

**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> ,)	Magistrate Judge Nan R. Nolan
)	
Defendants.)	

**DEFENDANTS’ UPDATE REGARDING OBJECTIONS TO CERTAIN CLAIMS
INCLUDED IN THE REPORT OF CLAIMS ADMINISTRATOR GILARDI & CO. LLC**

Pursuant to this Court’s Order of April 25, 2012, Defendants respectfully submit this “update regarding their objections to certain claims included in the Gilardi Report since the meet and confer sessions.” (Dkt. 1814). For ease of reference, this update tracks the categories of objections previously identified in “Defendants’ Objections” filed February 27, 2012, and incorporates without restatement the arguments and positions set forth therein. (Dkt. 1800).

**A. Claims Filed by Third Parties Without Evidence of the Third Parties’
Authority to File on Behalf of the Beneficial Owners**

Following the meet and confer process, 8,283 claims remain in dispute in this category (Plaintiffs have withdrawn 7 claims objected to in this category). The remaining dispute concerns 13 third-party filers who submitted claims on behalf of class members without competent proof of authority. (*Id.* at 6–9).¹

As set forth in Defendants’ Objections, these third party submissions failed to provide

¹ Consistent with the request of the Court, no exhibit identifying the specific claims remaining at issue has been filed with this submission. Defendants have provided the updated list to Plaintiffs and will submit the list to the Court upon request.

any “documentation *from the beneficial owners* establishing the third parties’ authority to file claims on behalf of the beneficial owner.” (Dkt. 1800 at 9 (emphasis in original)). Plaintiffs’ counsel either misapprehended this objection and the underlying legal requirement, or these third parties are unable to provide the requisite proof. As to 12 of the 13 bulk filers, Plaintiffs’ counsel responded to Defendants’ objections only by submitting evidence *from third party filers themselves* asserting their authority to function as the agents of class members (*i.e.*, beneficial owners) with respect to claims in this litigation. (Dkt. 1820 at 2–11; Dkt. 1803, Tabs 1–13). This, however, satisfies neither the express requirements of the Proof of Claim form nor basic legal standards.

Proof of agency authority *from the class member* as principal is required. It is well-settled that “only the words or conduct of the alleged principal, not the alleged agent,” establish an agent’s authority. *Opp v. Wheaton Van Lines*, 231 F.3d 1060, 1064 (7th Cir. 2000) (internal quotations and citation omitted); *Sphere Drake Ins. Ltd. v. Am. Gen’l Life Ins. Co.*, 376 F.3d 664, 672 (7th Cir. 2004); *Anetsberger v. Metropolitan Life Ins. Co.*, 14 F.3d 1226, 1235 (7th Cir. 1994) (deposition testimony of agent, standing alone, insufficient to establish agent’s authority); *Steinberg v. Entrust Midwest, LLC*, No. 10 C 332, 2011 U.S. Dist. LEXIS 7293, at *10 (N.D. Ill. Jan. 25, 2011) (Guzmán, J.) (“It is the principal’s intent, not that of the agent’s, that controls.”); *see also* Restatement (Second) of Agency § 15 (1958). To this end, it is notable that even the limited number of depositions permitted on the subject of reliance in Phase II (15 total) provided concrete examples of claims filed by the third-parties on behalf of class members who, in fact, *did not* give authority to act on their behalf. (Dkt. 1800 at 6-8). Indeed, one of the third parties purported to submit claims on behalf of two *named defendants*. (Dkt. 1764 at 7, n.4).

“[T]he party alleging an agency relationship . . . bears the burden of proving its existence by a preponderance of the evidence.” *Sphere Drake*, 376 F.3d at 672. Absent competent evidence *from the class member* as principal appropriately documenting the authority of the third party to

function as an agent with respect to the claims in this litigation, this burden has not been met.² Here, there is no competent evidence that any of the underlying class members with respect to whom this objection is raised in fact received notice of the claims process, authorized the filing of claims in their name, or are even aware that claims have been submitted on their behalf. Not one of the principals filed its own claim or provided any evidence ratifying the third party submission purportedly filed on its behalf. *See Sphere Drake*, 376 F.3d at 677 (explaining that “[r]atification requires that the principal have full knowledge of the facts and the choice to either accept or reject the benefit of the transaction”).

