record quarter, the culmination of an absolutely outstanding year for Household. Growth and profitability in the quarter were excellent and exceeded our expectations. Revenues were particularly strong. . . . Our record earnings reflect an outstanding year in our consumer finance business, a dramatic turnaround in our MasterCard/Visa business, and strong results in all of our other businesses. We are particularly pleased with excellent receivable growth in 1999, particularly in our branches, while fully realizing all of the acquisition synergies of the Beneficial merger.”

* * *

“Credit Quality and Loss Reserves

Credit quality improved from both the third quarter and a year ago. The annualized net chargeoff ratio for the fourth quarter fell 13 basis points to 3.96 percent, the lowest level since 1997. The chargeoff ratio was 4.09 percent in the third quarter and 4.39 percent in the year-ago quarter. The managed delinquency ratio (60+days) improved 23 basis points to 4.66 percent at December 31, compared with 4.89 percent at September 30 and 4.90 percent a year ago.”

The foregoing statements are neither vague nor general.² The press release also sets forth specific results for earnings per share and net income, along with figures for the Company’s net chargeoff ratios and managed delinquency ratios, all of which were false and misleading when made. These statements clearly are not “soft” statements but financial results that are clearly actionable.

² To the extent defendants only seek to exclude the portions of the press release describing Household’s business results, this language was alleged to be false and misleading in plaintiffs’ Consolidated Complaint and previously deemed actionable. See *Jaffe*, 2004 U.S. Dist. LEXIS 4659, at *24-*25.

See Aviva Partners LLC v. Exide Techs., No. 05-3098 (MLC), 2007 U.S. Dist. LEXIS 17347, at *46 (D.N.J. Mar. 13, 2007) (“Published earnings figures that are allegedly false or misleading are the types of statements actionable under section 10(b) and Rule 10b-5.”). The same may be said for each false statement of financial results that defendants seek to preclude. *See Kavalier Decl. Ex. 5*, ¶¶5, 7, 9, 11, 15, 18, 21, 25, 30, 35. A jury could easily find that a reasonable investor would have considered it important that Household’s “record” results were the product of the Company’s deceptive lending practices, that the Company improperly reaged delinquent loans to current in order to conceal the true level of delinquencies and mask the credit quality of Household’s loan portfolios, and that Household overstated net income by failing to record timely expenses associated with its various credit card agreements in violation of GAAP. Because Household’s press release, when considered in totality, does not contain vague statements of optimism or hype, defendants’ motion should be denied. *Sequel Capital, LLC v. Rothman*, No. 03 C 0678, 2003 U.S. Dist. LEXIS 20967, at *36 (N.D. Ill. Nov. 24, 2003) (concluding that defendants’ statement that the company “successfully integrated the acquisitions” was material).

2. Defendants Denials of Predatory Lending Were Material to Investors and Are Actionable

Defendants next attempt to preclude plaintiffs from relying on defendants’ statements made in Household press releases (Nos. 13 and 16 on Plaintiffs’ False Statement Chart, Ex. A to the Parties Joint Statement of Undisputed Facts attached as Exhibit A to the Final Pretrial Order). In these press releases, defendants denied that Household was a predatory lender or that the Company engaged in predatory lending practices. During the Class Period, defendants repeatedly reassured investors that Household was not a predatory lender, “abhorred” any type of unethical lending practices and “fully complied with all applicable federal and state laws and regulations. *See Kavalier Decl., Ex. 5*, ¶¶13, 16 (quoting defendant Gary Gilmer); *see generally Kavalier Decl., Ex. 5*, ¶¶19, 23, 32, 39.

Defendants characterize these and other Class Period denials about Household's involvement in predatory lending as vague, generic statements that are nothing more than puffery. Relying on *Searls v. Glasser*, 64 F.3d 1061 (7th Cir. 1995), defendants further contend that the absence of a universal definition of the term "predatory lending" precludes plaintiffs from advancing as a basis for liability at trial defendants' statements denying accusations that Household was a predatory lender or that it engaged in predatory lending practices.³ Defs' Mem. at 5-6.

Defendants' repeated statements denying Household's predatory lending practices are easily distinguishable from the non-actionable statements alleged in *Searls*, 64 F.3d 1061. There, plaintiffs brought a securities fraud suit based on defendant's statement that the corporation was "recession-resistant." *Id.* at 1064. The court deemed the statement too vague, stating that "[i]t is a promotional phrase used to champion the company but is devoid of any substantive information." *Id.* at 1066. The court further likened the statement to a projection, or a loose prediction, which are non-actionable as a matter of law. *Id.* at 1067.

