UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED, Plaintiffs, *- against -* HOUSEHOLD INTERNATIONAL, INC., ET AL., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzmán

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT

REDACTED VERSION OF DOCUMENT FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER DATED NOVEMBER 5, 2004 AND MINUTE ORDER DATED OCTOBER 10, 2006

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Defendants Household International, Inc., now known as HSBC Finance Corporation, William F. Aldinger, David A. Schoenholz, and Gary Gilmer (collectively, "Defendants") respectfully submit this Memorandum in opposition to Plaintiffs' Motion for Entry of Judgment.

INTRODUCTION

Although neither reliance[1] nor damages has yet been adjudicated as to *any* class member, including any named Plaintiff, Plaintiffs urge the Court to enter a "final judgment" as to *every* class member. There is no basis to do so. Because it is axiomatic that a final judgment cannot be entered when neither liability nor damages has been fully adjudicated, Plaintiffs' motion should be summarily denied.

At Plaintiffs' insistence, the Court bifurcated this action into two sequential phases. Certain discrete class-wide liability issues (*e.g.*, falsity, materiality, and scienter) were addressed in an initial phase, as to which post-verdict motions are still pending. Issues as to any individual claimant's alleged reliance and actual damages were expressly reserved by the Court for a second phase that has not even begun, thus necessarily precluding the entry of a final judgment at this time. *See* Fed. R. Civ. P. 54; *Kunz* v. *DeFelice*, 538 F.3d 667, 680 (7th Cir. 2008) ("But a look at the record as a whole reveals that the district court used the 'final judgment' form prematurely, even by its own lights. The district court had expressly bifurcated Kunz's claim for damages."). Because Plaintiffs' request for the entry of a final judgment is at best premature, their companion request for a bond pursuant to Federal Rule of Civil Procedure 62, which contemplates a supersedeas bond only when an appeal is taken, is likewise out of order.

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[1] Plaintiffs have thus far relied on a presumption of reliance that made class treatment possible in Phase I proceedings, but will now be subject to rebuttal of that presumption in Phase II proceedings.

Although these conclusions cannot seriously be disputed, Defendants elected to respond to Plaintiffs' motion in writing to assure the Court that Plaintiffs' reckless and fact-free accusations that Household is fraudulently dissipating its assets and disparaging the authority of this Court are utterly untrue. As summarized below and conclusively demonstrated in the accompanying Declarations of Joan Coppenrath and Michael Reeves (the Company executives responsible for the asset sales Plaintiffs question), every one of the asset sales that Plaintiffs depict as a fraudulent transfer was made at fair market value, and the vast majority occurred *before the Phase I trial.* [redacted] Typically, the asset sales Plaintiffs malign involved exchanges of receivables for cash. As the Court recognized and Plaintiffs' counsel conceded at the presentment, the exchange of one asset (such as a pool of receivables) for another asset of comparable value (such as cash) is not a fraudulent transfer. Plaintiffs should be admonished for wasting judicial resources with their baseless and vexatious motion.

PROCEDURAL HISTORY AND STATUS

Following class certification in this case, Defendants served discovery requests on Lead Plaintiffs and certain of their investment advisors. Plaintiffs successfully opposed this discovery on the ground that it necessarily involved individualized elements that they said would more properly be addressed in a separate phase following the trial of class-wide liability issues as to common questions such as falsity, materiality, and scienter. When this issue was presented to the Court in 2005 on Plaintiffs' motion to quash Defendants' efforts to take discovery of Lead Plaintiff PACE and certain of its investment advisors, Magistrate Judge Nolan noted that "Lead

Plaintiffs recognize that discovery related to PACE's investment decisions may be relevant but contend that discovery should initially be limited to class-wide liability issues." (M.J. Nolan's April 18, 2005 Order, Dkt. 225, at 7 n.5, annexed to the accompanying Declaration of Thomas J. Kavaler as Ex. Kavaler 1.) The Magistrate Judge concluded that "the most efficient and expeditious manner of managing this litigation is to delay discovery into individualized issues until after class-wide liability has been determined" (*id.* at 9), and that "bifurcating discovery regarding class liability issues and discovery regarding individualized reliance issues is the most orderly, efficient, and economical way to proceed." (*Id.*) On that basis she held that Defendants' demands for discovery on individual issues should be postponed "without prejudice to reassertion, if necessary, after a determination of class-wide liability." (*Id.* at 11.)