As to only one of the bulk filers at issue—Chicago Clearing Corporation (“CCC”)—Plaintiffs did submit certain documents executed by CCC’s customers, including Assignment and Agency Agreements executed by 89 CCC customers (Dkt. 1803, Ex. A-6-c) and affidavits executed by 64 other CCC customers. (*Id.*, Ex. A-6-d). With one exception, however, these documents fall short of establishing by competent evidence the authority to act on behalf of the actual class members whose claim are at issue.

First, the Agency and Assignment Agreements do not grant CCC the right to file claims in a contested matter. Rather, authorization is expressly limited to CCC’s filing of claims “for those securities class action *settlements* that are listed and periodically updated at www.chicagoclearing.com (‘Settlements’)” and to deduct as CCC’s fee “20% of the Customer’s

² Contrary to Plaintiff’s assertion (Dkt. 1802 at 11–12), Judge Guzmán did not hold otherwise in his August 16, 2011 Order. Rather, Judge Guzmán simply declined to rule that claims submitted by nominees without evidence of authorization by the beneficial owner should be rejected at that time. Indeed, Judge Guzmán expressly reserved for the Magistrate Judge “claims adjudication process” those claims that had not been properly ratified by the class member. To this end, Judge Guzman explained in his order that, if a claim was filed by a nominee without proper authorization, “but the victim desires to file substantially the same claim, there is no harm in accommodating the victim’s desire to file its claim independently through another custodian or to ratify the claim already filed.” (Dkt. 1775 at 2). However, Judge Guzman also held that with respect to claims that remained unratified by class members through the claims process, Defendants would have the opportunity to challenge the issue of authority “through the claims adjudication process” and reserved the issue as “a determination to be made by the magistrate judge . . . to the extent a conflict remains after the claims administrator has performed its function.” (*Id.* at 2-3).

pro rata share of the Plan of Allocation of *the Settlements*.” (Docket No. 1803, Ex. A-6-c (emphasis added).) The claims process in this case does not involve a settlement, nor is this case listed on CCC’s website. The Agreements, therefore, provide no evidence of CCC’s authority to appear on behalf of class members in this ongoing litigation.

Second, with the single exception of the affidavit executed by CCC client Michael Osher (as to whom Defendants filed no objection), none of the Agency and Assignment Agreements or affidavits was executed by an actual class member (a beneficial owner of Household Stock). Rather, all of these documents were executed by representatives of entities that appear themselves to be intermediary nominee institutions. The fact that an intermediate nominee may have authorized CCC to file claims does not establish the requisite grant of authority by an actual class member.

Neither Defendants nor the Court may rely upon the mere submissions by bulk filers and nominees asserting authority to act on behalf of the actual owners of Household common stock. As Judge Guzmán succinctly explained in another case:

Notwithstanding otherwise reasonably prudent behavior by the third party, he may not rely upon ‘the mere statements of the alleged agent, made outside the presence of the principal and not subsequently approved by [the principal]’ to establish the existence of a principal-agent relationship. . . . Because the principal is the source of power, the agent’s authority may only be proved by tracing it to that source in some word or act of the alleged principal.

Davis Cos. v. Emerald Casino, Inc., No. 99 C 6822, 2003 U.S. Dist. LEXIS 16039, at *15–16 (N.D. Ill. Sept. 10, 2003) (citation omitted); *see also, e.g., Malcak v. Westchester Park Dist.*, 754 F.2d 239, 245 (7th Cir. 1985) (“A third party dealing with an agent has the obligation to verify both the fact and extent of the agent’s authority.”). Thus, absent documentation *from the class member* principal, the proof of authority submitted by Plaintiffs’ counsel is insufficient as a matter of law to establish agency authority

If not rejected as a matter of law based on the absent evidence of authority, at a minimum, the alleged authority issue presents factual determinations that must be presented to and resolved

by a jury. *See, e.g., Anetsberger*, 14 F.3d at 1234 (“The existence and scope of an agency relationship are questions of fact, unless the parties’ relationship is so clear as to be undisputed.”); *accord Moriarty v. Glueckert Funeral Home, Ltd.*, 155 F.3d 859, 864 (7th Cir. 1998); *Valenti v. Qualex, Inc.*, 970 F.2d 363, 367 (7th Cir. 1992).