In contrast, at a time when investors were questioning whether Household's results were due to predatory lending practices similar to one of its competitors (Providian), defendants here made particularized statements disclaiming any predatory lending practices at Household, while reassuring investors that the Company's lending practices were "ethical" and compliant with the law. Indeed, during the Class Period, defendants took great pain to distinguish Household from other companies faced with allegations of predatory lending practices, stating that "predatory lending practices

³ Defendants made the same losing argument in their motion to dismiss plaintiffs' [corrected] amended consolidated class action complaint. *See* Docket No. 88 at 35 (arguing that various statements quoted in the Amended Complaint are non-actionable puffery). Defendants even relied on the same "recession-resistant" language from *Searls v. Glasser* in arguing that various statements quoted in the Amended Complaint were non-actionable puffery. *Id.* ("For example, 'indefinite predictions of growth' and descriptions of a company as "recession-resistant," constitute non-actionable puffery . . .). This Court already once rejected defendants' "puffery" argument and should do so again now. *See Jaffe*, 2004 U.S. Dist. LEXIS 4659.

undermine[d] the integrity of the industry in which [Household] compete[s].” Kavalier Decl. Ex. 5, ¶13; ¶23 (“Frankly, you don’t stay in business in this industry by taking advantage of your customers . . . so [the Company] take[s] exception to any characterization that [Household] engaged in predatory lending practices.”). Defendants’ statements reassuring the market that Household was an upstanding corporate citizen that abhorred predatory lending practices were not mere “promotional phrase[s] . . . devoid of substantive information,” nor were they financial projections, as was the case in *Searls*, 64 F.3d 1061. Instead, defendants’ statements concerned a widely used and commonly understood term – predatory lending – and conveyed to the market that everything at Household was above-board with respect to the Company’s lending practices. Household’s reassurances were particularly important to investors at a time when the topic of “predatory lending” was gaining increasing attention from regulatory agencies and the media and companies such as Provident were being accused of deceptive lending practices on a daily basis. Defendants cannot seriously contend that a reasonable investor would not consider Household’s deceptive lending practices an important fact in deciding whether to buy or sell Household securities. *Makor Issues & Rights, Ltd. v. Tellabs, Inc.*, 437 F.3d 588, 596 (7th Cir. 2006).

Moreover, courts have consistently found statements of opinion and other subjective statements to be actionable under §10(b) if the speaker is aware of undisclosed facts that tend to seriously undermine the statement’s accuracy, and if the statement, in context, would likely have been important to investors. *See Lindelo v. Hill*, No. 00 C 3727, 2001 U.S. Dist. LEXIS 10301, at *12 (N.D. Ill. Jul. 20, 2001) (sales puffery may be actionable if defendants “said things that were so discordant with reality that they would induce a reasonable investor to buy the stock at a higher price than it was worth ex ante”). Such is the case here. Defendants’ statements that Household was an “ethical lender” that “abhorred” deceptive lending practices and complied with state and federal law were completely at odds with the deceptive lending practices ingrained in Household’s business –

practices authorized by defendants that were eventually made known to the public, culminating in Household's \$484 million settlement with the state attorneys general. *See In re Countrywide Fin. Corp. Sec. Litig.*, No. CV-07-05295-MRP (MANx), 2008 WL 5100124, at *2 (C.D. Cal. Dec. 1, 2008) (finding the statement "high quality" actionable because Countrywide's "essential operations were so at odds with the company's public statements that many statements that would not be actionable in the vast majority of case are rendered cognizable to the securities laws).

Finally, the market's reaction to allegations stemming from Household's predatory lending activities also demonstrates that a reasonable investor considered Household's predatory lending denials an important fact in deciding whether to buy or sell Household securities. For example, the price of Household stock dropped significantly following a report that the California Department of Corporations had sued Household's HFC and Beneficial subsidiaries for violations of state consumer protection laws due to the Company's abusive lending practices. Fischel Report, ¶¶12, 34, attached as Ex. 1 hereto. The price of Household stock also dropped several times thereafter, each time in response to news about Household's predatory lending practices. *Id.*, ¶34. The movement of Household's stock price in response to evidence of predatory lending at Household is another factor demonstrating defendants' predatory lending denials are actionable statements for which defendants should be held liable. *No. 84 Employer-Teamster Joint Council Pension Trust Fund v. Am. W. Holding Corp.*, 320 F.3d 920, 935 (9th Cir. 2003) (movement of stock price was one factor taken into consideration in determining the materiality of defendants' misstatements).

