UNITED STATES DISTRICT COURT

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

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In advance of the June 15 Status Conference, Lead Plaintiffs submit this Report to update the Court regarding: (1) defendants' discovery of class members and other third parties; (2) the ongoing claims administration process; (3) certain outstanding issues related to defendants' discovery and their efforts to challenge certain claims; and (4) the status of defendants' efforts to rebut the presumption of reliance.

I. DEFENDANTS' DISCOVERY OF CLASS MEMBERS AND THIRD PARTIES

On January 5, 2011, this Court authorized defendants to take discovery regarding the individualized reliance of class members. In response, defendants engaged in a massive frenzy of discovery. Between January 13, 2011 and May 24, 2011, defendants served discovery on 131 entities, including the Lead Plaintiffs, custodian banks, absent class members and their outside investment advisors. Typically, defendants served interrogatories, requests for production of documents and notices of depositions on class members. Defendants also served third-party subpoenas, typically requesting documents and depositions from entities that are not class members. Ultimately, defendants took twelve depositions of class members and third parties. Although plaintiffs provide a brief summary of defendants' discovery efforts herein, a chart detailing defendants' efforts is attached hereto as Exhibit 1 for the Court's convenience.

On January 13, 2011, defendants served written discovery and deposition notices on 98 absent class members and the three Lead Plaintiffs – well beyond the 15 institutional investors they purportedly needed discovery from, as repeatedly represented to the Court. In response, Lead Plaintiffs filed a motion for a protective order directed primarily at the scope of defendants' proposed discovery. On January 31, the Court granted plaintiffs' motion for a protective order, making clear that defendants could discover trading strategies, along with documents or internal communications concerning non-public information about Household, but were not entitled to

discovery related to publicly available information because the truth on the market defense had been litigated during Phase I. The Court also limited defendants to 15 depositions.

On February 3, 2011, defendants served "revised" written discovery on 92 purported absent class members. Ignoring the Court's admonitions during the January 27, 2011 hearing and the January 31, 2011 Order, defendants' revised written discovery continued to seek internal private analyses or communications based on publicly available information. Defendants later withdrew their revised discovery from 16 of these absent class members after being informed that they had served the wrong entity, or that the entities would not be submitting a claim. Defendants' game of serving and subsequently withdrawing discovery continued throughout February and March. In February, in addition to the 92 absent class members, defendants served written discovery on approximately six additional class members. In March, defendants served three deposition notices pursuant to Federal Rule of Civil Procedure 30(b)(6), served approximately 13 absent class members with written discovery and issued approximately 14 subpoenas to third parties.[1] Of these, defendants subsequently withdrew one Fed. R. Civ. P. 30(b)(6) deposition notice and one subpoena.

In April, defendants moved to compel certain absent class members to provide more "complete" responses to their discovery. In denying defendants' motion, the Court reiterated that defendants were not entitled to discover internal communications, documents or analysis based on publicly available information. Defendants subsequently served 14 overly broad deposition notices seeking precisely that information. Defendants' deposition notices also sought testimony concerning the persons responsible for individual transactions in Household common stock, even though the Court previously admonished defendants that they were not permitted discovery on each individual

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[1] These third-party subpoenas were issued after defendants identified the correct entity that should have initially been served with discovery.

transaction. *See*, *e.g.*, January 27, 2011 Hearing Transcript at 14:18-15:1 ("I'm saying you can ask as to the name of the people primarily responsible for the trading strategy, ***not for each individual transaction***.") (emphasis added). Defendants later withdrew four of these deposition notices and postponed one deposition.

During the absent class member and third-party depositions that did proceed between May 9, 2011 and May 24, 2011, defendants questioned witnesses on a variety of topics clearly outside the scope of discovery authorized by the Court. For example, defendants repeatedly introduced into evidence several publicly available Household press releases and asked whether the witness considered those publicly available documents when purchasing Household common stock in 2001. Though the Court could not have been clearer that this type of discovery would not be permitted, defendants pursued this line of questioning anyway.

In total, defendants served written discovery on over 100 purported class members, including the three lead plaintiffs, served approximately 20 deposition notices pursuant to Fed. R. Civ. P. 30(b)(6), and issued approximately 25 document and/or deposition subpoenas to third parties. Many of defendants' written discovery requests were either withdrawn altogether or postponed. Approximately 31 absent class members and third parties ultimately produced responsive documents. *See* Exhibit 1. Defendants also withdrew or postponed many of the document and deposition subpoenas served on third parties.

