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

DECLARATION OF SPENCER A. BURKHOLZ IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR APPROVAL OF ATTORNEYS' FEES AND EXPENSES AND AWARD OF EXPENSES TO LEAD PLAINTIFFS

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I, SPENCER A. BURKHOLZ, declare as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California, and I have been admitted *pro hac vice* in this action. I am a partner of the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Lead Counsel"), and counsel for Glickenhaus & Co. ("Glickenhaus"), PACE Industry Union-Management Pension Fund ("PACE") and International Union of Operating Engineers Local No. 132 Pension Plan ("IUOE") (collectively, "Lead Plaintiffs" or "Plaintiffs"). I have been actively involved in the prosecution of this action and am familiar with its proceedings. I have personal knowledge of the majority of the matters set forth herein based upon my active supervision and participation in all material aspects of this litigation. As to the remaining matters, I have reviewed our litigation files and consulted with other attorneys who worked on this case, as well as our support staff. I could and would testify completely to the matters set forth herein if called upon to do so. I submit this declaration in support of Plaintiffs' motion for approval of class action settlement and motion for approval of attorneys' fees and expenses and for an award of expenses to Lead Plaintiffs.

I. PRELIMINARY STATEMENT

2. The $1.575 billion Settlement of this case is the culmination of 14 years of hard-fought litigation and the product of Plaintiffs' unyielding determination to achieve an unparalleled recovery for aggrieved investors. Plaintiffs vigorously prosecuted each stage of this case, from the investigation and filing of the Consolidated Complaint, through a 26-day trial, more than four years of post-trial proceedings, defendants' appeal to the Seventh Circuit Court of Appeals, and proceedings on remand, before this case ultimately settled on the morning the retrial was set to begin. At each stage, Plaintiffs were met with an aggressive defense and experienced defense counsel who constantly expressed their beliefs that Plaintiffs could not prevail on the claims asserted based on the facts alleged.

3. The Settlement was achieved only after Lead Counsel, *inter alia*, (1) filed a detailed, 154-page Consolidated Complaint; (2) opposed multiple rounds of defendants' motions to dismiss the Consolidated Complaint; (3) vigorously fought to obtain critical documentary and testimonial evidence during discovery, including filing over 40 motions to compel, multiple requests for reconsideration and multiple objections to the Magistrate Judge's rulings; (4) deposed or defended more than 70 percipient, expert and third-party witnesses; (5) retained three highly-qualified expert witnesses, who submitted detailed expert reports and rebuttal reports; (6) opposed defendants' summary judgment motion; (7) prepared the Pretrial Order for the 2009 trial and its voluminous supporting exhibits, including filing 10 motions *in limine* and *Daubert* motions and opposing defendants' seven motions *in limine* and *Daubert* motions, including defendants' 105-page "omnibus" motion to exclude 14 separate categories of evidence; (8) extensively prepared this case for trial and attended the 8-day Pretrial Conference in 2009; (9) moved a team of approximately 20 Robbins Geller attorneys, paralegals, forensic accountants and support staff from San Diego, California to Chicago, Illinois for the pretrial hearings and the 26-day trial in 2009; (10) elicited testimony from 22 witnesses and introduced over 200 exhibits into evidence at trial; (11) obtained a jury verdict in favor of Plaintiffs; (12) completed Phase II discovery and successfully opposed defendants' presumption of reliance briefing; (13) worked with the Court-appointed claims administrator Gilardi to monitor claims administration; (14) responded to defendants' objections to over 27,000 claims, drafted correspondence related to various claims issues at the request of the Special Master, and worked with defense counsel to resolve certain of their objections; (15) worked extensively with absent class members, third-party claims filers, brokers and custodial banks to protect and perfect class members' claims; (16) successfully opposed defendants' post-trial motions; (17) obtained a judgment; (18) vigorously opposed defendants' appeal to the Seventh Circuit Court of Appeals, successfully convincing the Court of Appeals to reject the vast majority of defendants'

arguments on appeal; (19) engaged in remand proceedings, including expert discovery of defendants' three new loss causation and damages experts; (20) defeated defendants' efforts to exclude Plaintiffs' loss causation and damages expert, Professor Daniel Fischel; (21) extensively prepared this case for the retrial, including preparing the Pretrial Order, filing offensive *Daubert* motions and motions *in limine* and opposing defendants' motions *in limine*; (22) attended the four-day Pretrial Conference; and (23) moved a team of approximately 14 Robbins Geller attorneys, a forensic accountant and support staff from San Diego, California to Chicago, Illinois for the pretrial proceedings and retrial.

4. As discussed in greater detail below, Plaintiffs faced significant risks and hurdles in this case that could have resulted in the complete dismissal of Plaintiffs' claims, or alternatively, a serious diminution of any recovery to the Class. Defendants filed numerous and lengthy motions to dismiss the Consolidated Complaint, successfully asserting the statute of limitations as a defense and shortening the Class Period by two years. Defendants also repeatedly challenged Plaintiffs' loss causation allegations and the opinions offered by Plaintiffs' loss causation expert, moving for summary judgment on the issue and seeking to exclude Plaintiffs' expert from testifying at trial. Indeed, defendants ultimately obtained a new trial on the issue of loss causation and what it means to "make" a statement under *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011). In short, the risks to Plaintiffs in litigating this case over the last 14 years, including the risks Plaintiffs faced at the 2009 trial and at the retrial, cannot be overstated.

5. The 14-year prosecution required Lead Counsel and their professional support staff to perform over 133,000 hours of work on behalf of over 30,000 class members. Lead Counsel have at all times assumed the responsibility of litigating this action on a contingent-fee basis, such that attorneys' fees would be paid only upon Lead Counsel securing a recovery for the benefit of the Class by settlement or judgment. Lead Counsel have not yet received any compensation for their

effort. In consideration of their extensive efforts on behalf of the Class, Lead Counsel are applying for compensation in the amount of 24.68% of the recovery.

6. The fee application for 24.68% is fair both to the Class and Lead Counsel, and warrants the Court's approval. This fee request is within the range of fee percentages frequently awarded in this type of action and, under the particular facts of this case, fully justified in light of the substantial benefits conferred on the Class, the risks undertaken, the nature and extent of legal services performed, and the fact that the $1.575 billion settlement was not likely at the outset of the case.

7. The following is a summary of the principle events which occurred during the course of this extensive, 14-year case and the legal services Lead Counsel provided.

II. FACTUAL SUMMARY OF PLAINTIFFS' CLAIMS

8. During the Class Period, Household was a large consumer lender holding company that provided consumer loans, mortgage services, auto finance and credit insurance products, and credit card services. Household's customer base was primarily composed of nonconforming, nonprime or subprime customers. Such customers generally had limited credit histories, modest incomes or high debt-to-income ratios or had experienced credit problems caused by occasional delinquencies, prior charge-offs or other credit-related actions.

9. Plaintiffs alleged that, during the Class Period, defendants embarked on a three-pronged fraud which enabled Household to falsely report "record" financial results, by: (1) engaging in predatory lending; (2) improperly "reaging" delinquent loans to "current" in order to conceal the true level of delinquencies and mask the credit quality of Household's loan portfolios as reported to investors; and (3) overstating net income by failing to record timely expenses associated with various credit card agreements in violation of Generally Accepted Accounting Principles ("GAAP").

10. Plaintiffs alleged that defendants' fraudulent statements and omissions, made in the Company's public filings with the United States Securities and Exchange Commission ("SEC"), press releases, news articles and at investor conferences, caused Household's stock to trade at higher prices than it would have if defendants had told the truth, and that the disclosure of the truth later in the Class Period caused Household's stock price to decline.

11. Ultimately, defendants would pay $484 million to Attorneys General from all 50 states to settle charges that Household engaged in predatory lending practices – resulting in a $525 million charge to Household's financials. Household was also forced to restate its financials due to improper accounting of expenses – a $600 million restatement that lowered earnings by $386 million. And on March 18, 2003, Household entered into a Consent Order with the SEC in which defendants agreed to cease and desist from engaging in improper reaging of delinquent accounts to prevent or delay charge-offs.