C. Statements Made by Company-Authorized Spokespersons to Reporters Are Actionable

Defendants also seek to preclude plaintiffs from relying on statements made by reporters directly quoting Household spokespersons, Craig Strem ("Strem") and Megan Hayden-Hakes ("Hayden-Hakes"). (Statement Nos. 12, 22-23, 26, 31-32, 36-37, 39-42, and 46-47 as set forth in the False Statement Chart.) During the Class Period, Strem was the Vice President of Corporate

Relations and Communications and reported directly to defendant Aldinger. Hayden-Hakes, a direct report of Stroom, served as Director of Corporate Communications. Stroom Depo. at 23:8-12, attached as Ex. 2 hereto. Hayden-Hakes Depo. at 28:3-4, attached as Ex. 3 hereto. Both were authorized to make statements to the media on behalf of Household. Hayden-Hakes Depo. at 95:19-96:1 (“I was the company spokesperson. I was responsible – one of the company’s spokespersons. I was responsible for handling media relations.”). That defendants can be held liable for the statements made by Stroom and Hayden-Hakes to the media, as *authorized company spokespersons*, cannot be subject to dispute.

First, defendants’ reliance on the “entanglement theory” is completely misguided. Under the entanglement theory, corporate officers can be found liable for “*unreasonable, third-party forecasts* only if they have sufficiently entangled themselves with the forecasts by placing their imprimatur, express or implied, on the projections.” *In re SmarTalk Teleservices, Inc. Sec. Litig.*, 124 F. Supp. 2d 527, 544-45 (S.D. Ohio 2000) (finding defendants liable for analysts’ statements without having to demonstrate the elements of the entanglement test) (emphasis added). The entanglement theory is entirely inapplicable here because plaintiffs are not relying on third-party analysts’ loose interpretations of statements made by management as a basis for defendants’ liability. Rather, the statements set forth in news articles are *directly attributable* to defendant Gilmer and Household spokespersons Stroom and Hayden-Haykes.

Indeed, the authorities defendants cite in support of their “entanglement theory” relate to patently different circumstances and each address the *pleading requirements* for establishing liability for generalized *statements* made by securities analysts loosely interpreting conversations

with management.⁴ None of the cases relied on by defendants address the circumstances present here – statements made in news articles that can be *directly attributed* to defendant or company spokespersons.

Defendants’ claim that Stroom and Hayden-Hakes were misquoted or misunderstood is disingenuous at best and better left for a jury to decide. The statements made by Stroom and Hayden-Hakes were consistent with the false and misleading statements made by defendant Gilmer and advanced by the Company throughout the Class Period, *i.e.* that Household diametrically opposed and did not engage in unethical lending practices.⁵ There is no evidence in the record demonstrating that the statements made by Stroom or Hayden-Hakes inaccurately represented Household’s false and misleading position on predatory lending. Had journalists misquoted Hayden-Hakes or Stroom or “inaccurately interpreted” their remarks as defendants contend, certainly there would be some contemporaneous evidence demonstrating defendants’ belief that Household’s spokespersons had been misquoted. But there is none. Indeed, as part of her job, Hayden-Hakes regularly distributed “particularly newsworthy” articles to Household senior management, including

⁴ See, e.g., *In re ATI Techs. Sec. Litig.*, No. 05-4414, 2007 WL 2301151, at *9 (E.D. Pa. Aug. 8, 2007) (dismissing as not actionable statement contained in Goldman Sachs and Deutsche Bank analyst reports that merely stated the analysts’ own observations about the company); *In re Dura Pharms., Inc. Sec. Litig.*, 452 F. Supp. 2d 1005, 1035 (S.D. Cal. 2006) (dismissing statements made in analyst reports because reports failed to identify which statements were made by management); *In re NTL, Inc. Sec. Litig.*, 347 F. Supp. 2d 15, 36 (S.D.N.Y. 2004) (failing to adequately plead that analysts relied on specific information provided to defendants where analyst report did not identify exact statements made by defendants); *Frazier v. Vitalworks, Inc.*, 341 F. Supp. 2d 142, 151 (D. Conn. 2004) (dismissing “completely unattributed” statements made in analyst report).