As the discovery continued, defendants' efforts seemed to change from a focus on individualized issues of reliance into a quest to gather information regarding claims made by class members. For example, defendants identified the following subjects of examination, among others, in their deposition notices served on absent class members:

> 1. Whether any defendant named in ¶¶37-49 of the operative complaint in this action has or had a controlling interest in [the class member], and, if so, the nature of such controlling interest.

> 2. Whether [the class member] is or was related to or affiliated with any defendant named in ¶¶37-49 of the operative complaint in this action, and, if so, the nature of such relationship or affiliation.
>
> 3. Whether [the class member] purports to have authority to file or process claims in this action on behalf of any person or entity other than [the class member] and, if so, the basis of [the class member]'s authority to file or process such claims.
>
> 4. Whether any person or entity other than [the class member] has authority to file or process claims in this action on behalf of [the class member] and, if so, the basis of that person's or entity's authority to file or process such claims.

Along similar lines, defendants noticed the depositions of certain custodian banks, including State Street, BNY Mellon Asset Servicing ("BNY Mellon") and The Northern Trust Company ("Northern Trust"), seeking testimony regarding their authority to submit claims on behalf of absent class members.[2] Obviously, defendants' discovery directed at the authority of third parties to submit claims on behalf of absent class members is utterly unrelated to their efforts to rebut the presumption of reliance. However, plaintiffs chose not to seek a protective order from the Court on this issue. Put simply, plaintiffs have grown accustomed to defendants' dilatory, obstructionist tactics designed not to address the merits of the case, but rather to create new issues that suddenly must be addressed before a judgment can be entered. Undoubtedly, defendants will now argue that they should be entitled to conduct discovery of every custodian bank and third-party filer that submitted claims for absent class members to test their authority to do so. However, plaintiffs already allowed defendants an opportunity to take this discovery – and as usual, defendants got nothing that helps their cause.

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[2] The State Street deposition took place on May 24, 2011 in Boston, Massachusetts. As discussed more fully below, defendants served Northern Trust on May 18, 2011 and apparently unsuccessfully attempted to serve BNY Mellon on that same day, noticing the depositions for May 23 and May 24, respectively. Given the unreasonably short notice, Northern Trust was unable to make a designee available to testify on the date set forth in the subpoena. Defendants advised plaintiffs' counsel on May 20 that the deposition would not go forward on May 23, as noticed. Since May 24 was the discovery cut-off, neither the Northern Trust nor BNY Mellon depositions went forward.

II. CLAIMS ADMINISTRATION

A. The Notice Process

In 2006, Gilardi & Co. ("Gilardi"), the Court-appointed claims administrator, sent the Notice of Pendency and Proposed Partial Settlement of Class Action to 440,164 potential class members in connection with the partial settlement with defendant Arthur Andersen. Declaration of Michael Joaquin ("Joaquin Decl."), dated June 10, 2011, ¶3, which is attached hereto as Exhibit 2. This list of potential class members was developed from information obtained from Household's transfer agent and communications with major brokerage houses, which commonly hold securities in street name for the benefit of their clients. *See* Declaration of Carole K. Sylvester, dated March 24, 2006 (Docket Nos. 455 and 457).

On January 24, 2011, Gilardi mailed the Notice of Verdict in Favor of the Plaintiff Class and the Proof of Claim Form (collectively the "Claims Package") to the 440,164 potential class members identified in 2006. Joaquin Decl., ¶3. In addition, Gilardi engaged in additional outreach, sending the Claims Package and cover letters to 225 brokerages, custodian banks and other institutions that hold securities in street name. *Id*., ¶4. Gilardi also delivered copies of the Claims Package to 559 registered electronic filers who are qualified to submit electronic claims on behalf of beneficial owners for whom they act as trustees or fiduciaries. *Id*., ¶5. Gilardi also published the Summary Notice in *USA Today* on February 1, 2011 pursuant to this Court's Order Approving Form and Manner of Notice entered on January 11, 2011. *Id*., ¶11.

Relying on the records developed in 2006 and their outreach efforts to brokerage houses, custodial banks and other institutions, Gilardi ultimately mailed Claims Packages for delivery to 646,715 potential class members. Joaquin Decl., ¶8.

