

**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.)	
_____)	

**REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION IN
LIMINE TO PRECLUDE AT TRIAL ANY REFERENCE TO THE
UNSUBSTANTIATED POST-CLASS PERIOD ALLEGATIONS OF VOTER FRAUD
AGAINST ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW
("A.C.O.R.N.")**

[PLAINTIFFS' MOTION *IN LIMINE* NO. 7]

The allegations of voter fraud against Association of Community Organizations for Reform Now (“ACORN”) (whether pre-class period, class period or post-class period) should be precluded from this trial. It clearly has no relevance to the claims or defenses in this action. Fed. R. Evid. 402. The prejudicial nature of any reference to ACORN voter fraud clearly outweighs any probative value under Fed. R. Evid. 403. Also, pursuant to Fed. R. Evid. 602, no witness on defendants’ trial witness list has personal knowledge of voter fraud committed by ACORN. Defendant William F. Aldinger or any other witness for the defense referring to news articles or reports regarding this subject matter would be inadmissible hearsay under Fed. R. Evid. 801. The parties can argue whether the allegations are “substantiated” or not, but even defendants acknowledge they are not relevant.

Defendants agree that there should be no reference to alleged voter fraud at ACORN but place a “caveat” that it should not be introduced unless plaintiffs “open the door” by referring to ACORN’s “good character.” Of course, it is unclear since defendants do not define what exactly is a reference to ACORN’s “good character.” Defendants should clarify what exactly they are agreeing to at the pretrial conference, and the parties should be able to reach an agreement.

However, defendants’ proposed order does warrant a response since it is overbroad. Defendants’ proposed order requesting that “no party may introduce evidence of [what defendants refer to as] ‘unsubstantiated allegations’ for any purpose” should be rejected. Defs’ Mem. at 9. Defendants argue that plaintiffs should not be able to introduce evidence of state regulatory examination reports, civil litigations, and other relevant evidence because it is “unsubstantiated” according to defendants. Yet, plaintiffs addressed this claim with respect to this type of evidence in the opposition to defendants’ omnibus motion *in limine* (see Plaintiffs’ Opposition to Defendants’ Omnibus Motion *In Limine* to Exclude or Limit 14 Categories of Evidence (“Omnibus Mem.”), §§B.-D.). There is clearly an evidentiary basis to admit the SEC consent decree, state regulatory

examination reports, civil complaints and settlements, and other evidence as described more fully in plaintiffs' Omnibus Mem.¹ The proposed order should be modified to only refer to the fact that no reference to any voter fraud at ACORN, whether alleged or substantiated, should be presented to the jury.

DATED: February 13, 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

¹ Defendants' arguments that the ACORN allegations are somehow similar to the SEC consent decree since they both occurred post-class period is without merit. The SEC consent decree includes "findings" from a governmental entity regarding Household's reaging practices and false financial statements issued during the Class Period. *See* plaintiffs' Omnibus Mem., §A. The SEC's findings are relevant to the claims in this case whereas alleged voter fraud by ACORN clearly is not.

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

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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 13, 2009, declarant served by electronic mail and by U.S. Mail to the parties the **REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION *IN LIMINE* TO PRECLUDE AT TRIAL ANY REFERENCE TO THE UNSUBSTANTIATED POST-CLASS PERIOD ALLEGATIONS OF VOTER FRAUD AGAINST ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW ("A.C.O.R.N.")**.

The parties' e-mail 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
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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 13th day of February, 2009, at San Diego, California.

/s/ Teresa Holindrake
TERESA HOLINDRAKE