

**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,	)	Lead Case No. 02-C-5893
	)	(Consolidated)
Plaintiff,	)	
	)	CLASS ACTION
v.	)	
	)	Judge Ronald A. Guzmán
HOUSEHOLD INTERNATIONAL, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

**MOTION TO BAR OR COMPEL DIRECTED TO WELLS FARGO & COMPANY**

Defendant Household International, Inc. (“Household”), by its undersigned counsel, respectfully moves this Court to bar any and all claims submitted by or on behalf of Wells Fargo & Company or its affiliated entities (“Wells Fargo”). In the alternative, and pursuant to Fed. R. Civ. P. 37, Household seeks an order compelling Wells Fargo to: (a) provide full and complete answers to Household’s revised interrogatories and document requests; (b) produce documents responsive to the document requests; and (c) designate a witness to testify at deposition regarding the subjects identified in Household’s Second Revised Notice of Rule 30(b)(6) Deposition. In support of this motion, Household states as follows:

1. As the court will recall, Wells Fargo is uniquely situated among the class of potential claimants herein. Specifically, in the time period between March and May 2002, Wells Fargo conducted certain investigations and analyses regarding a potential acquisition of Household. In the course of that investigation, and in conjunction with the negotiations surrounding the possible acquisition, Wells Fargo was made privy to certain non-public information regarding Household. Well Fargo has filed claims herein, and said claims appear to have been submitted both on behalf

of Wells Fargo and/or its related entities as beneficial owner, and as a custodian for other beneficial owners.

2. As the following recitation of events demonstrates, counsel for Household has made numerous good faith attempts to obtain information, documents and testimony regarding Wells Fargo's examination of Household, the extent to which Wells Fargo became aware of material, non-public information regarding Household, and the impact such information may have had on decisions involving Household stock. To date, despite these efforts to obtain voluntary compliance without the Court's intervention, Household has received nothing but a series of objections. Well Fargo has failed to answer any interrogatory, has produced no documents (other than materials produced in response to plaintiff's subpoena in Phase I), and has indicated that it will only produce a witness to testify regarding two subject matters, as to which it has refused to produce responsive materials.

3. On February 14, 2011, Household served upon Wells Fargo: Revised Interrogatories, Revised Document Requests and a Revised Rule 30(b)(6) Deposition Notice. These requests, copies of which accompany this motion as Exhibits A-C, respectively, were served upon James M. Strother, Executive Vice President and General Counsel for Wells Fargo.<sup>1</sup>

4. Between March 15 and March 31, 2011, undersigned counsel for Household made numerous attempts to reach an individual at Wells Fargo with authority to discuss compliance with the discovery requests and the scheduled Rule 30(b)(6) deposition. These attempts are described in the accompanying Affidavit of Luke DeGrand, submitted as Exhibit D.

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<sup>1</sup> Exhibit C includes both the revised deposition notice served on Wells Fargo's General Counsel and a subsequent second revised notice served on Wells Fargo's new counsel on April 21, 2011.

5. On March 31, 2011, an inside attorney for Wells Fargo advised undersigned counsel for Household that Wells Fargo was in the process of engaging an outside attorney with whom it could consult regarding the discovery, including the deposition. Wells Fargo requested additional time to enable it to secure such counsel. Exhibit D.

6. On April 20, 2011, undersigned counsel for Household received a telephone call from a Chicago attorney who indicated that he had been retained to represent Wells Fargo in connection with the discovery. At the request of said counsel an additional copy of the discovery requests were transmitted on April 21, 2011.

7. On May 5, 2011, counsel for Wells Fargo requested additional time, this time until May 13, 2011, in which to serve responses to the discovery requests, and stated that it was Wells Fargo's "plan to cooperate" in providing Household with the requested information and documents. *See Exhibit D.*

8. On May 13, 2011, undersigned counsel received a telephone call from a new attorney for Wells Fargo, indicating that the Company would not be in a position to respond to the discovery on May 13, 2011, as previously indicated. Counsel requested the opportunity to serve responses by May 17, 2011. In the belief that responsive documents and interrogatory responses would be forthcoming, counsel for Household scheduled the Rule 30(b)(6) deposition for May 24, 2011. At Wells Fargo's request, the deposition was to proceed in Minneapolis, Minnesota. *Id.*

9. On May 16, 2011, Wells Fargo finally served its "responses" to Household's interrogatories, documents requests and Rule 30(b)(6) notice. Those responses accompany this motion as Exhibit E-G, respectively. Nothing additional has been served by Wells Fargo since.