To date, Gilardi has received 77,436 claims submitted by potential class members. Based on Gilardi's initial screening, they have preliminarily determined that approximately 45,332 of these

claimants have an allowed loss under the Court's Plan of Allocation. Joaquin Decl., ¶12. The preliminary, estimated damages for these potential class members, subject to revision as duplicate claims are identified and supplemental information is received, exceeds $2,000,000,000. *Id*.

B. The Court's May 31, 2011 Order

On May 31, 2011, the Court entered an Order approving the use of a one-page notice form to be sent to custodial banks and other third-party filers in an attempt to obtain answers to the question set forth on page five of the Proof of Claim Form.[3] According to Gilardi, as of June 6, 2011, over one hundred custodial banks and other third-party filers had submitted multiple claims on behalf of their clients. Fifty-four (54) of these institutions filed one or more claims for class members who appear, preliminarily, to have an allowed loss in excess of $250,000.[4] Joaquin Decl., ¶13. There are currently 626 potential class members with an allowed loss in excess of $250,000, who filed through a custodial bank or third-party filer. *Id*. Gilardi sent the one-page, Court-approved notice on June 10, 2011 to the 54 third-party filers, who have submitted claims collectively on behalf of the 626 claimants who appear, at least preliminarily, to have an allowed loss in excess of $250,000. The

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[3] The question states:

> Question: If you had known at the time of your purchase of Household stock that defendants' false and misleading statements had the effect of inflating the price of Household stock and thereby caused you to pay more for Household stock than you should have paid, would you have still purchased the stock at the inflated price that you paid?

The Proof of Claim form asks the claimant to check either the "yes" or "no" box.

[4] It is important to note that these allowed losses were developed by Gilardi based on information received to date. However, the allowed loss calculations are preliminary and may change for certain class members as the claims administration process continues. For example, a class member may have failed to list their Household stock held at the close of business on March 22, 2001. If Gilardi follows up with that class member, it may well be that the class member held shares on March 22. Pursuant to the Court's netting analysis, subsequent Damages Period sales could reduce their claim from $250,000+ to under that threshold. Similarly, if a class member identifies additional transactions during the Damages Period, it may affect their preliminary allowed loss as well.

one-page notices will be delivered to the third-party claimants by overnight courier on June 13, 2011. Joaquin Decl., ¶13. The Court has ordered that the "third-party filers should be given 90 days from receipt of the one-page notice form to obtain executed forms." May 31, 2011 Order at 8. Assuming delivery on June 13, Lead Counsel anticipates that the executed forms should be received no later than September 12, 2011. (September 11 falls on a Sunday.)

C. Processing Claims and Creating a List of Class Members With Allowed Losses

Gilardi is continuing its efforts to process the 77,436 claims submitted by potential class members to date. Among other things, Gilardi will process paper and electronic claims, review claims and correspond with claimants. Joaquin Decl., ¶15. The work remaining to be completed includes utilizing procedures to identify and reconcile any duplicate claim filings that may exist. As the Court is aware, many claims are filed by institutions on behalf of the underlying beneficial owners, and occasionally more than one claim for the same beneficial owner will be filed because of changing business relationships or changing fiduciary responsibilities. *Id*. For example, a beneficial owner's claim might be filed by both its brokerage firm and its custodial bank. Gilardi has developed extensive procedures to identify these types of duplications and to communicate with claimants' representatives to ensure that only one claim remains eligible for payment. Gilardi will also work with claimants and their representatives to identify and correct data errors and anomalies. One common example is a pricing error, where the purchase or sale price reported by the claimant does not correspond to the known trading range for the security on that day. Gilardi will obtain corrected data if it is available and otherwise work with filers to determine the cause of the error. Gilardi will also manage the ongoing process of notifying class members of other deficiencies with their claims and corresponding with them to obtain additional or corrected information, as necessary.

In light of the large volume of claims that must be processed and validated and the fact that the one-page notice supplemental submissions are not due until the week of September 12, Gilardi anticipates that the claims administration effort will take approximately six months. As such, Gilardi anticipates that the claims administration process, including preparing a list of class members with valid claims in Gilardi's view, with their allowed loss calculated pursuant to the Court's Plan of Allocation, will be complete on or about December 12, 2011. Joaquin Decl., ¶16.

III. OUTSTANDING ISSUES

Plaintiffs' Lead Counsel is aware of three potentially outstanding issues that may, or may not, be raised by the defendants at the June 15, 2011 Status Conference. The issues arise out of defendants' discovery directed at Wells Fargo & Company ("Wells Fargo"), Northern Trust and BNY Mellon, and defendants' request that Gilardi make determinations about the validity of certain claims immediately.