III. PRE-TRIAL PROCEDURAL HISTORY

A. Commencement of the Litigation

12. On August 19, 2002, Lawrence E. Jaffe Pension Plan initiated an action in the United States District Court for the Northern District of Illinois, Eastern Division, by complaint styled as *Lawrence E. Jaffe Pension Plan v. Household International, Inc. et al.*, Lead Case No. 02-C-5893, alleging violations of the federal securities laws and naming as defendants Household, Chief Executive Officer William Aldinger, Chief Financial Officer David Schoenholz and outside auditor Arthur Anderson (the "*Jaffe* Complaint"). Dkt. No. 1. The *Jaffe* Complaint brought claims on behalf of all persons who purchased Household securities between October 23, 1997 and August 14, 2002. Thereafter, a number of similar, related, class action complaints were filed. In all, a total of 7 actions involving similar claims were filed:

Abbreviated Case Name	Case No.	Date Filed
Jaffe v. Household International, Inc., et al.	02-C-5893	8/19/02
Abrams v. Household International, Inc., et al.	02-C-5934	8/20/02
Eisberry Holdings, LTD v. Household International, Inc., et al.	02-C-6130	8/28/02
Jannett v. Household International, Inc., et al.	02-C-6326	9/05/02
Dolowich v. Household International, Inc., et al.	02-C-6352	9/06/02
Hanschman v. Household International, Inc., et al.	02-C-6859	9/25/02
Friedel v. Household International, Inc., et al.	02-C-7067	10/02/02

13. On October 18, 2002, Glickenhaus, PACE, and IUOE (collectively, the "Glickenhaus Institutional Group") moved the Court to consolidate the related actions, for appointment as lead plaintiff, and for approval of its selection of Robbins Geller[1] as lead counsel and Miller Law LLC[2] ("Miller Law") as liaison counsel. Dkt. Nos. 20-21. In addition to the Glickenhaus Institutional Group, two other proposed lead plaintiffs, Natcan Investment Management, Inc. and StoneRidge Investment Partners, LLC, moved for appointment as lead plaintiff and approval of their selection of lead and liaison counsel. StoneRidge Investment Partners, LLC subsequently withdrew its motion for appointment as lead plaintiff.

14. On December 6, 2002, the Glickenhaus Institutional Group filed an opposition to Natcan Investment Management, Inc.'s motion for appointment as lead plaintiff. Dkt. No. 31. On December 9, 2002, the Court entered an order consolidating the cases for all purposes. Dkt. No. 33. On December 11, 2002, Natcan Investment Management, Inc. filed a motion withdrawing its motion to appoint lead plaintiff. Dkt. No. 37. On December 18, 2002, the Court entered an order granting

[1] Plaintiffs' counsel was previously associated with the law firm Milberg Weiss Bershad Hynes & Lerach. Plaintiffs' counsel later withdrew from Milberg Weiss and joined a new law firm in 2004; that law firm was subsequently renamed Robbins Geller. Dkt. Nos. 169, 1675.

[2] Formerly Miller Faucher and Cafferty LLP.

the Glickenhaus Institutional Group's motion for appointment as lead plaintiff and for approval of Robbins Geller as lead counsel and Miller Law as liaison counsel. Dkt. No. 38.

15. On February 7, 2003, Lead Plaintiffs filed a motion for a finding of relatedness, requesting that the Court make a finding pursuant to Local Rule 40.4 that the case entitled *Williamson v. Aldinger et al.*, 03-C-00331, a shareholder derivative action, was related to *Jaffe*. Dkt. No. 45. On May 2, 2003, after full briefing, the Court denied Plaintiffs' motion with prejudice. Dkt. No. 83.

B. Lead Plaintiffs' Investigation and the Preparation of the Consolidated Complaint

16. Prior to and after the Court appointed the Glickenhaus Institutional Group as Lead Plaintiffs, Lead Plaintiffs and Lead Counsel conducted an extensive investigation to thoroughly understand: (1) Household's business; (2) its competitors; (3) factors impacting its operation; (4) the Company's financial results prior to, during and after the Class Period; (5) the nature of the restatement; (6) Household's settlement with a multi-state group of Attorneys General; (7) applicable provisions of GAAP, SEC rules and the Company's publicly reported accounting policies; (8) the price of the Company's stock before, during and after the Class Period; (9) how the price of the Company's stock performed relative to its peer group and general market; and (10) Household's reaging and restructuring practices.

17. Lead Plaintiffs' investigations encompassed, among other things, the following in order to prepare a complaint that satisfied the stringent pleading requirement of the PSLRA:

- Researching defendants' public statements about Household, including statements made in conference calls, documents filed with the SEC, press releases and in analyst reports;
- Analyzing the restatement, including the determination of how the Company's originally reported financial results violated GAAP, SEC rules and Household's publicly reported accounting policies;

- Analyzing Household's reaging and restructuring practices and their impact on Household's financial statements;
- Researching defendants' compensation and their job responsibilities prior to, during and after the Class Period;
- Researching the subprime lending industry;
- Reviewing analyst reports concerning Household and the subprime lending industry in general;
- Analyzing the price of Household stock, the stock of Household's peers and the changes in the NYSE and other stock markets;
- Interviewing potential witnesses; and
- Preparing preliminary estimates of damages.

18. In addition, before the initiation of the litigation and continuing throughout, Lead Counsel conferred with consultants with expertise in accounting issues, analyzing potential recoverable damages, and the materiality of defendants' statements – key issues of dispute between Lead Plaintiffs and all of the defendants.

19. Lead Counsel also consulted with forensic accountants about the alleged accounting improprieties, the restatement, and factors that indicated defendants knew or recklessly disregarded that their accounting practices violated GAAP, SEC rules and Household's publicly reported accounting policies.

C. The Consolidated Complaint

20. On March 13, 2003, Lead Plaintiffs Glickenhaus, PACE and IUOE, and named plaintiffs The Archdiocese of Milwaukee Supporting Fund, Inc. and The West Virginia Laborers' Trust Fund, filed the 154-page Consolidated Complaint, which included claims for violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act") and Rule 10b-5 promulgated thereunder and §§11, 12(a)(2) and 15 of the Securities Act of 1933 (the "1933 Act"). The Consolidated Complaint added 16 additional defendants, naming as defendants: Household

International, Inc.; Officer Defendants William Aldinger, David Schoenholz and Gary Gilmer; Director Defendants Robert Darnall, Gary Dillon, John Edwardson, Mary Evans, J. Dudley Fishburn, Cyrus Friedheim, Jr., Louis Levy, George Lorch, John Nichols, James Pitblado, S. Jay Stewart, Louis Sullivan; HFC Director Defendant J.A. Vozar; Auditor Defendant Arthur Andersen; and Investment Bank Defendants Merrill Lynch and Goldman Sachs. Dkt. No. 54. The Consolidated Complaint also expanded the Class Period, asserting claims on behalf of all persons who purchased or otherwise acquired securities of Household during the period from October 23, 1997 to October 11, 2002, including common and preferred stock, bonds, notes, InterNotes(SM) and Trust indentures.

21. The Consolidated Complaint alleged that defendants made materially false representations and omissions in public filings, press releases, analyst reports and other public statements concerning the Company and its operations and financial conditions during the Class Period. As alleged in the Consolidated Complaint, defendants' wrongful and fraudulent scheme allowed Household to report "record" financial results during the Class Period by, among other things:

- Engaging in the widespread abuse of Household's customers through a variety of improper and illegal predatory lending techniques designed to maximize amounts loaned to subprime borrowers – without any regard to benefits to the borrowers – including through the use of Household's "EZ Pay Plus Bi-Weekly Payment Plan," by routinely charging additional discount points, including undisclosed prepayment penalties in its loans and up-selling second loans carrying exorbitant interest rates.

- Arbitrarily "reaging" or "restructuring" delinquent accounts to conceal true levels of defaults and delinquencies in order to manipulate and delay charging them off, thereby materially understating the Company's true credit quality and overstating EPS during the Class Period.

- Manipulating the accounting of expenses associated with various credit card partnership agreements in violation of GAAP.

22. The Consolidated Complaint also alleged that defendant Arthur Andersen actively participated in defendants' fraudulent scheme and that it falsely represented in reports to Household shareholders that the Company's financial statements presented fairly, in all material respects, the financial position of Household. Consolidated Complaint, ¶¶174, 190, 202, 227, 249, 279, 316, 365. The Consolidated Complaint alleged that, as a result of its conduct, Arthur Andersen was liable for violations of §10(b) and Rule 10b-5 of the 1934 Act and §§11, 12(a)(2) and 15 of the 1933 Act.

23. The Consolidated Complaint also described the Bank Defendants' roles as financial experts and underwriters in connection with the preparation and filing of the Beneficial Registration Statement after Household acquired Beneficial for $8 billion in June 1998. *Id.*, ¶¶354-382. As alleged in the Consolidated Complaint, the Beneficial Registration Statement incorporated by reference Household's materially false and misleading financial results for FY94-FY97 and interim FY98, including Household's reported EPS, and included false representations about the accuracy of Household's SEC filings, its financial statements and outstanding liabilities. *Id.*, ¶¶362-365. The Consolidated Complaint alleged that the Bank Defendants' failure to conduct a reasonable investigation in connection with their fairness opinions resulted in them failing to uncover and consider Household's and defendants' fraudulent scheme. The Consolidated Complaint alleged that, as a result of the foregoing conduct, the Bank Defendants were liable for violations of §11 of the 1933 Act. *Id.*, ¶¶354-382.