B. Claims Containing Incomplete or Defective Proofs of Claim

1. Claims Filed by Beneficial Owners Without Supporting Documentation of Their Transactions

275 claims remain in dispute in this category (Plaintiffs have agreed to the objection as to 5 claims; Defendants have withdrawn the objection as to 71 claims).

The following reflects the results with respect to the individual sub-categories identified by Plaintiffs in their Opposition (certain of which have been withdrawn based on subsequently received documentation) (Dkt. 1802 at 13–24):

B.1.a – Plaintiffs agreed to the objection as to 3 claims and Defendants received subsequent satisfactory documentation as to 25, leaving another 28 claims still in dispute. Of these 28: 11 do not contain documentation; 10 are inadequate self-reported documentation; 6 contain illegible documentation; and 1 is in a foreign language.

B.1.b(1) – objections withdrawn;

B.1.b(2) – objections withdrawn;

B.1.b(3) – the underlying data is unreliable (does not correspond to claim amount) and this claim remains contested;

B.1.b(4) – objections withdrawn;

B.1.b(5) – objections withdrawn as to 3 claims, the objection remains contested as to 7 claims because the underlying data is unreliable (does not correspond to claim amount);

B.1.b(6) – objections withdrawn;

B.1.b(7) – objection withdrawn as to 1 claim, the objection remains contested as to 3 claims because the underlying data is unreliable (does not correspond to claim amount);

B.1.b(8) – remains in dispute, the submitted affidavit is insufficient (does not appear to be holder of trading records);

B.1.c(1) – remains in dispute, no declaration provided;

B.1.c(2) – remains in dispute, no declaration provided;

B.1.c(3) – remains in dispute, no declaration provided;

B.1.d – Plaintiffs agreed to the objection as to 2 claims and objections were withdrawn as to 5 claims, leaving 221 claims still in dispute. The contention of Plaintiffs’ counsel that the mere filing of a claim form, without any supporting documentation establishing the transactions in Household Common Stock, can suffice is baseless and contrary to the express language of the Proof of Claim Form itself. (Dkt. 1800 at 2, 9; Dkt. 1766-2, Ex. B at 2).

2. Claims Filed by Third-Party Claims-Filing Services Without Supporting Documentation of the Beneficial Owners' Transactions

13,780 claims remain in dispute (Plaintiffs have agreed to the objection as to 1 claim; Defendants have withdrawn the objection as to 63 claims). There are no grounds to dispute the basic principle that competent supporting documentation of the underlying transactions must be provided to support a claim.

The following reflects the results with respect to the individual sub-categories identified by Plaintiffs in their Opposition (certain of which have been withdrawn based on subsequently received documentation) (Dkt. 1802 at 24-44):

B.2.a(1)(a) – objections withdrawn as to 3 claims, the objection remains contested as to 3 claims because the underlying data is unreliable (does not correspond to claim amount);

B.2.a(1)(b) – objections withdrawn as to 7 claims, the objection remains contested as to 1 claim because the underlying data is unreliable (does not correspond to claim amount);

B.2.a(1)(c) – objections withdrawn;

B.2.a(1)(d) – objections withdrawn;

B.2.a(1)(e) – remains in dispute, the affidavits provided are insufficient (does not appear to be holder of trading records);

B.2.a(1)(f) – remains in dispute, affidavit does not match claimant names;

B.2.a(1)(g) – remains in dispute because the underlying data is unreliable (does not correspond to claim amount);

B.2.a(1)(h) – objections withdrawn;

B.2.a(1)(i) – remains in dispute, the submitted affidavit is insufficient (does not appear to be holder of trading records);

B.2.a(1)(j) – objections withdrawn as to 6 claims, the objection remains contested as to 5 claims because the underlying data is unreliable (does not correspond to claim amount);

B.2.a(1)(k) – remains in dispute, the submitted affidavit is insufficient (does not appear to be holder of trading records);

B.2.a(1)(l) – objections withdrawn as to 5 claims, the objection remains contested as to 5 claims because the underlying data is unreliable (does not correspond to claim amount);