A. Defendants' Dispute With Wells Fargo

Defendants filed a motion to bar or compel directed to Wells Faro. The presentment date for defendants' motion is June 15, 2011, although the motion was originally set to be presented on May 26, 2011. Plaintiffs are not privy to the ongoing negotiations between defendants and counsel for Wells Fargo. However, plaintiffs are compelled to respond on behalf of the Class. First, this Court directed defendants to finish their discovery on or before May 24, 2011. The Court stated, in no uncertain terms:

> The discovery cutoff date will be that all discovery is to be initiated so as to be capable of being completed on or before May 24th. And I urge you to structure your discovery – sequencing, the amount, the targeting, all of it – in such a way that you will reach that and be able to utilize to the best effect those 120 days because there will be no extensions. Understand that now. ***If you leave crucial depositions, 30(b)(6) depositions or whatever, until the last few days of the discovery process, do not think you're going to come into this court and ask for an extension of that process because you have found out some new fact or you have been unable to obtain a deposition or you have not received an appropriate response***. Structure

> your discovery so that it will be completed, ***including any motions to compel*** or other avenues that you have to take, ***before the discovery cutoff date***.

January 5, 2011 Transcript at 26:1-16 (emphasis added).

Defendants failed to heed the Court's admonition. If they were not obtaining a sufficient response from Wells Fargo, they should have filed a motion to compel. Instead, they waited. Their motion to "bar or compel" should be denied for that reason alone.

Further, defendants' motion seeks the extraordinary remedy of barring all claims submitted on behalf of Wells Fargo as beneficial owner ***and*** as a custodian for other beneficial owners. Precluding the claims of Wells Fargo's custodian clients would be unduly prejudicial and a violation of due process. Defendants' efforts to bar any claims submitted by Wells Fargo as a custodian for other beneficial owners should be denied.

As a custodian bank, Wells Fargo serves as a fiduciary of the financial assets of individual and institutional investors. Among other things, Wells Fargo holds and maintains investors' assets, including securities. As part of its core services, Wells Fargo files claim forms on behalf of its investor clients in connection with the settlements of class action securities cases. In its capacity as a custodian bank, to date Wells Fargo has filed claims on behalf of thousands of beneficial owners of Household common stock in this case.

Defendants now seek the drastic remedy of barring the claims of these individual absent class members as punishment for Wells Fargo's failure to respond to discovery. Defendants' attempt to preclude absent class members from recovering damages in this case is entirely inappropriate and should not be permitted. To begin, the discovery requests at issue here are directed at Wells Fargo, ***not*** any of the individual absent class members on whose behalf Wells Fargo filed claims. Moreover, the individual absent class members were never put on notice that Wells Fargo had

received discovery requests from defendants. They should not now be blamed for Wells Fargo's purported noncompliance.

In this regard, defendants' reliance on *Brennan v. Midwestern United Life Ins. Co.* is misguided. There, the Seventh Circuit affirmed the district court's dismissal of the claims of absent class members who failed to respond to discovery. *Brennan v. Midwestern United Life Ins. Co.*, 450 F.2d 999, 1006 (7th Cir. 1971). The Court of Appeals found that dismissal was warranted under the circumstances of the case because the absent class members "ignored repeated requests that they comply with the discovery orders" and were warned that the failure to respond to discovery could result in dismissal. *Id*. at 1004 n.2. By contrast here, Wells Fargo's custodian clients never received discovery, were never given the opportunity to respond to any discovery, and most importantly, were never informed that Wells Fargo's failure to comply with discovery could result in their claims being barred. *Id*. at 1006 ("adequate notice must be given so that [absent class members] are fully informed of the discovery order and the possible consequences of their noncompliance with it"). Thus, unlike in *Brennan*, barring all claims submitted on behalf of Wells Fargo is clearly unwarranted and would violate due process.

Furthermore, it is arguable whether the Court even authorized the broad discovery defendants seek from Wells Fargo regarding its role as a custodian bank – the only requests even remotely related to the individual absent class members. For example, defendants' Fed. R. Civ. P. 30(b)(6) Deposition Notice seeks testimony regarding Wells Fargo's, or any other person's, authority to file or process claims in this action. *See* Docket No. 1758-3 (topic Nos. 11 and 12). It is entirely unclear how these subjects of examination will help defendants rebut the presumption of reliance, or if they even fall within the confines of discovery established by the Court. Yet defendants would have the Court bar nearly 2,500 absent class members' claims based on Wells Fargo's alleged refusal to make a witness available to testify on these subjects.