D. Defendants' Motions to Dismiss

1. The Household Defendants', Arthur Andersen's and the Bank Defendants' Motions to Dismiss

24. On May 13, 2003, the Household Defendants, Arthur Andersen, and the Bank Defendants filed three separate motions to dismiss the Consolidated Complaint. With respect to Lead Plaintiffs' §10(b) and Rule 10b-5 claims, the Household Defendants argued that Lead Plaintiffs

failed to allege (1) any false or misleading statements with particularity; (2) scienter with the particularity required by the PSLRA; and (3) any actionable false or misleading statements. The Household Defendants also argued that Lead Plaintiffs' §§11 and 12(a)(2) claims should be dismissed because they were time-barred and lacked loss causation. Finally, the Household Defendants argued that Lead Plaintiffs' §20(a) "control person" claims lacked a predicate violation and that no false or misleading statements could be attributable to defendant Gilmer. Dkt. No. 88.

25. In moving to dismiss the claims against it, Arthur Andersen argued that Lead Plaintiffs failed to properly allege the requisite scienter or loss causation and that certain claims were time-barred by the applicable statute of limitations and statute of repose. Dkt. No. 94. Defendant Arthur Andersen also filed a separate motion to strike Paragraphs 180 and 181 of the Consolidated Complaint, which summarized Arthur Andersen's role in ten securities fraud class actions involving accounting fraud or accounting improprieties, arguing that the allegations in those paragraphs were immaterial to the allegations in this case. Dkt. No. 93.

26. In their motion to dismiss the Consolidated Complaint, the Bank Defendants argued that the §§11 and 12(a)(2) claims against them should be dismissed because (1) the claims were barred by the statute of limitations; (2) the Fairness Opinions they issued were just that – opinions – and Lead Plaintiffs failed to allege that the Bank Defendants did not hold their stated opinions or that the Fairness Opinions otherwise were false; (3) the Bank Defendants were not "statutory sellers" as required under §12(a)(2); and (4) Lead Plaintiffs failed to allege the necessary elements of a §11 claim. Dkt. No. 95. The Bank Defendants also argued that Lead Plaintiffs' §15 claims should be dismissed because they failed to adequately allege an underlying violation of §§11 or 12(a)(2) and neither Goldman Sachs nor Merrill Lynch "controlled" a primary violator.

27. On June 19, 2003, Lead Plaintiffs filed three separate oppositions to defendants' motions to dismiss and an opposition to Arthur Andersen's motion to strike. Dkt. Nos. 101-104. In

their 55-page opposition to the Household Defendants' motion to dismiss, Lead Plaintiffs addressed each of defendants' arguments in turn, demonstrating that defendants' motion should be denied. Specifically, Lead Plaintiffs argued that the Consolidated Complaint identified each false statement with particularity and provided detailed reasons for its falsity, including detailed allegations of defendants' improper and illegal lending practices, arbitrary "reaging" and "restructuring" of loans to make them current, and improper accounting treatment of expenses for their credit card-related agreements. Lead Plaintiffs also argued that the Consolidated Complaint identified the basis for its allegations, including SEC filings, analyst reports, news media, interviews with former Household employees, and findings of regulatory agencies. Responding to defendants' argument that the Consolidated Complaint failed to adequately allege scienter, Lead Plaintiffs argued that defendants had both the motive and opportunity to commit fraud, and that defendants' three-part fraudulent scheme gave rise to circumstantial evidence of conscious misbehavior or recklessness. Lead Plaintiffs argued that, contrary to defendant Gilmer's assertion, he was liable for the false and misleading statements directly attributable to him. Lead Plaintiffs also addressed defendants' argument that Plaintiffs' §§11 and 12(a)(2) claims were time-barred and not actionable.

28. In opposing Arthur Andersen's motion to dismiss, Lead Plaintiffs argued that Arthur Andersen, Household's auditor for 17 years, had direct knowledge of the facts regarding Household's improper accounting, which ultimately resulted in a restatement requiring Household to take a $600 million charge. Dkt. No. 101. Lead Plaintiffs further argued that Arthur Andersen knew or recklessly disregarded highly suspicious facts and "red flags" regarding Household's reaging and predatory lending practices. *Id.* Lead Plaintiffs also argued that, contrary to Arthur Andersen's assertion, the Consolidated Complaint alleged both falsity and scienter as to Arthur Andersen and adequately pled loss causation. Lastly, Lead Plaintiffs argued that their claims were not time-barred by the applicable statute of limitations.

29. Lead Plaintiffs also filed an opposition to Arthur Andersen's motion to strike paragraphs 180 and 181 of the Consolidated Complaint, arguing that Arthur Andersen failed to meet its heavy burden under the Federal Rules of Civil Procedure of demonstrating that these paragraphs should be stricken. Lead Plaintiffs further argued that paragraphs 180 and 181 were relevant to their allegations concerning Arthur Andersen's scienter and that Arthur Andersen's attempt to demonstrate that the paragraphs had "no relevance" to the case failed. Dkt. No. 103.

30. In opposing the Bank Defendants' motion to dismiss, Lead Plaintiffs argued that their §11 claim, which was premised on the false and misleading statements contained in the June 30, 1998 Beneficial Registration Statement, were filed within the applicable statute of limitations. Lead Plaintiffs further argued that both Goldman Sachs and Merrill Lynch met the statutory definition of an underwriter and, as a result, were liable for all false and misleading statements contained in the Beneficial Registration Statement. Lastly, Lead Plaintiffs addressed the Bank Defendants' argument that they were not liable for the false and misleading statements contained in their fairness opinions. Dkt. No. 102.

31. Lead Plaintiffs' three oppositions cited over 100 cases and made forceful and unique arguments in response to the individualized arguments raised by each defendant. Lead Counsel spent significant time and resources analyzing defendants' motions, distinguishing the cases they relied on and performing the legal research necessary to draft three separate oppositions demonstrating that the allegations in the Consolidated Complaint satisfied the strict pleading burden imposed by the PSLRA.

32. On July 21, 2003, the Household and Bank Defendants filed replies in further support of their motions to dismiss the Consolidated Complaint. Dkt. Nos. 113, 119. On August 1, 2003, defendant Arthur Andersen filed its reply in further support of its motion to dismiss the Consolidated Complaint. Dkt. No. 125.

33. On March 19, 2004, the Court entered an Order granting in part and denying in part defendants' motions to dismiss the Consolidated Complaint. Dkt. No. 135. Specifically, the Court denied Household's and Arthur Andersen's motions to dismiss the §10(b) and Rule 10b-5 claims, concluding that the Consolidated Complaint articulated the "who, what, when, where, and how of the fraud with sufficient particularity" and adequately pleaded facts giving rise to a strong inference of scienter. March 19, 2004 Order at 16-19. The Court also denied Household's, the Household Officers and Arthur Andersen's motions to dismiss the §20(a) claims, finding that Lead Plaintiffs sufficiently alleged control person liability. Order at 20. With respect to Lead Plaintiffs' §§11, 12(a)(2) and 15 claims, the Court found that the claims were subject to the one-year/three-year statute of limitations set forth in §13 of the 1933 Act and, as a result, Lead Plaintiffs' claims against Household, the Officer Defendants, the Individual Defendants, Arthur Andersen and the Bank Defendants were untimely. Order at 21-27. The Court did, however, uphold as timely allegations arising out of certain debt registration statements. The Court further found that Lead Plaintiffs sufficiently pleaded violations of §§11 and 15 as to allegations stemming from those debt registration statements.

34. In sum, the Court upheld Lead Plaintiffs' §§10(b), 20(a) and Rule 10b-5 claims against Household, the Officer Defendants and Arthur Andersen; dismissed Lead Plaintiffs' §§11, 12(a)(2) and 15 claims against Household, the Officer Defendants, the Director Defendants, Arthur Andersen, and the Bank Defendants; and upheld in part Lead Plaintiffs' §§11 and 15 claims against Household, the Household Director Defendants and Arthur Andersen. The Court terminated Goldman Sachs and Merrill Lynch as parties. The Court also denied Arthur Andersen's motion to strike paragraphs 180 and 181 of the Consolidated Complaint.

35. On July 2, 2004, the Household Defendants and Arthur Andersen filed their Answers to the Consolidated Complaint. Dkt. Nos. 155-156. On December 8, 2005, the Household Defendants filed an Amended Answer to the Consolidated Complaint. Dkt. No. 346.