B.2.a(1)(m) – objection withdrawn as to 1 claim, the objection remains contested as to 8 claims because the submitted affidavit is insufficient (does not appear to be holder of trading records);

B.2.a(1)(n) – remains contested because the underlying data is unreliable (does not correspond to claim amount);

B.2.a(1)(o) – remains contested as to 219 claims because the submitted affidavit is insufficient (does not appear to be holder of trading records);

B.2.a(1)(p) – remains contested because the underlying data is unreliable (does not correspond to claim amount);

B.2.a(1)(q) – remains contested because as to 3 claims no affidavit was provided, and as

to 2 claims because the submitted affidavit is insufficient (does not appear to be holder of trading records).

B.2.a(1)(r) – remains contested because no affidavit was provided;

B.2.a(2) – remains contested because the submitted affidavit is insufficient (does not appear to be holder of trading records);

B.2.a(3) – remains contested because no affidavit was provided;

B.2.a(4) – remains contested because no affidavit was provided;

B.2.a(5) – remains contested because no affidavit was provided;

B.2.a(6) – remains contested because the submitted affidavit is insufficient (does not appear to be holder of trading records);

B.2.a(7) – remains contested because the submitted affidavit is insufficient (does not appear to be holder of trading records);

B.2.a(8) – one claim is withdrawn, one claim remains contested because no affidavit was provided;

B.2.a(9) – remains contested because no affidavit was provided;

B.2.a(10) – remains contested because no affidavit was provided;

B.2.a(11) – remains contested because the underlying data is unreliable (does not correspond to claim amount);

B.2.a(12) – remains contested because the submitted affidavit is insufficient (does not appear to be holder of trading records);

B.2.b – Plaintiffs agreed to objection as to 1 claim, the rest remain contested because the submitted affidavit is insufficient (does not appear to be holder of trading records);

B.2.c – the objection as to 27 claims has been withdrawn, the rest remain contested because no affidavit was provided;

B.2.d – the objection has been withdrawn as to one claim, and the rest remain contested because no affidavit was provided as to 26 claims;

B.2.e – remains contested because the submitted affidavit is insufficient (does not appear to be holder of trading records);

B.2.f – remains contested because no affidavit was provided;

B.2.g – remains contested because no affidavit was provided;

B.2.h – remains contested because the submitted affidavit is insufficient (does not appear to be holder of trading records);

B.2.i – remains contested because the submitted affidavit is insufficient (does not appear to be holder of trading records);

B.2.j – remains contested because no affidavit was provided;

B.2.k – remains contested because no affidavit was provided.

3. Unbalanced Claims

1,199 claims remain in dispute in this category (Plaintiffs have agreed to the objection as to 2 claims; Defendants have withdrawn the objection as to 90 claims). Plaintiffs have provided no meaningful response to the claimed amounts that do not correspond to the underlying transaction data. Instead, they assert only generically, and without any legal basis, that such

imbalances may be due to multiple alternative reasons and that “any discrepancies resulting in unbalanced claims,” should be ignored. (Dkt. 1802 at 44–46). With respect to the only claims specifically addressed by Plaintiffs (Claim nos. 620315–620317), Plaintiffs refer to a correction by the Government of Singapore Investment Corp., but provide no documentation of any kind from the Government of Singapore Investment Corp. supporting the purported correction. (*Id.* at 45–46). Moreover, during the meet and confer process it was revealed that Gilardi made numerous determinations as to purported claim amounts based on *ex parte* and undocumented conversations with filers. Gilardi cannot function as an adjudicative body to unilaterally determine these disputed matters and such inaccurate and unsupported calculations cannot provide a competent basis for a claim. Plaintiffs concede this category contains factual disputes that require additional inquiry. (Dkt. 1815 at 4).

4. Claims with Negative Balances

844 claims remain in dispute following the meet and confer process (Defendants have withdrawn the objection as to 32 claims). These are claims for which the underlying data is necessarily flawed because they contain negative balances without documented “short” sales (a mathematical impossibility). Plaintiffs have no factual or legal response to this objection. (Dkt. 1802 at 46–47). As with the unbalanced claims, these inaccurate calculations cannot provide a competent basis for a claim and Gilardi cannot function as an adjudicative body to unilaterally determine these disputed matters. Plaintiffs concede that this category contains factual disputes that require additional inquiry. (Dkt. 1815 at 4).