⁵ Indeed, even when speaking in terms of Household’s general lending philosophy, Hayden-Hakes confirmed that she was merely reiterating her understanding of Household’s stance on “customer commitment,” *as conveyed to her by management*. Hayden-Hakes Depo. at 141:15-142:2; 157:13-158:10. In other words, Hayden-Hakes was a conduit for management’s false and misleading statements. For example, when asked about the statement in the May 31, 2002 *American Banker* article, in which Hayden-Hakes claimed “Household ‘took full and prompt responsibility’ and is ‘satisfied that this situation was localized to the Bellingham branch’” she confirmed that “that’s what [she] was told by people who were involved in the investigation” Hayden-Hakes Depo. at 191:5-10.

Gilmer, Aldinger and Schoenholz. Hayden-Hakes Depo. at 117:23-118:19; Hayden-Hakes Ex. 26, attached as Ex. 4 hereto. Yet at no time during the Class Period did anyone in senior management indicate that the wrong message had been sent to the public via any of the news articles.⁶ Hayden-Hakes Depo. at 129:21-130:6. Thus, the statements in the media attributed to Stroom and Hayden-Hakes are not the type of “unreasonable” third-party statements to which the “entanglement theory” generally applies. Defendants should be held accountable for the false and misleading statements made by Household spokespersons.

Defendants also contend plaintiffs should not be permitted to rely on a March 23, 2001 *Origination News* article, which repeats verbatim a statement made by defendant Gilmer in Household’s March 12, 2001 Press Release. In the Press Release, defendant Gilmer reaffirmed Household’s position on predatory lending: “Household’s position on predatory lending is perfectly clear . . . [u]nethical lending practices of any type are abhorrent to our company, our employees, and most importantly our customers.” See Kavalier Decl. Ex. 5, ¶16; Hayden-Hakes Depo. at 133:15-3 (confirming that Household management usually approved press releases before their issuance). That defendant Gilmer can be held liable for the false and misleading statements *he* made in a Household Press Release that were subsequently repeated by a journalist cannot be subject to dispute. There is no “risk” that the author of the *Origination News* article quoted Gilmer out of context or inaccurately interpreted his statement, as the article a *word-for-word* reproduction of the statements made by Gilmer in Household’s press release. Moreover, a journalist quoting defendant

⁶ Hayden-Hakes testified that it was her practice to alert journalists to errors in the event any inaccuracies or misstatements appeared. Hayden-Hakes Depo. at 100:18-20. Hayden-Hakes recalled only *one* instance during the Class Period where statements were inaccurately attributed to her by the media – in an *Associated Press* article by Don Thompson. Hayden-Hakes Depo. at 101:2-17. During her deposition, Hayden-Hakes confirmed that Don Thompson corrected his error after she called to complain about the inaccuracy. She could recall *no other* instance in which she was inaccurately quoted. *Id.* at 102:13-103:8.

Gilmer's prior statements is analogous to a quote contained in an analyst report, and it is well established that defendants cannot escape liability by filtering their false statements through the eyes and ears of analysts. *See Warsaw v. Xoma*, 74 F.3d 955 (9th Cir. 1996). Defendants' motion to preclude plaintiffs from advancing these statements as a basis for defendants' liability should be denied.

III. CONCLUSION

For the foregoing reasons, defendants' motion should be denied in its entirety.

DATED: February 10, 2009

Respectfully submitted,

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
PATRICK J. COUGHLIN (111070)
MICHAEL J. DOWD (135628)
SPENCER A. BURKHOLZ (147029)
DANIEL S. DROSMAN (200643)
MAUREEN E. MUELLER (253431)

/s/ Michael J. Dowd

MICHAEL J. DOWD

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154432)
LUKE O. BROOKS (90785469)
JASON C. DAVIS (253370)
100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

Lead Counsel for Plaintiffs

MILLER LAW LLC
MARVIN A. MILLER
LORI A. FANNING
115 S. LaSalle Street, Suite 2910
Chicago, IL 60603
Telephone: 312/332-3400
312/676-2676 (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

S:\CasesSD\Household Intl\Trial\Pltffs Opps to Defs MILs Dauberts\OPP00057371_Opp to Preclude Certain Stmts.doc

DECLARATION OF SERVICE BY ELECTRONIC MAIL 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 Diego, State of California, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway Suite 1900, San Diego, California 92101.

2. That on February 10, 2009, declarant served by electronic mail and by U.S. Mail to the parties the **PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION *IN LIMINE* TO PRECLUDE PLAINTIFFS FROM ADVANCING CERTAIN STATEMENTS AS A BASIS FOR ANY DEFENDANT'S LIABILITY.**

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 MMiller@MillerLawLLC.com LFanning@MillerLawLLC.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 10th day of February, 2009, at San Diego, California.

/s/ Teresa Holindrake

TERESA HOLINDRAKE