2. The Household Defendants' Motion to Dismiss Pursuant to the Seventh Circuit's Decision in *Foss v. Bear, Stearns Co.*

36. On June 30, 2005, the Household Defendants filed a motion to dismiss pursuant to the Seventh Circuit's decision in *Foss v. Bear, Sterns Co.*, 394 F.3d 540 (7th Cir. 2005). Dkt. No. 243. In *Foss v. Bear, Sterns*, the Seventh Circuit held that the Sarbanes-Oxley Act extended the statute of repose for securities fraud claims from three to five years, but did not apply retroactively to revive securities fraud claims that were already time-barred when Sarbanes-Oxley went into effect on July 30, 2002. Dkt. No. 245. Relying on the Seventh Circuit's decision, defendants argued that Plaintiffs' claims prior to July 30, 1999 should be dismissed as time-barred because they arose prior to the enactment of Sarbanes-Oxley.

37. On August 18, 2005, Lead Plaintiffs filed their opposition to the Household Defendants' *Foss* motion to dismiss. Dkt. No. 279. Lead Plaintiffs argued that none of Plaintiffs' claims arose until August 14, 2002, when Plaintiffs were first placed on inquiry notice of defendants' fraud, *i.e.*, after the enactment of Sarbanes-Oxley. As a result, Lead Plaintiffs argued, Sarbanes-Oxley's two-year statute of limitations and five-year statute of repose applied and Plaintiffs' claims were not time-barred. On September 16, 2005, the Household Defendants filed a reply in further support of their motion to dismiss. Dkt. No. 295.

38. On February 28, 2006, the Court granted defendants' motion, dismissing Plaintiffs' §10(b) claims that arose prior to July 30, 1999. Dkt. No. 434. Applying the Seventh Circuit's *Foss* decision, the Court concluded that claims based on any misrepresentation or omission that occurred before July 30, 1999 expired before Sarbanes-Oxley became effective on July 30, 2002. As the

result of the Court's decision, the Class Period in this case was shortened to July 30, 1999 through October 11, 2002.

3. The Household Defendants' Motion to Dismiss Pursuant to the Supreme Court's Decision in *Dura Pharmaceuticals, Inc. v. Broudo*

39. On June 30, 2005, the Household Defendants also filed a motion to dismiss based on the Supreme Court's decision in *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005), which addressed the pleading requirements of the PSLRA for loss causation in a securities fraud case. Dkt. No. 247. Defendants argued that *Dura* changed the pleading standard for loss causation and that Plaintiffs failed to adequately plead loss causation under the new standard articulated by the Supreme Court. The Household Defendants also filed a motion to stay discovery pending disposition of their motion to dismiss. Dkt. No. 249. At a hearing on July 7, 2005, the Court denied defendants' request to stay discovery. Dkt. No. 261.

40. On August 18, 2005, Lead Plaintiffs filed their opposition to the Household Defendants' *Dura* motion to dismiss. Dkt. No. 280. Lead Plaintiffs first argued that defendants' motion to dismiss – filed after they answered the Consolidated Complaint – was procedurally improper and should be treated as a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c). Lead Plaintiffs also argued that the Supreme Court's decision in *Dura* merely brought the Ninth Circuit standard for pleading loss causation in line with other circuits, including the Seventh. Thus, under *Dura* and pre-existing Seventh Circuit law, to successfully plead loss-causation, plaintiff must simply provide "fair notice" by alleging a "short and plain statement" of the loss and "some indication" of the causal connection to the misrepresentations "that the plaintiff has in mind." Dkt. No. 280 at 8.

41. Lead Plaintiffs further argued that the Consolidated Complaint satisfied the standard for pleading loss causation under both *Dura* and Seventh Circuit precedent by detailing how

defendants' misrepresentations and omissions caused Household stock to trade at artificially inflated prices during the Class Period, and describing the leakage into the market of the truth about Household's business operations. Lead Plaintiffs also refuted defendants' assertion that Plaintiffs were required to plead a stock drop directly tied to an express "corrective disclosure." On September 16, 2005, the Household Defendants filed a reply in further support of their motion to dismiss. Dkt. No. 297.

42. On April 24, 2006, the Court entered an order denying defendants' *Dura* motion to dismiss. Dkt. No. 494. The Court rejected defendants' argument that *Dura* changed the pleading standards in the Seventh Circuit for pleading loss causation, noting that the standard articulated in *Dura* was consistent with existing Seventh Circuit precedent. The Court also concluded that Plaintiffs had sufficiently pled loss causation, thereby satisfying the pleading standards as enunciated in *Dura* and Seventh Circuit law.

4. The Household Defendants' Motion Pursuant to 28 U.S.C. §1292(b) for Certification and Amendment of the Court's April 26, 2006 Order

43. On May 9, 2006, defendants filed a motion pursuant to 28 U.S.C. §1292(b) for certification and amendment of the Court's April 24, 2006 Order denying their *Dura* motion to dismiss. Dkt. No. 503. Defendants argued interlocutory review was appropriate because the Seventh Circuit had yet to evaluate the significance of the Supreme Court's decision in *Dura Pharmaceuticals, Inc. v. Broudo* on Seventh Circuit law. Certification was also warranted, defendants argued, because resolution of the question of whether *Dura* had affected or expanded upon the pleading requirement for loss causation in the Seventh Circuit would affect the course of litigation, there was a difference of opinion among the courts regarding the effect of *Dura* and it would advance the ultimate resolution of the Litigation. Dkt. No. 504.

44. On May 19, 2006, Lead Plaintiffs filed an opposition to defendants' motion for certification under 28 U.S.C. §1292(b). Dkt. No. 515. Lead Plaintiffs argued that defendants failed to identify a "controlling question of law as to which there is a substantial ground for difference of opinion" as required for interlocutory review. *Id.* at 1. Specifically, Lead Plaintiffs argued that *Dura* itself settled a circuit conflict regarding the standards for pleading loss causation and lower courts were simply applying *Dura* and Seventh Circuit precedent to the facts alleged in each case. Thus, defendants' proposed question – whether *Dura* had affected or expanded upon the pleading requirement for loss causation in securities fraud cases in the Seventh Circuit – was not "controlling" and was not an abstract legal issue appropriate for §1292(b) certification. Lead Plaintiffs also argued that interlocutory review would slow, rather than advance, the Litigation.

45. On May 26, 2006, defendants filed a reply in further support of their motion for interlocutory review. Dkt. No. 516. On December 11, 2006, the Court denied defendants' motion. Dkt. No. 816. The Court also reaffirmed its prior ruling that the Consolidated Complaint sufficiently alleged loss causation under the pleading standard articulated in *Dura*.

E. Lead Plaintiffs' Motion to Certify a Class and the Parties' Stipulation to Class Certification

46. On June 30, 2004, Lead Plaintiffs filed a Motion for Class Certification, seeking to certify a class of:

> All persons and entities who purchased or otherwise acquired publicly traded securities of Household International, Inc. during the period beginning October 23, 1997 through and including October 11, 2002 (the "Class Period"), including all persons or entities who purchased or otherwise acquired debt securities of Household Finance Corporation, a wholly owned subsidiary of Household, pursuant to registration statements which became effective on or after August 19, 1999, or in the secondary market.

47. Lead Plaintiffs also sought appointment as class representatives and for approval of Robbins Geller as Lead Counsel and Miller Law as liaison counsel.[3] Dkt. Nos. 158, 161.

48. On October 8, 2004, the parties filed a Stipulation and [Proposed] Order Regarding Class Action Certification, wherein the parties stipulated to a class of persons who purchased or otherwise acquired the securities of Household International, Inc. between October 23, 1997 and October 11, 2002 with respect to claims brought pursuant to §§10 and 20 of the 1934 Act and Rule 10b-5 promulgated thereunder. Dkt. No. 182. The parties also stipulated that no class would be certified for claims brought under §§11 and 15 of the 1933 Act for persons who purchased Household securities issued pursuant to the Registration Statements effective during the Class Period. On December 3, 2004, the Court approved and entered the parties' stipulation and proposed order regarding class certification. Dkt. No. 194.

49. On August 16, 2005, the parties filed a Joint Motion and [Proposed] Order for Entry of Modification to Stipulation and Order Regarding Class Action Certification Entered December 3, 2004. Dkt. No. 277. Under the terms of the modified stipulation, the parties agreed that defendants would waive their right to decertify in part the Class as set forth in the stipulation. The parties also requested that the Court direct that notice be sent to the Class. On August 22, 2005, the Court entered an order approving the parties' modification to the stipulation and order regarding class certification. Dkt. No. 287.