5. Claims Relating to Investments Other than Household Common Stock

Four claims remain in dispute in this category (Plaintiffs have agreed to the objection as to 4 claims). Plaintiffs assert that the 4 claims in dispute constitute “post-HSBC merger converted shares,” (Dkt. 1802 at 47), but there is no competent proof to support this assertion.

C. Claims Containing Overstated Claim Amounts

1. Duplicate Claims

Plaintiffs have agreed to all duplicate claim objections.

2. Claims With No Reported Trading Activity During the Damages Period

Six claims remain in dispute in this category (Plaintiffs have agreed to the objection as to 5 claims; Defendants have withdrawn the objection as to 9 claims). Plaintiffs provide no response establishing activity during the damages period. (Dkt. 1802 at 48).

3. Claims for Which Defendants' Calculations of the Allowed Losses Are Less than Gilardi's Allowed Losses

1,538 claims remain in dispute in this category (Plaintiffs have agreed to the objection as to 5 claims; Defendants have withdrawn the objection as to 108 claims). Plaintiffs concede that this category contains factual disputes that require additional inquiry. (Dkt. 1815 at 4).

D. Claims With a "Yes" Answer, or Lacking An Answer, to the Proof of Claim Form's Reliance Question

1. Claims with a "Yes" Answer to the Reliance Question

123 claims remain in dispute in this category (Defendants have withdrawn the objection as to 1 claim). These claims should be rejected as a matter of law for the reasons set forth in Defendants' Objections. (Dkt. 1800 at 14–15).

2. Claims Filed by Beneficial Owners Without an Answer to the Reliance Question

2,532 claims remain in dispute in this category (Plaintiffs have agreed to the objection as to 5 claims; Defendants have withdrawn the objection as to 36 claims). These claims also fail as a matter of law. (Dkt. 1800 at 14–15).

3. Claims Filed by Third Parties on Behalf of Beneficial Owners with Allowed Losses in Excess of \$250,000 Without an Answer to the Reliance Question

99 claims remain in dispute in this category (Plaintiffs have agreed to the objection as to

2 claims). These claims also fail as a matter of law. (Dkt. 1800 at 15).

4. Claims Filed by Third Parties on Behalf of Beneficial Owners with Allowed Losses of \$250,000 or Less Without an Answer to the Reliance Question

Defendants acknowledge that this category has been previously ruled on by the Court and this objection has been stated for record purposes. (Dkt. 1800 at 15–16).

E. Untimely Claims

The burden is on a claimant to show excusable neglect for a failure to meet court ordered deadlines. *See, e.g., In re Cendent Corp. Prides Litig.*, 233 F.3d 188, 197 (3d Cir. 2000). No such showing has been made with respect to the untimely claims.

F. Claims Filed by Individuals or Entities that Are Not Members of the Certified Class

1. Claims Filed by Household Employees

182 claims remain in dispute in this category following the meet and confer process (Plaintiffs have agreed to the objection as to 1 claim). These claims fail as a matter of law. (Dkt. 1800 at 17–18).

2. The Claim Filed by the HSBC-North America Tax Reduction Investment Plan (“TRIP”)

This claim remains in dispute and should be rejected as a matter of law for the reasons set forth in Defendants’ Objections. (Dkt. 1800 at 18).

3. Claims Filed on Behalf of HSBC as the Beneficial Owner

Defendants have withdrawn this objection as to the claims in this category.

4. Claims Submitted by Participants in the HSBC ADS Fund

These claims remain in dispute and should be rejected as a matter of law for the reasons set forth in Defendants’ Objections. (Dkt. 1800 at 18–19).

Dated: May 9, 2012

Respectfully submitted,

/s /R. Ryan Stoll

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CERTIFICATE OF SERVICE

R. Ryan Stoll, an attorney, hereby certifies that on May 9, 2012, he caused true and correct copies of the foregoing Defendants' Remaining Objections to Certain Claims Submitted by Gilardi & Company to be served via the Court's ECF filing system on the following counsel of record in this action:

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