Defendants renewed their requests for discovery of Lead Plaintiffs and their investment advisors in 2006. Plaintiffs successfully opposed this request based upon the same argument: that such discovery should be postponed until after the class-wide trial of common issues. Magistrate Judge Nolan again disallowed depositions of named Plaintiffs and their investment advisors prior to resolution of class-wide issues. (*See* M.J. Nolan's November 13, 2006 Order, Dkt. 762, at 8, Ex. Kavaler 2.) This Court adopted that ruling in full, holding that Magistrate Judge Nolan had "correctly denied defendants' motion to reconsider the bifurcation of discovery in this case." (January 29, 2007 Order, Dkt. 935, at 2, Ex. Kavaler 3.) Defendants' right to obtain required discovery on non-class issues was thus deferred to what came to be called Phase II. In consequence, Defendants have not yet been allowed to conduct merits discovery of any individual Plaintiff, any other class member, or any person responsible for their respective investment decisions.

During the pretrial conference, the Court confirmed that issues regarding individualized reliance and damages would not be resolved or made subject to discovery during the Phase I class-wide trial and noted that the shape of Phase II remained to be determined. (March 12, 2009

Pretrial Tr., at 33:17-22, Ex. Kavaler 4.) Following the Phase I trial, Defendants renewed their motion for judgment as a matter of law with respect to issues such as falsity, materiality, scienter, and loss causation or, in the alternative, for a new trial. (Dkt. 1650.) Their moving papers highlighted numerous defects in Plaintiffs' showing and inconsistencies in the Phase I jury verdict, including the legal insufficiency of Plaintiffs' "leakage model", the consequent irrationality and lack of record support for the jury's loss causation findings, and fatal infirmities with respect to the essential elements of scienter and materiality. These motions are currently pending before the Court. Resolution of one or both of them in Defendants' favor would obviate the need for proceedings on individualized issues (*i.e.*, there would be no Phase II).

In response to the Court's inquiry "as to how they feel we should proceed on phase two" (May 7, 2009 Trial Tr., at 4812:7-9, Ex. Kavaler 5), the parties have also submitted detailed briefs and expert affidavits delineating competing views as to the contours of any second phase. (*See* Plaintiffs' Post-Verdict Submission, Dkt. 1622; Defendants' Recommendations for Phase Two Proceedings, If Needed, Dkt. 1623; and Responses, Dkts. 1630, 1633.) Defendants' submissions identified open legal and factual issues regarding the essential elements of reliance and damages, proposed an efficient program for discovery and adjudication of these issues, and also demonstrated that such proceedings should logically await the resolution of core issues addressed in Defendants' pending motions for judgment as a matter of law or for a new trial.[2] (Dkt. 1623.) Although Plaintiffs now assert that quantification of damages is a mere ministerial function not open to dispute, their Phase II submission and Defendants' response included declarations of opposing experts as to the proper methodology in this unique setting, where the alleged corrective

[2] In their Phase II submissions, Defendants also explained that they are entitled to a jury trial on the remaining elements of Plaintiffs' 10b-5 claim. *See* U.S. Const. amend. VII ("In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."); Defendants' Recommendations For Phase Two Proceedings, If Needed, Dkt. 1623, at 15-16.

disclosure date(s) for each type of claimed fraud were not identified in the "Leakage Model" that the jury adopted in part. The experts differ on such key protocols as the time period for which advantageous sales must be netted out, the choice of LIFO or FIFO for the matching of purchases and sales, and the predicate date(s) for application of the PSLRA's 90-day "look back" analysis required under 15 U.S.C. § 78u-4(e)(1). (*See* Dkt. 1622, at 16-17; Dkt. 1630, at 6-10.)

Plaintiffs nevertheless argue, with complete indifference to this manifest lack of finality, that there is an urgent need for entry of a "final judgment" in their favor and the posting of a bond under Rule 62. In view of their supposed insecurity "driven by Household's financial condition" (Pl. Br. at 1), it is significant that Plaintiffs have elected not to move for prejudgment relief under Rule 64, nor have they demonstrated in their motion their capacity or willingness to post the bond required by applicable Illinois law in the amount of double the amount of the security they seek. *See* Fed. R. Civ. P. 64 (adopting the prejudgment remedy provisions of the state in which the district court sits); 735 Ill. Comp. Stat. Ann. § 5/4-107. Nor have they substantiated in any way their serious — but fact-free — accusations of "fraud." *See* Fed. R. Civ. P. 11.