F. Fact Discovery

50. Under the mandatory discovery stay set forth in the PSLRA, all formal discovery was stayed while defendants' motions to dismiss were pending. On March 31, 2003, Plaintiffs filed a motion for an order requiring defendants to preserve and maintain relevant documents in the United

[3] Pursuant to the Court's February 28, 2006 Order, the Class Period was subsequently shortened to July 30, 1999 to October 11, 2002.

States. Dkt. No. 74. Plaintiffs explained that Household had in its possession documents and other evidence relevant to Plaintiffs' claims and that it was crucial to the prosecution of Plaintiffs' case that the documents be preserved during the mandatory stay on discovery. Plaintiffs argued the requested relief was necessary because Household had recently been acquired by HSBC Holdings Plc. ("HSBC") and, as a result of the merger, relevant documents could be exported to HSBC's London, England headquarters, or otherwise destroyed or lost in the process of completing the merger. On April 17, 2003, the Court entered a Stipulation and Order, pursuant to which Household agreed to preserve and maintain all documents in the United States in its possession and/or under its control that were relevant to Plaintiffs' allegations. Dkt. Nos. 77-78.

51. Upon the lifting of the mandatory discovery stay in March 2004, following the Court's denial of defendants' motion to dismiss, discovery commenced in May 2004.

1. Written Discovery to Defendants

52. On May 17, 2004, Lead Plaintiffs served their First Request for Production of Documents to Defendant Arthur Andersen. That same day, Lead Plaintiffs also served their First Request for Production of Documents to the Household Defendants. Lead Plaintiffs served additional document requests on the Household Defendants on April 8, 2005, March 13, 2006, October 3, 2006, October 12, 2006, October 25, 2006 and January 31, 2007.

53. On July 16, 2004, Lead Plaintiffs served their First Set of Interrogatories Propounded to Arthur Andersen. Also on July 16, 2004, Lead Plaintiffs served their First Set of Interrogatories Propounded to the Household Defendants. Lead Plaintiffs propounded additional interrogatories on the Household Defendants on September 21, 2005 and March 6, 2006.

54. On February 24, 2006, Lead Plaintiffs served the Household Defendants with their First Set of Requests for Admissions. Lead Plaintiffs served additional Requests for Admission on

the Household Defendants on March 6, 2006, March 27, 2006, June 9, 2006, August 30, 2006 and October 3, 2006.

55. Lead Counsel engaged in numerous meet-and-confer discussions with counsel for defendants to discuss their objections to the document requests, interrogatories, and requests for admission, to negotiate the scope of the discovery and to arrange for the production of documents. Given the scope of discovery sought and disputes about relevancy, burden and privilege, this required extensive coordinated efforts and expenditures of substantial time and resources on Lead Counsel's part. Further, as discussed in Section III.F., *infra*, in many instances the parties were unable to resolve their discovery disputes, which resulted in motion practice with the Court.

2. Depositions

56. In preparation for trial, Lead Plaintiffs took the depositions of more than 50 current and former Household employees, directors and Fed. R. Civ. P. 30(b)(6) witnesses in various locations throughout the United States. Those depositions are set forth as follows:

Deponent	Date	Location
Aldinger, William	1/29-30/2007	San Francisco, CA
Allcock, Robin	3/7-8/2007	Charlotte, NC
Ancona, Edgar D	4/18/2006	Chicago, IL
Anderson, Daniel	11/16/2006	Chicago, IL
Bangs, Lawrence	12/14/2006	Hilton Head Island, SC
Clarke, Lidney	6/13/2006, 12/4/2006	Chicago, IL
Connaughton, James	6/21/2006	Chicago, IL
Creatura, Paul J	7/28/2006	Chicago, IL
Cunningham, Christine	11/11/2004; 12/2/2005	Chicago, IL; Prospect Heights, IlL
Cunningham, Curt	3/8/2006	Chicago, IL
Curtin, A. Kathleen Kelly	1/25/2007	Chicago, IL

Deponent	Date	Location
Davis, John	12/1/2006	Chicago, IL
Detelich, Thomas	12/22/2006; 1/31/2007	Chicago, L; Prospect Heights, IL
Ekholdt, Per	3/28/2006	Chicago, IL
Fasana, Gregory	9/26/2006	Chicago, IL
Friedrich, Douglas	1/25/2007; 3/27/2007	Naples, FL
Gargul, Elisa	4/6/2006	Chicago, IL
Gilmer, Gary	1/11-12/2007	Chicago, IL
Hayden-Hakes, Megan E.	8/18/2006	Milwaukee, WI
Hennigan, Ned M	6/22/2006	Chicago, IL
Hicks, Stephen	12/5/2006	Chicago, IL
Hueman, Dennis	11/7/2006	Newport Beach, CA
Kauffman, James	1/24/2007	Marco Island, FL
Levy, Louis	8/25/2006	New York, NY
Little, David	6/30/2006	Chicago, IL
Makowski, Paul	11/14/2006	Charlotte, NC
Markell, Helen	4/6/2005	San Diego, CA
Matasek, Steve	11/12/2004	Chicago, IL
McDonald, Steven	11/30/2006	Chicago, IL
Mehta, Siddharth N.	4/10/2007	Chicago, IL
Mizialko, Clifford	4/5/2006	Chicago, IL
Mizialko, Jr., Clifford	8/10/2006	Chicago, IL
Murphy, Celeste	4/11/2006	Chicago, IL
Nelson, Kay	9/19/2006	Chicago, IL
O'Han, Robert	5/24/2006	Chicago, IL
Pantelis, Daniel	11/8-9/2006	Chicago, IL
Peters, Jr., Richard	6/28/2006	Chicago, IL
Robin, Kenneth	12/7/2006	Chicago, IL

Deponent	Date	Location
Rodemoyer, Carin	6/27/2006	Chicago, IL
Rybak, Walter	2/24/2006	Chicago, IL
Schneider, Thomas	5/4/2006	Chicago, IL
Schoenholz, David	2/28/2007; 3/1/2007	Chicago, IL
Sesterhenn, Peter Alan	2/2/2006	Chicago, IL
Sodeika, Lisa	6/6/2006, 11/2/2006	Chicago, IL
Sprude, Margaret	7/12/2006	Chicago, IL
Streem, Craig A.	2/21/2007	Chicago, IL
Titus, Timothy	5/9/2006, 12/4/2006	Chicago, IL
Vozar, Jr., Joseph	2/7-8/2007	Chicago, IL
Walker, Kenneth	12/14/2006	Chicago, IL
Walter, Lewellyn	3/15-16/2006	Chicago, IL
Weintroub, Scott	4/12/2006	Chicago, IL
Werner, Carol E.	2/16/2006	Chicago, IL
Worwa, Christine	4/25/2006	Chicago, IL

57. These depositions were critical in developing evidence concerning Household's predatory lending practices, improper reaging and restructuring of delinquent loans and accounting manipulations, and establishing defendants' knowledge of the fraud. The depositions were also critical in establishing the admissibility of documentary evidence.

3. Third-Party Discovery

58. Beginning on May 28, 2004, Lead Plaintiffs began issuing subpoenas for documents and depositions to dozens of relevant third parties, including Household's outside auditor KPMG and the entities involved in HSBC's acquisition of Household, including HSBC and Morgan Stanley. A list of the third parties Plaintiffs subpoenaed in this action is set forth below:

Person/Entity	Affiliation	Subpoena Date
Marc B. Tull	Claimant in an arbitration proceeding against Household regarding predatory lending	5/28/2004
Sarah Siskind	Attorney who represented plaintiffs in lawsuit entitled *ACORN v. Household Int'l, Inc*., No. 02-2140 (N.D. Cal.)	8/17/2004
Robert Parlette	Attorney who represented plaintiffs in lawsuit entitled *Luna, et al. v. Household Finance Corp., III, et al.*, Case No. 02-2-00178-0 (W.D. Wash.)	8/17/2004
Jeffrey Sams	Attorney who represented plaintiffs in lawsuit entitled *Frost, et al. v. Household Realty Corporation, et al.*, Case No. 2:04-cv-00347-GLF-TPK (S.D. Ohio)	8/17/2004
KPMG LLP	Provided consulting services to Household	8/27/2004
Elaine Markell	Household employee	2/22/2005
Kenneth Gang	Household employee	3/08/2005
Melissa Rutland Drury	Household employee	7/26/2005
Curt Cunningham	Household employee	8/29/2005
Walter Rybak	Household employee	8/29/2005
John D. Nichols, Jr.	Member of Household's board of directors	12/14/2005
Louis E. Levy	Household employee	12/14/2005
Office of Thrift Supervision	United States federal agency under the Department of the Treasury that chartered, supervised, and regulated all federally chartered and state-chartered savings banks and savings and loans associations	1/12/2006
Office of the Comptroller of the Currency	An independent bureau within the United States Department of the Treasury that was established by the National Currency Act of 1863 and serves to charter, regulate, and supervise all national banks and thrift institutions and the federal branches and agencies of foreign banks in the United States	1/12/2006
Moody's Corporation	Credit rating agency	3/07/2006
Standard & Poor's Corporation	Credit rating agency	3/07/2006
Fitch, Inc.	Credit rating agency	3/07/2006
William Ryan	Securities analysts at Ventana Capital/Portales Partners, which provided coverage on Household	3/07/2006

