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 Honorable Jorge L. Alonso

PLAINTIFFS' MOTION *IN LIMINE* TO PRECLUDE DEFENDANTS FROM CALLING THE LEAD PLAINTIFF OR INTRODUCING CLASS MEMBERS' TRADING RECORDS AND RELATED INFORMATION AT TRIAL

PLAINTIFFS' MOTION *IN LIMINE* NO. 7

At trial, defendants intend to call James Glickenhaus, the representative of Glickenhaus & Co. which is one of the three Court-appointed Lead Plaintiffs. Pretrial Order, Ex. D-3. Defendants also intend to offer Glickenhaus & Co.'s trading records and related information at trial.[1] Pretrial Order, Ex. C-2. Although plaintiffs inquired, defendants refused to provide any rationale for the relevance of Mr. Glickenhaus's testimony or his company's trading records. There is a good reason for defendants' silence: the Lead Plaintiffs and their trading records are utterly irrelevant to the issues that must be decided at this trial. As such, defendants should be precluded from calling Mr. Glickenhaus or seeking to admit the trading records and related information.

Put simply, the trades and testimony of a Lead Plaintiff are irrelevant to class-wide issues of liability. And defendants know it. In 2005, defendants' post-class certification attempts to take discovery from Glickenhaus' Co-Lead Plaintiff PACE were rejected in this case. Magistrate Judge Nolan wrote:

> [D]iscovery of PACE's ***investment history is irrelevant to any class-wide liability issues*** and thus, not essential at this time. Given plaintiffs' reliance on the fraud on the market theory, ***resolution of individualized reliance issues is not necessary to establishing class-wide liability***. Significantly, the Household defendants have failed to cite a single case indicating that even if reliance is rebutted as to a single plaintiff, it necessarily invalidates the class-wide presumption.

Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc., No. 02-C-5893, 2005 WL 3801463, at *4 (N.D. Ill. Apr. 18, 2005) (emphasis added).

Undeterred by this ruling, defendants later sought discovery of the Lead Plaintiffs, including Glickenhaus & Co., claiming that it was relevant to their "truth on the market" defense. Again rejecting defendants' relevance arguments, Magistrate Judge Nolan held:

> Contrary to Defendants' assertion, there is no need to depose the individual named Plaintiffs in order to determine what information was on the market at the time of the alleged fraud. The truth on the market defense ***turns on the representations made to the marketplace as a whole, and not to any individual plaintiff***. . . . ***Indeed, if the market as a whole was privy to corrective information at the time of the alleged fraud, it is irrelevant whether any individual plaintiff was also aware of that information***. Thus, the truth on the market defense ***is not a valid***

[1] Defendants have designated these proposed exhibits as DX0104 (Glickenhaus & Company Trading Records), DX0219 (Glickenhaus & Company Form 13F reports), DX0220 (Proofs of Claim and Releases for All Accounts Managed by Glickenhaus & Company), and DX0221 (Glickenhaus & Company Account Activity in Household International).

> ***basis for allowing Defendants to depose the named Plaintiffs prior to a determination of class-wide liability***.

Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc., No. 02-C-5893, 2006 WL 3332917, at *2 (N.D. Ill. Nov. 13, 2006) (emphasis added). In any event, defendants' truth on the market defense is settled and not an issue for the retrial. Defendants pursued their truth on the market defense at the first trial and it was rejected by the jury, as both Judge Guzmán and the Court of Appeals noted. *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 430 (7th Cir. 2015); Dkt. No. 1703 at 5-8; Dkt. No. 1737 at 2-3.

Defendants' attempts to interject the investment history of a single class member into a class-wide trial certainly fare no better in 2016, than they did a decade ago. In fact, reliance is the only element of a §10b case that is implicated by the trading practices or knowledge of an individual class member. And reliance is not at issue in this trial, because it was properly addressed in Phase II of this case. *Glickenhaus*, 787 F.3d at 429-33.

The Court of Appeals noted that:

> In Phase I ***the jury addressed all issues that were appropriate for class-wide resolution*** – *e.g.*, whether any of the 40 possible false statements were actionable misrepresentations, whether they were material, who was liable for which misrepresentations, and how much inflation the actionable misrepresentations caused in the stock price. Phase II addressed the remaining issues – *e.g.*, reliance questions and the calculation of individual class members' damages.

Id. at 430 (emphasis added).

Thereafter, the Court of Appeals rejected each of defendants' reliance-related arguments, holding that the "reliance question" on the proof of claim form accurately reflected the Supreme Court's description of how the presumption of reliance can be rebutted, describing defendants' arguments regarding limitations of discovery of class members as a "non-starter" and rejecting any argument that the reliance question was meaningless. *Id*. at 432-33. Ultimately, the Court of Appeals concluded:

> Because the proceedings below were neatly divided into two phases, ***there's no need to redo anything in Phase II***, even though we are remanding for a new trial on certain issues from Phase I.

Id. at 433 (emphasis added).

In short, the re-trial only deals with the class-wide issues related to loss causation, per share damages and proportionate liability. Mr. Glickenhaus can add nothing of value to this inquiry – nor can his firm's trading records. If there were any issues with Glickenhaus & Co.'s reliance or its trading practices, defendants needed to address them in Phase II – and their attempts to do so were rejected by Judge Guzmán.[2] Defendants' attempt to open up a sideshow of some kind should be rejected. Mr. Glickenhaus's testimony and his firm's trading records and related information have no relevance at trial and are, therefore, inadmissible. FRE 401, 402. Further, even if this evidence were relevant, the limited probative value of the views and trading practices of one of over 30,000 class members would be substantially outweighed by the danger of unfair prejudice, confusion of the issues and undue delay. FRE 403. Defendants should be precluded from calling Mr. Glickenhaus or from offering related exhibits, including DX0104, DX0219, DX0220 and DX0221.