ARGUMENT

I. No Final Judgment Can Be Entered Because the Essential Elements of Individual Reliance and Damages Have Not Yet Been Adjudicated

Plaintiffs' motion seeking entry of a "final judgment" is procedurally defective because only the class-wide portion of the liability phase of this judicially bifurcated action has been litigated. The Court of Appeals has confirmed in the specific context of bifurcated proceedings that a final judgment may not be entered where a claim has been only partially adjudicated. *See, e.g.*, *Kunz* v. *DeFelice*, 538 F.3d at 680 ("But a look at the record as a whole reveals that the district court used the 'final judgment' form prematurely, even by its own lights. The district court had expressly bifurcated Kunz's claim for damages."); *Rice* v. *Sunrise Express, Inc.*, 209 F.3d 1008, 1015 (7th Cir. 2000) (holding that judgment in a bifurcated action is not final until all

questions of liability have been fully resolved); *accord Association of Frigidaire Model Makers* v. *General Motors Corp.*, 51 F.3d 271 (Table), 1995 WL 141344, at *3 (6th Cir. 1995).

Plaintiffs erroneously argue that this well-settled rule does not apply here because only "ministerial" tasks relating to the distribution of damages remain. However, except for an interim District of Arizona decision in *In re Apollo Group Inc. Securities Litigation*, No. CV-04-2147 PHX, 2008 WL 410625 (D. Ariz. Feb. 13, 2008), which proved to be improvident[3] and is flatly inconsistent with binding Court of Appeals authority in this Circuit, each of the cases Plaintiffs cite illustrates that this narrow exception involves simple, straightforward calculations to allocate a sum certain or apply an uncontested formula to quantify an adjudicated damages award.[4] Here, in dramatic contrast, Defendants have not yet been allowed any merits discovery of any individual Plaintiff or other class member; Plaintiffs successfully argued for adjudication of individual issues (including entitlement to the presumption of reliance) at a later stage that has not yet commenced; there has been no award of damages; and there has been no resolution of methodological disputes that are so novel (because so few securities fraud class actions are tried to verdict, and none where a leakage model has been sustained) and so complex that Plaintiffs saw the need to submit expert opinions to advocate their proposed approach. Where substantive

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3 As Plaintiffs correctly note, "[i]n Apollo, seven months after judgment, the court granted defendants' motion for judgment under Rule 50(5)(b)." (Pl. Br. at 8 n.7.)

4 *See, e.g.*, *Boeing Co.* v. *Van Gemert*, 444 U.S. 472, 480 (1980) ("Thus, the damage to each class member is simply the difference between the redemption price of his debentures and the value of the common stock into which they could have been converted. To claim their logically ascertainable shares of the judgment fund, absentee class members need prove only their membership in the injured class."); *Production and Maintenance Employees' Local 504* v. *Roadmaster Corp.*, 954 F.2d 1397, 1401–1402 (7th Cir. 1992) ("[A]mount of benefit accruals is set by a formula in the plan. Determining that amount is just a matter of plugging information into the formula."); *Winston Network, Inc.* v. *Indiana Harbor Belt Railroad Co.*, 944 F.2d 1351, 1357 (7th Cir. 1991) ("The computation of damages in this case required nothing more than adding IHB's predetermined portion of the state court judgment, with statutory interest, to IHB's defense costs in the state court litigation. That determination is viewed as 'mechanical.'"); *Parks* v. *Pavkovic*, 753 F.2d 1397, 1402 (7th Cir. 1985) (stating that the "barely" ministerial damages calculation at issue required only that "the members of the class . . . submit receipts or other evidence showing what they . . . still owe institutions").

elements of Plaintiffs' claim have not yet been addressed, the entry of a final judgment is not possible. *See, e.g., Buchanan* v. *United States*, 82 F.3d 706, 708 (7th Cir. 1996) (where "[n]o one knows exactly what the plaintiffs are entitled to," "there is no final judgment"); *Parks* v. *Pavkovic*, 753 F.2d 1397, 1401 (7th Cir. 1985) (except where damages can be calculated in a non-controversial manner, "an order that merely decides liability and leaves the determination of damages to future proceedings does not finally dispose of any claim; it is just a preliminary ruling on the plaintiff's damage claim").[5]