Person/Entity	Affiliation	Subpoena Date
Morgan Stanley & Co., Inc.	Analysts firm that provided coverage on Household	3/07/2006
Portales Partners LLC	Analysts firm that provided coverage on Household	3/07/2006
Christopher Bianucci	Worked for Household's auditors, Arthur Anderson and Ernst & Young	3/24/2006
John Keller	Worked for Household's auditors, Arthur Anderson and Ernst & Young	3/24/2006
Scott Carnahan	KPMG employee	3/29/2006
Todd Bruning	KPMG employee	3/29/2006
Brian Gordon	KPMG employee	3/29/2006
Robert Glynn	KPMG employee	3/29/2006
Jeffrey Bower	KPMG employee	3/29/2006
William Long	KPMG employee	3/29/2006
Andrew Kahr	Consultant retained by Household to provide predatory lending initiatives	5/19/2006
Dennis Hueman	Household employee	5/19/2006
Ernst & Young LLP	Auditing firm that provided services for Household	5/19/2006
Megan Hayden Hakes	Household employee	6/09/2006
HSBC Holdings PLC	HSBC Finance Corp.'s parent company	9/12/2006
Wilmer Cutler Pickering Hale and Dorr LLP	Law firm hired to investigate allegations by Elaine Markell concerning Household's reaging practices	9/29/2006
Goldman Sachs Group, Inc.	Financial advisors in connection with Household's acquisition of Beneficial	10/02/2006, 10/30/2006
Promontory Financial Group	Consulting firm retained by Household	10/23/2006
Wells Fargo & Company	Bank that reached tentative deal to acquire Household	10/26/2006

59. Lead Counsel engaged in meet-and-confers with most of the subpoenaed third parties to discuss their objections to the subpoenas, to negotiate the scope of the subpoenas and to arrange for the production of responsive documents. This required extensive coordinated efforts and expenditures of time and resources on Lead Counsel's part. Further, in some instances, the parties could not resolve their disagreements over the scope of the subpoenas and relevancy of documents and testimony sought. As a result, Lead Plaintiffs engaged in motion practice with several of the

third parties in order to obtain the documents and deposition testimony needed to develop the allegations in the case, as discussed in detail in Section III.F.3-5, below.

60. Plaintiffs also conducted the depositions of nine third-party fact witnesses, including Household's outside auditors, Arthur Andersen[4] and KPMG, along with the entities involved in HSBC's acquisition of Household, including HSBC and Morgan Stanley, and market analysts who covered Household during the Class Period. Those depositions are set forth as follows:

Deponent	Date	Location
Bianucci, Christopher	8/2/2007	Chicago, IL
Burgess, William	1/30/2007	Chicago, IL
Flint, Douglas	1/8/2007	London, UK
Keller, Jonathan	7/26/2007	New York, NY
Long, William	8/9/2006	Chicago, IL
May, Todd	5/1/2007	Minneapolis, MN
Posner, Kenneth	5/1/2007	New York, NY
Pruzan, Jonathan	4/20/2007	New York, NY
Stephens, Brian	10/5/2006	Chicago, IL

As with the Household depositions, these depositions were critical in developing evidence regarding defendants' alleged fraud.

4. Defendants' Discovery Requests to Plaintiffs

61. On July 30, 2004, the Household Defendants served their First Set of Interrogatories and First Request for the Production of Documents to Lead Plaintiffs Glickenhaus, PACE and IUOE. That same day, the Household Defendants also served their First Set of Interrogatories and First Request for the Production of Documents to named plaintiffs The Archdiocese of Milwaukee

[4] At the time Plaintiffs deposed Arthur Andersen employees, it had settled the claims against it and, accordingly, was no longer a party. *See* Section IV (discussing settlement with Arthur Andersen).

Support Fund, Inc. and West Virginia Laborer's Trust Fund. On September 24, 2004, defendants took the deposition of Maria Wieck, the Fed. R. Civ. P. 30(b)(6) designee for PACE.

62. On February 13, 2006, the Household Defendants served their Second Set of Interrogatories to Lead Plaintiffs. The Household Defendants propounded additional interrogatories to Lead Plaintiffs on May 26, 2006, October 31, 2006, December 22, 2006 and January 31, 2007. The Household Defendants also served a Second Request for the Production of Documents from Lead Plaintiffs on March 29, 2006.

63. Lead Counsel expended a significant amount of time reviewing and analyzing defendants' document requests and interrogatories, as well as drafting responses and objections to them. Pursuant to the Court's Order, Plaintiffs were also required to supplement certain interrogatory responses based on the documents produced and the testimony elicited during discovery. Accordingly, Plaintiffs spent a substantial amount of time reviewing documents and deposition testimony and supplementing their discovery responses in order to provide thorough and complete answers to defendants' written discovery.

64. Additionally, Lead Plaintiffs collectively produced thousands of pages of documents in response to defendants' document requests. In connection with Plaintiffs' production, Lead Counsel expended a substantial amount of time reviewing Plaintiffs' documents for responsiveness and conducting a privilege review to ensure no documents protected by the attorney-client privilege or work product doctrine were inadvertently produced.

5. Discovery Disputes

65. The parties litigated numerous complex discovery disputes during the nearly three-year discovery period in this case. Prior to filing or responding to motions to compel and other motions, the details of which are outlined below, Lead Counsel spent thousands of hours analyzing the documents in an effort to narrow the scope of discovery disputes while still aggressively

pursuing the discovery rights of the Class. Lead Counsel also spent many hours preparing for meet-and-confer conferences with counsel for defendants and third parties, conducting those conferences, and preparing correspondence memorializing those conversations.

66. Due to the complexity of the disputes regarding documents and depositions, the parties filed more than 40 motions related to discovery, the vast majority of which were fully briefed, heard and then decided by Magistrate Judge Nolan.[5] Further, in many instances Magistrate Judge Nolan's ruling on a particular discovery dispute resulted in one (or both) parties moving for reconsideration of that ruling, or filing an objection with Judge Guzmán. In those instances, Lead Counsel spent a significant amount of time analyzing Magistrate Judge Nolan's rulings, researching the applicable case law, drafting persuasive briefs, and advocating Plaintiffs' position at hearings.

67. In addition to the issues culminating in motion practice, the parties engaged in numerous discovery disputes that were resolved without formal motion practice or Court intervention. However, the following provides insight into the complexity of the parties' discovery disputes, how hard fought the disputes were, and the lengths Plaintiffs were compelled to go in order to obtain necessary discovery from defendants.

a. Discovery Disputes with Defendants

68. **Lead Plaintiffs' Motion for a Protective Order**: On July 30, 2004, Lead Plaintiffs filed a motion for a Protective Order, requesting that the Court enter a Protective Order governing confidential materials. Dkt. No. 166. Despite numerous meet and confers and Lead Plaintiffs' good faith attempt to reach an agreement with defendants concerning the terms and scope of a protective order, no agreement could be reached, and Lead Plaintiffs were forced to seek Court intervention. On August 3, 2004, defendants filed their own Motion for a Protective Order and an opposition to

[5] Pursuant to the November 4, 2002 Order of the Executive Committee, all discovery disputes in this case were referred to Magistrate Judge Nolan. Dkt. No. 23.

Lead Plaintiffs' motion. Dkt. No. 167. On August 4, 2004, Magistrate Judge Nolan entered an order directing the parties to file a joint motion outlining the areas of disagreement and providing the grounds supporting each side's version of the disputed provisions. Pursuant to Magistrate Judge Nolan's directive, the parties filed a joint submission on August 19, 2004, in which they outlined their respective views regarding a proposed protective order governing the treatment of confidential materials. Dkt. No. 173. On September 28, 2004, Magistrate Judge Nolan granted in part and denied in part both motions. Dkt. No. 181. On October 25, 2004, the parties filed a joint motion for entry of the [Proposed] Protective Order. Dkt. Nos. 189-191. On November 1, 2004, after finding good cause for the entry of a protective order, Magistrate Judge Nolan granted the parties' joint motion, directing the Household defendants to submit a protective order complying with the Court's Order. Dkt. No. 192. On November 5, 2004, the Court entered the operative protective order. Dkt. No. 193.

