

**IN THE UNITED STATES DISTRICT COURT  
FOR THE 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

**NON-PARTY WELLS FARGO & COMPANY’S RESPONSE  
TO PLAINTIFFS’ MOTION TO PERMIT UNRESTRICTED  
USE OF WELLS FARGO DISCOVERY AT TRIAL**

Non-party Wells Fargo & Company (“Wells Fargo”), by and through its attorneys, respectfully submits this response to Plaintiffs’ Motion to Permit Unrestricted Use of Non-Party Wells Fargo Discovery at Trial:

1. Plaintiffs served the October 26, 2006 subpoena in the Northern District of California over four years into the litigation. (Declaration of Jason Davis in Support of Plaintiffs’ Motion (“Davis Declaration”), Ex. 1.) The materials sought by the subpoena relate to a due diligence investigation conducted in 2002 by Wells Fargo in connection with a possible combination between Wells Fargo and defendant Household International, Inc. (“Household”).

2. Wells Fargo sought and obtained attorneys-eyes only protection for certain documents it produced in response to the Northern District of California subpoena. (Davis Decl., Ex. 3, Feb. 8, 2007 Stipulated Protective Order, *Lawrence E. Jaffe Pension Plan v.*

*Household Int'l, Inc., et al.*, No. CO-07-80028 (N.D. Cal.) (“California Protective Order”).)

The California Protective Order does not address use of the documents at trial.

3. Wells Fargo complied with the subpoena at significant expense, and produced thousands of pages of documents and a Rule 30(b)(6) witness for a day-long deposition under the California Protective Order.

4. Wells Fargo and Household are parties to a March 2002 Confidentiality Agreement which restricts use of any confidential information obtained by Wells Fargo during the 2002 due diligence process (“Confidentiality Agreement”).

5. On Monday, March 16, 2009 counsel for Wells Fargo contacted Household to seek Household’s position as to whether it would object to use of the documents produced by Wells Fargo at trial based on the March 2002 Confidentiality Agreement. As of March 18, the date of plaintiffs’ filing of the instant motion, Household had not responded. Since the filing of plaintiffs’ motion, counsel for Household and Wells Fargo have continued discussions regarding the effect of the Confidentiality Agreement and California Protective Order on the use of Wells Fargo materials at trial.

6. The November 5, 2004 Protective Order entered in this action (“Illinois Protective Order”) directs parties to “cooperate to reach an agreement” as to use of Confidential Information designated under that Order at trial. (Illinois Protective Order, ¶ 32.) Wells Fargo is not a party to this action, but has an interest in fulfilling its obligations under the March 2002 Confidentiality Agreement with Household and in the confidentiality of the documents and testimony relating to commercially sensitive and proprietary aspects of its operations under the California Protective Order.

7. Wells Fargo recognizes that introduction of certain documents and testimony provided by Wells Fargo in response to the subpoena may be necessary at trial. Wells Fargo has consented to the hearing of any dispute related to this issue before this Court. (Davis Decl., Ex. 6)

8. Wells Fargo is not seeking to “close the courthouse doors” on its behalf as Plaintiffs’ motion suggests. (*See* Pls. Mem. at 2.) Nonetheless, Wells Fargo maintains that the documents and testimony it has produced are highly sensitive and proprietary and submits that the restrictions of the California Protective Order apply in all respects other than for the narrow purpose of introducing those materials at trial. Wells Fargo therefore opposes plaintiffs’ motion to the extent it seeks to lift the California Protective Order for any purpose other than introduction of the Wells Fargo materials at trial, such as public use of documents prior to trial.

9. Wells Fargo reserves its rights to seek an order placing those portions of the trial record that contain or refer to Wells Fargo materials under seal.

10. Wells Fargo will not object to the use at trial of documents and testimony provided in response to the October 26, 2006 subpoena issued in the Northern District of California, subject to Household’s position regarding the confidentiality of such materials in light of the March 2002 Confidentiality Agreement between Household and Wells Fargo. Wells Fargo opposes plaintiffs’ motion to the extent that it seeks to lift the February 8, 2007 Stipulated Protective Order, *Lawrence E. Jaffe Pension Plan v. Household Int’l, Inc., et al.*, No. CO-07-80028 (N.D. Cal.), for any other purpose.

Dated: March 19, 2009

NON-PARTY WELLS FARGO & COMPANY

By:           /s/ John F. Kloecker            
          One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I, John F. Kloecker, an attorney, on oath state that I served a true and correct copy of the foregoing on all counsel of record by filing it with the Court's Electronic Case Filing System on March 19, 2009. Additionally, true and correct copies were sent by U.S. Mail to:

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/s/ John F. Kloecker