10. As the Court will see, Wells Fargo has responded to *none of the interrogatories*; it has produced *none of the requested documents*, and it has agreed to produce a witness as to only *two* of the areas of inquiry designated in Household's Rule 30(b)(6) notice.

11. A review of the "responses" reveals, moreover, the specious nature of the objections that have been interposed. For example, in Interrogatory Numbers 1- 3, Household seeks information regarding trading strategies employed by Wells Fargo, and the communication of non-public information regarding Household. To these straightforward requests, Wells Fargo has responded with a series of boilerplate objections that include, remarkably, that the Interrogatory "assumes facts not yet proven or that are untrue." Exhibit E (pp. 3-4).

12. In accordance with this Court's prior orders, discovery in Phase II is to be complete by May 24, 2011. Wells Fargo's conduct in dragging its heels, and then refusing to provide any meaningful responses to Household's discovery requests, has thwarted Household's legitimate attempt to obtain discovery regarding, *inter alia*, Wells Fargo's reliance on information obtained through the Company's 2002 due diligence examination and the non-public information Wells Fargo admittedly received as part of that examination.

13. As this Court has previously noted, "It's pretty clear that Wells Fargo had non-public information so that their reliance went beyond price. It went to some information that wasn't available to the public." Transcript of Proceedings held January 27, 2011, at 18. Inquiry regarding Wells Fargo's knowledge of and reliance upon such non-public information is, as the Court stated, "perfectly reasonable." *Id.*

14. Wells Fargo has been repeatedly advised that its refusal to participate in the discovery process and provide answers to the requested discovery could result in the preclusion of claims. Examples of such correspondence accompany this motion as Group Exhibit H.

15. Under the authority of *Brennan v. Midwestern United Life Ins. Co.*, 450 F.2d 999, 1006 (7th Cir. 1971) (holding that absent class members who receive notice of the pendency of the class suit may be subject to party discovery procedures, and affirming the trial court's bar of claims of non-responding members), any and all claims submitted on behalf of Wells Fargo should be barred. Alternatively, Household requests that the Court order Wells Fargo to immediately respond to Household's discovery requests and produce a witness or witnesses regarding the subjects identified in Household's Rule 30(b)(6) deposition notice.

***Certification of Compliance with Local Rule 37.2***

16. As is reflected herein, and in the attached affidavit, undersigned counsel for Household states that after consultations by email and telephone, and good faith attempts to resolve the differences addressed herein, the parties have been unable to reach an accord without the Court's assistance within the discovery period previously established.

Wherefore, for the reasons set forth herein, defendant Household International, Inc. respectfully moves this Court to bar any and all claims submitted by or on behalf of Wells Fargo & Company or its affiliated entities, under Fed. R. Civ. P. 30, 33, 34 & 37, and the authority of *Brennan v. Midwestern United Life Ins. Co.*, 450 F.2d 999, 1006 (7th Cir. 1971). In the alternative, and pursuant to Fed. R. Civ. P. 37, Household seeks an order compelling Wells Fargo to: (a) provide full and complete answers to Household's revised interrogatories and document requests; (b) produce documents responsive to the document requests; and (c) designate a witness to testify at deposition regarding the subjects identified in Household's Second Revised Notice of Rule 30(b)(6). Household also seeks an award of the costs and fees incurred in bringing this motion.

Respectfully submitted,  
HOUSEHOLD INTERNATIONAL, INC.

By:           **Luke DeGrand**            
          One of Its Attorneys

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**CERTIFICATE OF SERVICE**

Tracey L. Wolfe, an attorney, hereby certifies that on May 20, 2011, she caused true and correct copies of the foregoing Defendants' Motion to Bar or Compel Directed to Wells Fargo & Company to be served via the Court's ECF filing system on the following counsel of record in this action:

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and upon the following counsel for Wells Fargo & Company by electronic mail:

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/s/ Tracey L. Wolfe \_\_\_\_\_