69. **Defendants' Motion to Compel Lead Plaintiffs to Comply with their Initial Disclosure Obligations Under Fed. R. Civ. P. 26(a)(1)**: On August 10, 2004, the Household Defendants and Arthur Andersen filed a motion to compel Lead Plaintiffs to comply with their initial disclosure obligations under Federal Rule of Civil Procedure 26(a)(1). Dkt. No. 170. Specifically, defendants requested that the Court compel Lead Plaintiffs to supplement their initial disclosures to provide a computation of their alleged damages, claiming that Lead Plaintiffs' initial disclosures failed to provide the required information. Lead Plaintiffs filed an opposition to defendants' motion to compel on August 17, 2004. Dkt. No. 171. In their opposition, Lead Plaintiffs explained that defendants' request was premature because a detailed computation of damages would necessarily require expert analysis, and that the work product of non-testifying experts was protected from disclosure. Lead Plaintiffs further argued that they were unable to provide a computation of damages, despite defendants' insistence on disclosure, because they had not yet retained or

designated an expert to testify with respect to damages. On August 20, 2004, defendants filed a reply in further support of their motion to compel. Dkt. No. 174.

70. On August 30, 2004, the Court heard oral argument on defendants' motion and instructed Lead Plaintiffs to provide defendants with their underlying theory of damages to the Class. Lead Plaintiffs filed a submission on September 7, 2004 summarizing their theory of damages for liability under §10(b) of the 1934 Act and §11 of the 1933 Act. Dkt. No. 177. On September 20, 2004, the Court entered an Order denying defendants' motion to compel in part, and granting it solely to the extent that the Court previously ordered Plaintiffs to submit a written explanation of their damages theory. Dkt. No. 180.

71. **The Household Defendants' Motion to Amend the Protective Order**: On January 3, 2005, the Household Defendants filed a motion to amend the protective order, seeking to add as an additional category of confidential information "Household Organizational Charts Containing Non-Public Employee Information." Dkt. No. 196. On January 10, 2005, Lead Plaintiffs filed an opposition to defendants' motion, arguing that the organizational charts did not constitute trade secrets or other confidential material, the Household Defendants failed to establish good cause for amending the Protective Order, and Lead Plaintiffs' interest in using the organizational charts during litigation outweighed any interest the Household Defendants had in maintaining their confidentiality. Dkt. No. 195. The Household Defendants filed a reply in further support of their motion on January 14, 2005. Dkt. No. 200. On January 28, 2005, the Court entered an Order directing the parties to submit additional briefing addressing the value of the information contained in the organizational charts given their age. Dkt. No. 203. Thereafter, the parties submitted additional briefing pursuant to the Court's request.

72. On September 28, 2005, the Court entered an order granting defendants' motion to amend the protective order, finding that the organizational charts contained information entitled to

confidential protection during the nondispositive pretrial phase of this case. Based on arguments raised in Plaintiffs' opposition concerning defendants' over-designation of documents as "confidential," however, the Court instructed the Household Defendants to review and redesignate, if necessary, documents produced in discovery. Dkt. No. 306.

73. On October 12, 2005, the Household Defendants filed a motion for partial reconsideration of the Court's September 28, 2005 Order, asking the Court to reconsider the portion of its Order requiring them to review and redesignate, if necessary, documents produced to Plaintiffs marked "confidential" under the protective order. Dkt. No. 309. Defendants claimed reconsideration was warranted because Plaintiffs purportedly falsely represented that an ongoing review of documents demonstrated that defendants had ignored the protective order. Dkt. No. 311. In reality, defendants argued, the documents to which Plaintiffs referred as evidence that defendants ignored the protective order were produced in accordance with an interim protective order, which expressly provided that all discovery material was to be deemed confidential. On October 17, 2005, Lead Plaintiffs filed an opposition to defendants' motion for reconsideration, in which they responded to defendants' baseless allegations that they misled the Court and provided further examples of defendants' improper designation of documents as confidential. Dkt. No. 319. On October 25, 2005, defendants filed a reply in further support of their motion for partial reconsideration. Dkt. No. 327. On January 6, 2006, the Court granted defendants' motion for partial reconsideration, vacating the portion of its September 28, 2005 Order requiring defendants to review and redesignate, if necessary, documents produced to Plaintiffs. Dkt. No. 372.

74. **Lead Plaintiffs' Motion for a Protective Order Quashing the Household Defendants' Third-Party Subpoenas**: On January 11, 2005, Lead Plaintiffs filed a motion for a protective order quashing the Household Defendants' third-party subpoenas, which sought documents from 14 investment advisors and administrators of Lead Plaintiff PACE. Dkt. No. 1615.

Lead Plaintiffs argued that the subpoenas should be quashed because they sought information concerning individualized issues concerning PACE's reliance, which had no bearing on class-wide issues. Lead Plaintiffs further argued that any inquiries into PACE's investment decisions should be left until after liability had been determined. Defendants filed an opposition to Lead Plaintiffs' motion on January 26, 2005, arguing that the information sought by the subpoenas was directly relevant to the merits of Lead Plaintiffs' claims and PACE's reliance. Dkt. No. 201. On February 8, 2005, Lead Plaintiffs filed a reply in further support of their motion. Dkt. No. 207.

75. On April 18, 2005, the Court entered an Order granting Lead Plaintiffs' motion, finding that Lead Plaintiffs had shown good cause for entry of the protective order. Dkt. No. 225. The Court further found that discovery of PACE's investment history was irrelevant to any class-wide liability issues and concluded that bifurcating discovery between class liability issues and individualized reliance issues was the most efficient way to proceed.

76. **Lead Plaintiffs' Motion to Compel Defendant Arthur Andersen to Produce Witnesses for Deposition and Documents**: On March 1, 2005, Lead Plaintiffs filed a motion to compel defendant Arthur Andersen to produce witnesses for deposition pursuant to Plaintiffs' Fed. R. Civ. P. 30(b)(6) deposition notice. Dkt. No. 210. Lead Plaintiffs also sought an order compelling the production of documents that Arthur Andersen refused to produce, including (1) documents relating to investigations by or communications with any federal or state regulatory body concerning Household or Arthur Andersen's services to Household; (2) documents concerning any professional services performed by Arthur Andersen for Household, including consulting engagement workpapers and related documents; (3) documents concerning Household, kept or maintained by Arthur Andersen personnel who provided services for Household, particularly audit employee desk files, correspondence and emails; (4) audit manuals and guides relevant to the Household audit; (5) documents concerning the compensation for each partner or principal at Arthur Andersen who

provided professional services to Household; (6) the reviews, evaluations and personnel files for all Arthur Andersen employees who provided professional services for Household; and (7) any documents concerning peer reviews of Arthur Andersen. Lead Plaintiffs argued that the deposition and documents sought were directly relevant to their claims. Lead Plaintiffs subsequently withdrew their motion to compel after Arthur Andersen entered into an agreement to settle the claims against it, as discussed in Section IV, *infra*.

77. **Lead Plaintiffs' Motion to Compel the Household Defendants to Produce Source Logs**: On June 6, 2005, Lead Plaintiffs filed a motion to compel the Household Defendants to produce logs identifying the source and/or custodian for documents produced in discovery. Dkt. No. 229. Lead Plaintiffs requested an Order compelling Household to identify where the documents it produced were found, by providing the names of employees or departments that maintained those files. Lead Plaintiffs argued that an order compelling production was necessary because Household had refused to produce any source and/or custodian logs despite protracted meet-and-confer sessions. At a hearing on August 24, 2005, the Court ordered defendants to file by September 2, 2005 a supplemental response verifying completion of document production. Lead Plaintiffs subsequently withdrew their motion as it related to the production of source logs, but maintained their request that defendants verify the completion of document production if necessary.

78. **Lead Plaintiffs' Motion to Compel the Household Defendants to Produce Documents Improperly Withheld on the Basis of Privilege**: On June 6, 2005, Lead Plaintiffs filed a motion to compel the Household defendants to produce documents improperly withheld on the basis of privilege. Dkt. No. 233. Specifically, Lead Plaintiffs sought an order compelling Household to produce certain documents identified as "privileged" on its privilege log, arguing that Household failed to justify the privileges asserted in the log and improperly applied the attorney-client privilege and work product doctrine to withhold documents. Lead Plaintiffs also sought an

order compelling Household to update its privilege log. After Lead Plaintiffs filed the motion to compel, the parties met and conferred. As a result of the discussions, Lead Plaintiffs dropped certain objections; defendants also dropped certain privileged designations and agreed to produce a revised privilege log. However, the parties continued to dispute defendants' assertion of privilege over 87 documents. On December 9, 2005, the Court denied Plaintiffs' motion to compel, finding that defendants had sufficiently established their claims of privilege for the withheld documents. Dkt. No. 375.