In sum, Wells Fargo's custodian clients should not be punished solely because Wells Fargo has allegedly failed to comply with defendants' discovery requests. Barring the claims of thousands of absent class members who were never put on notice of defendants' discovery requests is an extraordinarily harsh remedy that violates both Seventh Circuit precedent and due process. Accordingly, Lead Plaintiffs respectfully request an order denying defendants' motion to bar all claims filed by Wells Fargo as a custodian for other beneficial owners.

B. Northern Trust and BNY Mellon

On January 5, 2011, the Court gave defendants 120 days to conduct Phase II discovery, urged them to "structure your discovery . . . in such a way that you will reach that and be able to utilize to the best effect those 120 days" and warned that "***there will be no extensions***." (Emphasis added.) Jan. 5, 2011 Hr'g Tr. at 26:1-16 ("do not think you're going to come into this court and ask for an extension"). More than four months later, and only ***six days*** before the discovery cutoff, defendants served overbroad Fed. R. Civ. P. 30(b)(6) deposition subpoenas on two custodian banks, Northern Trust and BNY Mellon, scheduling depositions for May 23 and 24, 2011, respectively. *See* Exs. 3-4. Given the unreasonably short notice, Northern Trust was unable to make a designee available to testify on the dates set forth in the subpoena, *i.e.*, before the discovery cutoff. Apparently, BNY Mellon was never served.

Despite the Court's warning that ***no extension*** would be given – and without even attempting to obtain permission from the Court – defendants may seek to take these depositions ***after*** the Phase II discovery cutoff. The subpoenas set forth nine separate subjects of examination concerning Northern Trust's and BNY Mellon's role and responsibilities as custodian banks generally, and the claims they filed in this case on behalf of beneficial owners of Household common stock. *See* Ex. 3. Obviously, not a single topic addresses the fundamental question of whether a class member would have purchased Household stock knowing of defendants' fraud. Indeed, as custodian banks,

Northern Trust and BNY Mellon are not even in a position to answer the claim form question and cannot possibly possess evidence that will assist defendants in rebutting the presumption of reliance. Defendants' belated subpoenas to these entities are simply another attempt to circumvent the Court's prior orders on the scope and timing of Phase II discovery. Plaintiffs respectfully request an order precluding defendants from taking the proposed Northern Trust and BNY Mellon depositions.

Moreover, defendants' delay in issuing these deposition subpoenas is completely unjustified. For example, on March 24, 2011, two months before the discovery cutoff, Northern Trust filed claims on behalf of thousands of beneficial owners. The claims administrator received those claims on March 28, 2011 and uploaded them to defendants' secure website on April 7, 2011.[5] Defendants cannot dispute that they have been aware of the claims submitted by Northern Trust since April 7, 2011.

Notwithstanding this fact, defendants waited until May 18, 2011 – six days before the discovery cutoff – to serve a deposition notice on Northern Trust. The notice scheduled the deposition for May 23, 2011, one day before the cutoff and only three business days after Northern Trust received the notice. On its face, the subpoena failed to comply with the "reasonable notice" requirement of Fed. R. Civ. P. 30(b)(1). *See* Fed. R. Civ. P. 30(b)(1) (requiring reasonable written notice); *Peterson v. Union Pac. R.R. Co.*, No. 06-CV-3084, 2007 U.S. Dist. LEXIS 62134, at *6 (C.D. Ill. Aug. 23, 2007) (finding that the notice of deposition violated Fed. R. Civ. P. 30(b)(1) where the deposition was scheduled four business days later on the day that discovery closed).[6]

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[5] Pursuant to an agreement between the parties, on every third business day the claims administrator scans and uploads to a secure website each claim form received. Thus, defendants have access to the claim forms shortly after they are received by Gilardi.

[6] *See also In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 320, 328 (N.D. Ill. 2005) (denying motion to compel depositions served slightly more than two weeks before the close of discovery).

Because of the unreasonably short notice, Northern Trust informed counsel for defendants that it would not be able to make a witness available to testify by that date.