DATED: April 22, 2016

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
MICHAEL J. DOWD (135628)
SPENCER A. BURKHOLZ (147029)
DANIEL S. DROSMAN (200643)
LUKE O. BROOKS (90785469)
LAWRENCE A. ABEL (129596)
HILLARY B. STAKEM (286152)

s/ Luke O. Brooks
LUKE O. BROOKS

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
MAUREEN E. MUELLER
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)

Lead Counsel for Plaintiffs

[2] *See* Dkt. No. 1822 at 8-9 (Judge Guzmán rejects defendants' argument that they created a triable issue of fact as to Glickenhaus's reliance based on his post-trial Phase II deposition testimony).

MILLER LAW LLC
MARVIN A. MILLER
LORI A. FANNING
115 S. LaSalle Street, Suite 2910
Chicago, IL 60603
Telephone: 312/332-3400
312/676-2676 (fax)

Liaison Counsel

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses for counsel of record denoted on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 22, 2016.

s/ Luke O. Brooks
LUKE O. BROOKS

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: LukeB@rgrdlaw.com

Jaffe v. Household Int'l, Inc., No. 02-5893 (N.D. Ill.)
Service List

Counsel	E-mail address
Stewart Theodore Kusper Giovanni Antonio Raimondi THE KUSPER LAW GROUP, LTD. 20 North Clark Street, Suite 3000 Chicago, IL 60602 (312) 204-7938 Tim S. Leonard JACKSON WALKER L.L.P. 1401 McKinney Street, Ste. 1900 Houston, TX 77010 (713)752-4439	Stewart.Kusper@Kusperlaw.com Giovanni.Raimondi@Kusperlaw.com tleonard@jw.com
Counsel for Defendant David A. Schoenholz	
Dawn Marie Canty Gil M. Soffer KATTEN MUCHIN ROSENMAN LLP 525 West Monroe Street Chicago, Illinois 60661 (312)902-5253	dawn.canty@kattenlaw.com gil.soffer@kattenlaw.com
Counsel for Defendant William F. Aldinger	
David S. Rosenbloom C. Maeve Kendall McDERMOTT WILL & EMERY, LLP 227 West Monroe Street Chicago, IL 60606 (312) 984-2175	drosenbloom@mwe.com makendall@mwe.com
Counsel for Defendant Gary Gilmer	
R. Ryan Stoll Mark E. Rakoczy Andrew J. Fuchs Donna L. McDevitt Patrick Fitzgerald SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP 155 North Wacker Drive Chicago, IL 60606 (312)407-0700	rstoll@skadden.com mrakoczy@skadden.com Andrew.Fuchs@skadden.com Donna.McDevitt@skadden.com Patrick.Fitzgerald@skadden.com pclement@bancroftpllc.com zhudson@bancroftpllc.com TKavaler@cahill.com Jhall@cahill.com dbutswinkas@wc.com sfarina@wc.com

Counsel	E-mail address
Paul D. Clement D. Zachary Hudson BANCROFT PLLC 1919 M Street NW, Ste. 470 Washington, DC 20036 (202)234-0090 Thomas J. Kavaler Jason M. Hall CAHILL GORDON & REINDEL LLP 80 Pine Street New York, NY 10005 (212)701-3000 Dane H. Butswinkas Steven M. Farina Leslie C. Mahaffey Amanda M. MacDonald WILLIAMS & CONNOLLY LLP 725 Twelfth Street NW Washington DC 20005 202-434-5000 Luke DeGrand Tracey L. Wolfe DEGRAND & WOLFE, P.C. 20 South Clark Street Suite 2620 Chicago, Illinois 60603 (312) 236-9200 (312) 236-9201 (fax)	lmahaffey@wc.com amacdonald@wc.com twolfe@degrandwolfe.com ldegrand@degrandwolfe.com
Counsel for Defendant Household International Inc.	

Counsel	E-mail address
Michael J. Dowd Spencer A. Burkholz Daniel S. Drosman Luke O. Brooks Hillary B. Stakem ROBBINS GELLER RUDMAN & DOWD LLP 655 West Broadway, Suite 1900 San Diego, CA 92101 (619)231-1058 619/231-7423 (fax) Jason C. Davis ROBBINS GELLER RUDMAN & DOWD LLP Post Montgomery Center One Montgomery Street, Suite 1800 San Francisco, CA 94104 (415)288-4545 (415)288-4534 (fax) Maureen E. Mueller ROBBINS GELLER RUDMAN & DOWD LLP 120 East Palmetto Park Road, Suite 500 Boca Raton, FL 33432 (561)750-3000 (561)750-3364 (fax)	miked@rgrdlaw.com spenceb@rgrdlaw.com dand@rgrdlaw.com lukeb@rgrdlaw.com hstakem@rgrdlaw.com jdavis@rgrdlaw.com mmueller@rgrdlaw.com
Lead Counsel for Plaintiffs	
Marvin A. Miller Lori A. Fanning MILLER LAW LLC 115 S. LaSalle Street, Suite 2910 Chicago, IL 60603 (312)332-3400 (312)676-2676 (fax)	Mmiller@millerlawllc.com Lfanning@millerlawllc.com
Liaison Counsel for Plaintiffs	