Plaintiffs' contention that only a "ministerial" process remains (Pl. Br. at 9) also ignores the Supreme Court's decision in *Basic, Inc.* v. *Levinson*, 485 U.S. 224, 249–50 (1988), which allows a defendant the opportunity to demonstrate that particular class members did not rely on the integrity of the market price in reaching their investment decisions. This Court has acknowledged this requirement on multiple occasions. (*See* Magistrate Judge Nolan's April 18, 2005 Order, Dkt. 225 at 9-10, Ex. Kavaler 1 (finding that "bifurcating discovery regarding class liability issues and discovery regarding individualized reliance issues is the most orderly, effi-

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[5] No "formula" has ever been divined that could be used to determine the amount of individual or aggregate damages at this stage. *See* accompanying Declaration of Mukesh Bajaj. The process proposed by Plaintiffs' latest expert, Mr. Bjorn I. Steinholt, is "critically incomplete and economically illogical." *Id.* Notably absent from Plaintiffs' submission is support from their loss causation expert Professor Fischel, who recognized in a recent journal article that damages estimates based on processes such as the one Plaintiffs now advocate are inescapably unreliable, and that there is no substitute for evaluating actual trades, as will be done in any Phase II proceedings. *See* Daniel R. Fischel *et al., The Use of Trading Models to Estimate Aggregate Damages in Securities Fraud Litigation: An Update*, 10 National Legal Center for the Public Interest, Briefly 1, 19-20 (Mar. 2006). Unlike Professor Fischel, Plaintiffs' new expert Mr. Steinholt has not been subjected to *Daubert* scrutiny in this case, but his methods have been questioned by other federal courts. *E.g., In re BankAmerica Corp. Securities Litigation*, 210 F.R.D. 694, 708 (E.D. Mo. 2002) (rejecting, in a settlement approval context, Mr. Steinholt's use of a "simplifying assumption" to convert a per-share damage amount into an estimate of potential recoverable damages); *see also Barrie* v. *Intervoice-Brite, Inc.*, No. 3:01-CV-1071-K, 2009 WL 3424614, at *15, *21 (N.D. Tex. Oct. 26, 2009) ("Boiled down to its essence, Steinholt's . . . approach [to proving loss causation] is similar to that rejected" in controlling Fifth Circuit decisions); *Ryan* v. *Flowserve, Corp.*, 245 F.R.D. 560, 573 (N.D. Tex. 2007) (denying class certification on loss causation grounds after finding "the opinions of Plaintiffs' expert [Mr. Steinholt] to be flawed and underwhelming in several aspects," including that he used a "results-oriented approach to the . . . data").

cient, and economical way to proceed" and finding "nothing prejudicial about the reservation of the reliance issue until after a determination of class-wide liability, if necessary"); *see also* Dkt. 762, Ex. Kavaler 2; Dkt. 935, Ex. Kavaler 3.) Indeed, at the pretrial conference, Plaintiffs' counsel agreed that *Basic* contemplates rebuttal of the presumption of reliance on an individual basis, and that Defendants would be afforded the opportunity to do so "in a second phase":

> THE COURT: But we have agreement on the general proposition that one of the ways to rebut the inference is — or the presumption — is to present evidence of the acts, state of mind of individual investors?
>
> MR. BURKHOLZ: *That is in a second phase.*

(March 12, 2009 Pretrial Tr., at 23:24-24:14, Ex. Kavaler 4 (emphasis added).)

Because two essential elements of Plaintiffs' securities fraud claim — individual reliance and damages — await litigation and adjudication "in a second phase" of this action that has yet to commence, Plaintiffs' demand for the immediate entry of a final judgment cannot be entertained.

II. Plaintiffs' Request for a Bond is Procedurally Improper

Bootstrapping from their defective demand for a final judgment, Plaintiffs also ask the Court to order a supersedeas bond under Rule 62. (Pl. Br. at 10 n.8.) However, Rule 62 governs the circumstances under which a district court may require security from a party seeking a stay of execution of a judgment after entry of that judgment. Fed. R. Civ. P. 62(b) and (d). Here, Defendants have not moved to stay the execution of a judgment because there is and can be no judgment entered at this stage. Under these circumstances, Plaintiffs' invocation of Rule 62 is plainly out of order.