Defendants should not be rewarded for their dilatory tactics. They have been on notice since January 5, 2011 that discovery would end on May 24, 2011,[7] and were made aware of Northern Trust's claim submission by April 7, 2011 and of BNY Mellon's claim submission by April 20, 2011. Further, defendants do not have carte blanche permission to conduct depositions on irrelevant topics after the close of discovery – and any argument by defendants to the contrary should be rejected. In fact, as set forth above, the Court was explicit that defendants would not be permitted any extensions. Jan. 5, 2011 Hr'g Tr. at 26:1-16.

Yet this is exactly what defendants did. Defendants have no excuse for waiting until the last few days of discovery to serve the Northern Trust and BNY Mellon subpoenas. They should now be required to live with the consequences of that decision. *Hagins v. Madden*, No. 94 C 5629, 1995 U.S. Dist. LEXIS 5885, at *20 (N.D. Ill. May 2, 1995) (quashing subpoena where plaintiff attempted to depose witness after the date set for the close of discovery without seeking leave of the court to extend discovery).

C. Challenges to Claims

In a letter dated June 8, 2011, defendants requested that Gilardi provide them with a "planned protocol" for dealing with claims that defendants believe are ineligible. As is the customary practice in all securities cases, Gilardi will continue to review claims that are submitted and request that claimants provide further documentation (including proof of underlying transactions or authority to file claims for beneficial owners) to complete the claim, as necessary. Based on their letter to

[7] *See* Jan. 27, 2011 Hr'g Tr. at 20:7-12 (making clear "that the period of discovery was 120 days" and directing defendants to "structure your discovery, target your discovery and prioritize your discovery in such a way that you were able to complete the most important parts of it during that 120-day period").

Gilardi, defendants' apparently will argue that the entire claim and all supporting documentation must be completed by May 24, 2011 or else the claim is not valid. Similarly, defendants claim that former Household employees are excluded from the Class and any claims filed directly by Household employees, or the Household 401K Plan, should be rejected by Gilardi. Furthermore, defendants argue that Gilardi should reject claims of certain Goldman Sachs-related investment funds because Goldman Sachs was a defendant in this case at the pleading stage.

Clearly, plaintiffs disagree with defendants' analysis of all of these issues. However, it is not Gilardi's role to determine that claims are invalid for legal reasons. Rather than harassing the claims administrator, defendants should provide the Court with a brief supporting their arguments that certain claims should be rejected on or before July 15, 2011. Thereafter, plaintiffs should be given an opportunity to respond in writing by August 15, 2011.

IV. REBUTTING THE PRESUMPTION

On March 12, 2009, counsel for defendants made the following statements regarding the element of reliance:

> If we deposed ten entities . . . we would capture information on 50 percent of the stock ownership of this company. . . . [T]he institutional investors who own the lion's share of Household stock were big major sophisticated banks and other funds . . . . We could capture information about 50 percent of stock ownership by deposing only 10 of them. We could capture 60 percent by deposing only 15 of them. ***It may be that one or two sample depositions would tell us what we need to know and whether this is a worthwhile defense or not***.

March 12, 2009 Hrg. Tr. at 27:4-13 (emphasis added).

> [A]s I said, Your Honor, we could encompass 60 percent of the ownership by looking at only 15 large institutional investors.

Id. at 32:23-25.

> But we don't have any intention, your Honor, of dragging every small investor in here. ***We need to know what the 15 big institutional investors – what they did, whether or not they can prove reliance on an individual basis, whether we can – I should put it correctly. Whether we can rebut the rebuttable presumption of***

> ***reliance as to them by simply finding out the facts that were denied during fact discovery***.

Id. at 33:4-11 (emphasis added).

Defendants have now served discovery on 131 entities. They have taken the depositions of 12 class members, investment advisors and custodian banks. As set forth above, defendants claimed that one or two sample depositions would tell them what they needed to know about whether their attempt to rebut the presumption of reliance was a "worthwhile defense or not."

It is now the time. Defendants should advise the Court what, if anything, they have accomplished. The defendants should be ordered to file a memorandum of law with evidentiary support that raises a genuine issue of material fact with respect to their burden to rebut the presumption of reliance by July 15, 2011. Plaintiffs should be given an opportunity to respond in writing by August 15, 2011.

DATED: June 10, 2011

Respectfully submitted,

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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 W. Broadway, Suite 1900, San Diego, California 92101.

2. That on June 10, 2011, declarant served by electronic mail and by U.S. Mail to the parties the following documents:

PLAINTIFFS' STATUS CONFERENCE REPORT

The parties' e-mail addresses are as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of June, 2011, at San Diego, California.

Deborah S. Granger

DEBORAH S. GRANGER