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' RESPONSE TO PLAINTIFFS' NOTICE OF RECENT AUTHORITY

Defendants respectfully submit this Response to Plaintiffs' August 25, 2010 Notice of Recent Authority (Dkt. 1699) in order to bring the following three clarifications to the Court's attention.

First, Plaintiffs state that the Court of Appeals' class certification ruling in *Schleicher, et al.*, v. *Wendt, et al.*, No. 09-2154 (Easterbrook, J) is "relevant to [their] contention that following the trial and the jury's verdict, reliance is no longer a contestable element and defendants are not entitled to further proceedings on reliance." If Plaintiffs mean to imply that the Court of Appeals tacitly revoked a defendant's right to rebut the presumption of reliance, their position finds no support in *Schleicher*. To the contrary, the Court of Appeals noted that "[a] court of appeals can't revise principles established by the Supreme Court," which includes the holding that the presumption of reliance is rebuttable. *Basic* v. *Levinson*, 485 U.S. 224, at 249, 250 (1988) ("Any showing that severs the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff, or his decision to trade at a fair market price, will be sufficient to rebut the presumption of reliance.").

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Second, because this Court bifurcated issues of individual reliance and damages for proceedings following the trial of class-wide issues of falsity, materiality, scienter and loss causation, to date there has been no discovery, trial or jury verdict on these open, contestable issues. Nothing in *Schleicher* (which focused on class certification procedures and expressly distinguished the merits phase of an action) deprives Defendants of their due process right to litigate these essential elements. *See generally* Defendants' Recommendations For Phase Two Proceedings, If Needed (Dkt. 1623) at 7-9, 15-16; Defendants' Response to Plaintiffs' Post-Verdict Submission (Dkt. 1630) at 2-4.

Third, the Court of Appeals acknowledged "[t]he possibility that individual hearings will be required for some plaintiffs to establish damages". Slip Op. at 11. This seems particularly likely in this action, given the novel complications arising from Professor Fischel's admission that his leakage model charted price changes unrelated to fraud (contrary to the standard model of proof cited in Judge Easterbrook's hypothetical), and the jury's adoption of inflation numbers *dehors* the record. *See* Defendants' Recommendations For Phase Two Proceedings, If Needed (Dkt. 1623) at 6. Contrary to Plaintiffs' assertion, resolution of such issues is by no means "a mechanical function appropriately handled by the claims administrator," which is why Defendants believe their Rule 50(b) and 59 motions should be resolved on the merits prior to addressing the contours of Phase II and continue to urge the Court to resolve these anomalies in one way or another prior to the start of Phase II in order to minimize or avoid undue burden on class members, the parties and the Court.

Dated: August 27, 2010

Respectfully submitted,

CAHILL GORDON & REINDEL LLP

By: <u>/s/Thomas J. Kavaler</u> Thomas J. Kavaler Bar No. 1269927 Howard G. Sloane Bar No. 1197391 Patricia Farren

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Bar No. 1198498 Susan Buckley Bar No. 1198696 Landis C. Best David R. Owen

80 Pine Street New York, New York 10005 (212) 701-3000

-and-

EIMER STAHL KLEVORN & SOLBERG LLP 224 South Michigan Ave. Suite 1100 Chicago, Illinois 60604 (312) 660-7600

Attorneys for Defendants Household International, Inc., William F. Aldinger, David A. Schoenholz, and Gary Gilmer