It is likely that Plaintiffs eschewed the more logical process for seeking prejudgment security, *viz.*, a motion that would require them to satisfy the requirements for applicable state

law remedies under Federal Rule of Civil Procedure 64, in recognition that title 735, section 5/4-107 of the Illinois Code requires that such applications be backed by a bond posted by the movant in an amount twice the value of the requested security. Because Plaintiffs have made no such application under Rule 64, Defendants will not elaborate here on the reasons Plaintiffs cannot meet its requirements.

III. Plaintiffs' Brazen Assertion That Household is Fraudulently Dissipating Its Assets is Baseless

Plaintiffs' counsel conceded in open court that the gravamen of their motion is the brazen accusation that Household is engaging in deliberate fraudulent transfers to diminish its ability to pay any judgment that may be entered in this case:

> THE COURT: If I understand correctly the plaintiff's allegations, really what you're alleging is that there are transfers here that are essentially fraudulent to the creditors.
>
> MR. BURKHOLZ: Well —
>
> THE COURT: Is that correct?
>
> MR. BURKHOLZ: Well, there are transfers that are putting at risk the assets of the defendants.
>
> THE COURT: Well, they're fraudulent to the creditors because they're not made in the ordinary course of business; they're being made for the purpose of avoiding the judgment?
>
> MR. BURKHOLZ: That's correct.

(March 25, 2010 Presentment Tr., at 17:19-18:5, Ex. Kavaler 6.) As the Court correctly observed, this is a "serious, serious allegation." (*Id.* at 21:19.)[6]

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[6] Plaintiffs cite to the Company's own public filings as the only "evidence" to support their accusations of fraudulent transfers. On their face, however, the cited statements provide no support whatsoever for, and explicitly contradict, Plaintiffs' irresponsible assertions because they give no indication that the sales were anything other than ordinary-course, fair value transfers. (*See* HSBC Finance Corporation Form 10-K for the fiscal year ended December 31, 2009 (dated

Footnote continued on next page.

Plaintiffs cannot back up this reckless charge. As Plaintiffs' counsel acknowledged, transfers for fair value provide no support for their latest theory of "fraud":

> THE COURT: But what I'm trying to get to is what that really means, running them off of the balance sheet. I think in very simple terms. If they're selling this valuable asset and getting the value of the asset in return in some other way, then there's not a problem, is there?
>
> MR. BURKHOLZ: If they're getting equal value, there probably isn't a problem with an asset transfer.

(*Id.* at 19:3-9.) As demonstrated beyond any question by the accompanying declarations of senior executives responsible for the transfers Plaintiffs recite, each and every such asset sale or transfer in fact was effected at fair market value:

- Plaintiffs state: "In January 2009 [before the trial herein], for example, Household made a bulk sale of $15.4 billion in better quality credit card and auto receivables to an HSBC affiliate, HSBC Bank USA." (Pl. Br. at 4.)

  As demonstrated in detail in the accompanying Declarations of Joan Coppenrath and Michael Reeves, [redacted] (*See* Declaration of Joan Coppenrath ("Coppenrath Decl."), ¶¶ 6–7; Declaration of Michael Reeves ("Reeves Decl."), ¶¶ 7–8, 10–11.)

- Plaintiffs state: "As part of the agreement, all new credit originations are sold on a daily basis by Household to HSBC Bank USA—this amount was in ex-

Footnote continued from previous page.

March 1, 2010), at 154, Ex. Kavaler 7 ("The sales price [for HSBC Finance Corp.'s GM and UP credit card receivable portfolios] was determined based on independent valuation opinions based on the fair values of the pool of receivables in late November and early December 2008 [before the trial herein], the dates the transaction terms were agreed upon, respectively."); *id.* at 154-55 ("The sales price [for HSBC Finance Corp.'s auto finance receivable portfolio] was based on an independent valuation opinion based on the fair values of the receivable in September 2008 [before the trial herein], the date the transaction terms were agreed upon."); *id.* at 205 ("The GM and UP credit card receivables as well as the private label receivables that are sold to HSBC Bank USA on a daily basis at a sales price for each type of portfolio determined using a fair value calculated semi-annually in April and October by an independent third party based on the projected future cash flows of the receivables.").)

cess of $11 billion in 2009." (Pl. Br. at 4.)

As demonstrated in the Declaration of Michael Reeves, [redacted] (*See* Reeves Decl., ¶¶ 13–17, 18(b)–18(d), 19(b)–19(d), 20(b)–20(d).)

- Plaintiffs state: "In 2008, [before the trial herein] Household sold $19.3 billion of credit card receivables to HSBC Bank USA." (Pl. Br. at 5 n.4.)

