

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN, On)	Lead Case No. 02-C-5893
Behalf of Itself and All Others Similarly)	(Consolidated)
Situated,)	
) <u>CLASS ACTION</u>
Plaintiff,)	
) Judge Ronald A. Guzman
vs.)	
)
HOUSEHOLD INTERNATIONAL, INC., et)	
al.,)	
)
Defendants.)	
_____)	

**PLAINTIFFS' OBJECTIONS TO THE SPECIAL MASTER'S JULY 2, 2015 REPORT
AND RECOMMENDATION ON DEFENDANTS' CATEGORY E AND F OBJECTIONS**

Plaintiffs respectfully submit the following Objections to the Special Master's July 2, 2015 Report and Recommendation on Defendants' Category E and F Objections ("R&R") (Docket No. 2015) pursuant to Fed. R. Civ. P. 53(f)(2). Plaintiffs only object to the Special Master's recommendations with respect to defendants' Category F.1, F.2 and F.4 objections. *See* R&R at 9-22. Plaintiffs have no objections to the Special Master's recommendations with respect to defendants' Category E or F.3 objections.

I. PROCEDURAL HISTORY

On February 3, 2012 (the "February 2012 Order"), the Court entered an order setting the schedule for claims adjudication. Dkt. No. 1798. In the Order, the Court directed defendants to "enumerate" by February 27, 2012 the claims listed on Gilardi & Co. LLC's ("Gilardi") December 22, 2011 report to which they objected "either in terms of (a) calculation of the amount; (b) submission of the claim without proper authority of the actual class member; (c) incompleteness, duplication of another claim, or suffers from some mechanical deficiency in the claim submission itself." *Id.* at 1. The February 2012 Order further required defendants to list the claim number of the challenged claim and provide a "*claim-by-claim* explanation or analysis of the basis for their objections." *Id.* (emphasis added).

On February 27, 2012, defendants filed their objections to certain claims included in Gilardi's report. Dkt. No. 1800. In category F, defendants raised objections to "Claims Filed by Individuals or Entities that Are Not Members of the Certified Class." Dkt. No. 1800, at 17-19. In essence, defendants argued that the category F claimants were either Household agents or affiliates and, therefore were not members of the Class under defendants' interpretation of the class definition. First, defendants objected to 183 claims filed by "Household employees." Although defendants' objections included a list with the names of these purported employees, no additional information was provided in support of their objection. Similarly, defendants objected to the HSBC-North

America Tax Reduction Investment Plan (“TRIP”) claim (category F.2; Dkt. No. 1800, at 18) and claims submitted by participants in the HSBC ADS Fund (category F.4). Again, defendants provided a threadbare objection with no evidentiary support.

On March 28, 2012, plaintiffs filed their response to defendants’ F.1, F.2 and F.4 objections, among others. Dkt. No. 1802. In response to defendants’ objections, plaintiffs advanced both legal and factual arguments. Dkt. No. 1802, at 54-58. Among other issues, plaintiffs argued that Household had failed to provide any evidence “that these claimants were employed by Household during the Damages Period or when they purchased the shares at issue.” *Id.* at 55. Moreover, as to the TRIP and HSBC ADS Fund, plaintiffs again noted that defendants failed to provide any evidentiary support for their position. *Id.* at 56-57, 58.

On May 9, 2012, defendants provided an update to the Court regarding the parties’ efforts to meet-and-confer regarding their objections. Although defendants reargued their objections to other claims included in Gilardi’s report, defendants simply noted that the category F objections remained in dispute. Dkt. No. 1817. Despite this second opportunity to submit additional evidence, defendants again failed to provide any support for their category F.1, F.2 and F.4 objections. In response to defendants’ update, plaintiffs again pointed out that defendants had “failed to provide any support for their objections.” Dkt. No. 1820, at 10.

In fact, defendants submitted no evidence setting forth the basis for their category F objections until February 2013. On February 21, 2013, defendants wrote a letter to the Special Master identifying 151 former employees who allegedly worked at Household during the relevant time period (March 23, 2001 through October 11, 2002). *See* Defendants’ February 21, 2013 Letter attached hereto as Exhibit A (without attachment).¹ Defendants’ February 2013 list of employees

¹ Defendants provided plaintiffs with a list of employees without employment dates on February 15, 2013.

(and those employees' respective hire and termination dates) was purportedly developed by a "manual review of files for past and current employees." *Id.* However, defendants' list was not accompanied by a declaration from any Household or HSBC employee providing information as to how this list was developed or what files were searched. Similarly, defendants failed to submit any information with respect to the claim filed by the TRIP until January 2014. At that time, defendants submitted certain TRIP plan documents to the Special Master as attachments to an e-mail. Again, the documents were not accompanied by a declaration or other evidentiary support. *See* Defendants' January 2 and January 7, 2014 e-mails (without attachments), attached hereto as Exhibit B. Defendants have never provided a justification or explanation for their failure to submit evidence regarding their former employees or the TRIP plan on the day it was due – February 27, 2012. And, unquestionably, this information was in their possession and control.

II. ARGUMENT

As an initial matter, plaintiffs incorporate their original responses to defendants' objections to the category F.1, F.2 and F.4 claims herein. Dkt. Nos. 1802, at 54-58 and 1820, at 10.

Further, plaintiffs object to the R&R because the defendants failed to comply with Judge Guzman's February 2012 Order. Pursuant to that Order, defendants were required to object to claims and provide, on a claim-by-claim basis, the reasons for such objections by February 27, 2012. Although defendants raised objections to the F.1, F.2 and F.4 claims, they submitted no evidentiary support for these objections. In fact, defendants failed to submit any evidence that the claimants in categories F.1 and F.4 were current or former Household employees until February 21, 2013 – almost a full year after their objections should have been properly lodged. *See* Ex. A. Similarly, defendants failed to provide any evidence that the TRIP plan fell within the ambit of the Seventh Circuit's *In re Motorola Securities Litigation*, 644 F.3d 511 (7th Cir. 2011) decision until January

2014 – almost two years after defendants were required to provide the basis for their objections. *See* Ex. B. Defendants’ objections to these claims should be denied for this reason alone.

Moreover, the R&R never addresses the fact that, to this day, defendants have never submitted admissible evidence in support of their category F objections. For example, defendants’ February 21, 2013 letter purportedly provides information about certain claimants, including their hire and termination dates, based on a “manual” review of unidentified files. However, this list would certainly not qualify as a business record under FRE 803(6), nor would it be admissible under FRE 901 (“To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.”). In fact, the list is not even accompanied by a declaration that explains who performed a “manual review” of what “files for past and current employees.” *See* Ex. A. Concerns regarding the accuracy and authenticity are not abstract – defendants were forced to withdraw objections to 31 claims when it turned out these claimants were not employed during the relevant time period. *See* R&R at 11 n.5. There is simply no admissible evidence in the record which establishes that these claimants were Household employees during the relevant time period. In short, there is no evidentiary support – either timely or untimely – for the R&R’s conclusion that these claims should be denied.

In the same vein, defendants did not submit any TRIP plan documents to the Court or the Special Master until January 2014 and, when they did, the documents were not accompanied by a declaration establishing the authenticity of the documents or laying a business record foundation for those documents.

In short, the record is devoid of any admissible evidence supporting the findings set forth in the R&R. If the R&R stands, the defendants, who even after their appeal, made materially false statements with scienter, will have successfully evaded liability for over \$38 million in claims based

solely on the interpretation of language in the Class definition which was never intended to exclude victims of fraud. This result is drastically different from *In re Motorola*, where the defendants remained liable for the full amount of the settlement and the Court of Appeals simply determined which victims should share in that recovery. Therefore, defendants' F.1, F.2 and F.4 objections should be overruled.

III. CONCLUSION

By reason of the foregoing, this Court should modify the July 2, 2015 R&R to deny defendants' objections to the claims set forth in categories F.1, F.2 and F.4.

DATED: July 23, 2015

Respectfully submitted,

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DECLARATION OF SERVICE

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.

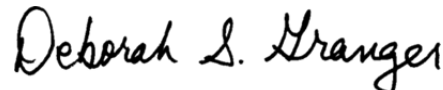
2. That on July 23, 2015, declarant served by electronic mail to the parties listed below the following documents:

PLAINTIFFS' OBJECTIONS TO THE SPECIAL MASTER'S JULY 2, 2015 REPORT AND RECOMMENDATION ON DEFENDANTS' CATEGORY E AND F OBJECTIONS

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 23rd day of July, 2015, at San Diego, California.



DEBORAH S. GRANGER