As demonstrated in the Declaration of Michael Reeves, [redacted] (*See* Reeves Decl., ¶¶ 13–15, 18(a)–18(b), 19(a)–19(b), 20(a)–20(b).)

[redacted] *See* Coppenrath Decl., ¶ 8; Reeves Decl., ¶¶ 9, 12. This factual showing conclusively puts to rest Plaintiffs' unfounded speculation that Household's asset transfers were done for less than fair market value or for any purpose other than a legitimate business purpose. Plaintiffs could and should have known from the face of the documents they cited that they had no basis to impugn these transfers in the first instance. Those same public filings, which were audited by independent auditor KPMG, make clear that every sale of assets Plaintiffs identify was made for fair market value.[7]

[7] *See* note 6, *supra*.

IV. Plaintiffs' Outlandish Accusations of Contempt by Household and HSBC Are Reckless and Untrue

Plaintiffs boldly refer to Household as an "arrogant, recalcitrant defendant, which refuses to admit wrongdoing and actively dissipates its assets – while thumbing its nose at the verdict and American legal system."[8] (Pl. Br. at 1.) It is simply untrue that the Company (or any other Defendant) has behaved disrespectfully towards the Court. To the contrary, the statements in Household's public filings are fully consistent with and, indeed, echo statements Defendants have made directly to the Court on the record (sometimes in the presence of the jury) and in multiple post-trial written submissions filed pursuant to Rule 11. (*E.g.*, May 7, 2009 Trial Tr., at 4806:25-4807:3, Ex. Kavaler 5 ("MR. KAVALER: Yes, your Honor. We believe the verdict is fatally inconsistent in a number of ways, which we're prepared to detail to the Court. I'm not sure if you need the jury to be present. Obviously it's up to you."); *id.* at 4807:4-14; *id.* at 4809:6-4810:5; Consolidated Memorandum of Law in Support of Defendants' Motions for Judgment as a Matter of Law Pursuant to Rule 50(b) or, in the Alternative, for a New Trial Pursuant to Rule 59 (Dkt. 1650).) Likewise, citing to the reserve taken by a French company (Vivendi Corp.) in another litigation, Plaintiffs carp that "Household also has refused to establish any litigation reserve as a result of the verdict." (Pl. Br. at 6.) Plaintiffs' reference to the internal accounting decisions of a foreign company governed by foreign accounting rules following an adverse verdict in a non-bifurcated trial offers no guidance in this context where Plaintiffs offer only unreliable and premature speculation on the subject of potential aggregate damages which for the reasons discussed in Point I above and in the accompanying Bajaj Declaration cannot be

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[8] Plaintiffs misleadingly refer to generic statements in public filings by Household's remote corporate parent to advance the patently false allegation that "[i]n its 2009 annual report, HSBC [Holdings plc] stated that a judgment in favor of plaintiffs is unenforceable against HSBC." (Pl. Br. at 5-6.) In fact, the cited report says nothing about Plaintiffs or this case, and the precise language Plaintiffs quote has regularly appeared in HSBC Holdings plc's public filings since well before its acquisition of Household in 2003, and indeed since before this lawsuit was filed in August 2002. (*See, e.g.*, HSBC Holdings plc Form 20-F/A for the fiscal year ended December 31, 2001 (dated March 13, 2002), at 6, Ex. Kavaler 8.)

quantified with any certainty at this interim stage as GAAP would require before a reserve could be taken.

Defendants have been open and candid with the Court in explaining respectfully and in detail the bases for their belief that the jury verdict cannot stand. Plaintiffs overlook that the fundamental nature of the adversarial process fully entitles a party to ongoing proceedings to "refuse to admit wrongdoing," to state that it will "contest the enforceability of any judgments obtained against it," and otherwise to express its strenuous disagreement with a jury verdict that it has demonstrated to be infirm as a matter of law in prior submissions to this Court. The Company would be less than honest with investors if it disclosed to the public a position other than the one it has consistently taken in its briefing and in open court. For Plaintiffs to infer from Defendants' legitimate pursuit of exoneration in a still-pending action an attitude of contempt for this Court and the entire legal system stands that adversarial system on its head, and certainly presents no basis for this Court to enter a final judgment before key substantive issues have been resolved.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Entry of Judgment should be denied.

Dated: April 15, 2010

Respectfully submitted,

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