79. **Lead Plaintiffs' Motion to Compel the Household Defendants to Produce Electronic Evidence in Native Electronic Format**: On June 6, 2005, Lead Plaintiffs filed a motion to compel the Household defendants to produce electronic evidence in native electronic format. Dkt. No. 237. An order compelling defendants to produce electronic documents in the manner in which they were stored was necessary, Lead Plaintiffs argued, because defendants had failed to produce a single electronic document in the year since Plaintiffs served their first request for documents on defendants. Lead Plaintiffs also sought an order compelling defendants to search the electronic files of 335 custodians using search terms identified by Plaintiffs. At status conference hearings held on June 9, 2005 and August 24, 2005, defendants represented that agreement had been reached between the parties on the production of documents in native format and that the only remaining dispute concerned the search terms and the number of custodians to be searched. Based on defendants' representations that email and spreadsheets would be produced, including emails from Household's internal "Housemail" system, Plaintiffs partially withdrew their motion to reflect discussion only of the remaining disputed issues. Lead Plaintiffs subsequently learned that the Household defendants had neither searched, nor produced any Housemail emails. Accordingly, on October 11, 2005, Lead Plaintiffs renewed their motion to compel the Household defendants to produce electronic

documents in native format. Dkt. No. 307. At an October 26, 2005 status conference hearing, the Court ordered a Rule 30(b)(6) deposition on the subject of Housemail.

80. On October 31, 2005, the Court entered an Order granting Plaintiffs' renewed motion to compel in part and denying it in part. The Court ordered the Household Defendants to search the emails of 162 custodians whose files Household had refused to search, along with the files of 119 custodians whose files Household had previously agreed to search, finding that Lead Plaintiffs made a sufficient showing of relevance for the emails of the 281 custodians. The Court also ordered defendants to search the emails of the 281 custodians using some of the search terms proposed by Plaintiffs, but denied Plaintiffs' motion as to certain other search terms. Dkt. No. 336.

81. **Lead Plaintiffs' Motion to Compel Responses to First Set of Interrogatories from Defendants**: On September 6, 2005, Lead Plaintiffs filed a motion to compel responses to the first set of interrogatories from the Household Defendants, which sought all facts upon which defendants based their affirmative defenses, the identity of all persons with knowledge of those facts and the identity of all documents which supported defendants' affirmative defenses. Dkt. No. 288. Lead Plaintiffs argued that they were entitled to a meaningful explanation of the factual basis for defendants' affirmative defenses, yet defendants had flatly refused to respond to Plaintiffs' interrogatories. On September 20, 2005, the Household defendants filed an opposition to Plaintiffs' motion to compel, arguing that the interrogatories were improper and premature "contention" interrogatories. Dkt. No. 300. On September 27, 2005, Lead Plaintiffs filed a reply in further support of their motion to compel. Dkt. No. 302. On November 11, 2005, the Court granted Plaintiffs' motion in part and denied it in part. Dkt. No. 339. The Court ordered defendants to amend their interrogatory answers to identify witnesses with knowledge of the facts underlying the affirmative defenses and to specifically identify which witness had knowledge regarding which

affirmative defenses. The Court also ordered defendants to identify documents supporting the affirmative defenses along with the principal and material facts supporting each affirmative defense.

82. **Household Defendants' Motion for Costs, Expenses and Fees**: On October 13, 2005, the Household Defendants filed a motion for costs, expenses and fees. Dkt. No. 314. In it, defendants argued they should be entitled to recover their expenses, including attorneys' fees, due to Plaintiffs' cancellation of the depositions of two Household employees. On June 23, 2006, the Court denied defendants' motion, noting that the cancellation of the depositions was not in bad faith or for any ill motive, but due to confusion between the parties over Household's production of emails from the Housemail system. Dkt. No. 535.

83. **Lead Plaintiffs' Motion to Compel Responses to Second Set of Interrogatories From Household Defendants**: On January 20, 2006, Lead Plaintiffs filed a motion to compel responses to the second set of interrogatories from the Household Defendants. Dkt. No. 379. Specifically, Lead Plaintiffs sought an order compelling defendants to provide responses to Interrogatory Nos. 4-12 and 18, which requested information regarding Household's predatory lending practices, along with the training relating to the Company's lending policies and practices. Lead Plaintiffs also sought an order compelling defendants to provide information for certain of the interrogatories for the time period 1997 through the end of 2003. Lead Plaintiffs argued that defendants' boilerplate objections to the interrogatories were insufficient and otherwise lacked merit. Lead Plaintiffs further argued that the information sought by the interrogatories, including post-Class Period information, was highly relevant to Plaintiffs' predatory lending allegations. Defendants filed an opposition to Plaintiffs' motion on February 3, 2006. On February 13, 2006, Lead Plaintiffs filed a reply in further support of their motion to compel. Dkt. No. 409.

84. At a hearing on February 15, 2006, the Court granted Plaintiffs' motion in part, denied it in part and entered and continued the issue of whether defendants were required to produce

any post-Class Period information. At the Court's request, the parties subsequently submitted additional briefing addressing the issue of the relevancy of post-Class Period information. On June 15, 2006, the Court denied Plaintiffs' request for post-Class Period discovery, concluding that the burden imposed on Household to produce additional post-Class Period documents outweighed any likely benefit to Plaintiffs. Dkt. No. 534. The Court based its conclusion in part on the fact that defendants had already produced more than four million pages of documents, including numerous post-Class Period documents relating to events occurring during the Class Period.

85. On June 29, 2006, Lead Plaintiffs filed an objection to Magistrate Judge Nolan's June 15, 2006 Order denying post-Class Period discovery. Dkt. No. 547. Lead Plaintiffs requested that the Order be overruled, arguing it was contrary to the law in the Seventh Circuit because it failed to recognize that post-Class Period discovery is necessary in securities fraud cases such as this, where intent and materiality are at issue, particularly where certain significant events relevant to the elements of scienter and materiality occurred outside the Class Period. On November 22, 2006, after full briefing, Judge Guzmán entered an Order rejecting Plaintiffs' objections and adopting Judge Nolan's June 15, 2006 Order in full. Dkt. No. 785.

86. **Lead Plaintiffs' Motion to Compel Re Rule 30(b)(6) Deposition on Housemail Topic**: On January 24, 2006, Lead Plaintiffs filed a motion to compel a deposition pursuant to Fed. R. Civ. P. 30(b)(6) on the topic of Housemail. Lead Plaintiffs' motion also requested that the Court issue sanctions. Dkt. No. 388. Lead Plaintiffs sought an order compelling Household to provide narrative responses under oath to designated questions regarding the Housemail system. Such an order was necessary, Lead Plaintiffs argued, because Household's designated witness was unable to testify on all topics relating to Housemail during the Rule 30(b)(6) deposition. Defendants filed an opposition to Plaintiffs' motion on January 31, 2006. Dkt. No. 399. On February 7, 2006, Lead Plaintiffs filed a reply in further support of their motion to compel. Dkt. No. 406. At a hearing on

February 15, 2006, the Court granted Plaintiffs' motion, ordering defendants to provide written responses to Plaintiffs' interrogatories regarding the topic of Housemail.

87. **Household's Inadvertent Production of Privileged Regulatory Agency Documents**: On February 1, 2006, Household notified Lead Plaintiffs that it had inadvertently produced privileged documents belonging to the Office of Comptroller ("OCC"), the Office of Thrift Supervision ("OTS"), the Federal Depository Insurance Corporation ("FDIC") and the Federal Financial Institutions Examination Council ("FFIEC") and demanded that Plaintiffs either return or destroy the documents. Dkt. No. 408. Household further informed Plaintiffs that it would object to the use of any of the privileged documents during all proceedings and would instruct witnesses not to answer any questions relating to the documents. In an order dated February 17, 2006, the Court directed Plaintiffs' counsel to deliver hard copies of any privileged documents to the Court under seal and delete all electronic privileged documents from Plaintiffs' databases. The Court also prohibited Plaintiffs from using any of the privileged documents until the issue had been resolved. Dkt. No. 416.

88. On February 23, 2006, Lead Plaintiffs filed a motion for reconsideration of the Court's February 17, 2006 Order. Dkt. No. 421. Lead Plaintiffs asked the Court to defer requiring the removal of all electronic copies of the privileged documents until after the Court ruled on whether the Class would be permitted to retain the documents. Lead Plaintiffs argued that removing all electronic copies would impose a substantial burden on the Class. Lead Plaintiffs also requested that they be permitted to use the privileged documents to brief the Court during the pendency of the dispute. During the February 28, 2006 hearing, the Court granted Plaintiffs' motion for reconsideration in part.

89. While the parties' dispute was pending before Magistrate Judge Nolan, Plaintiffs also sent letters to the OCC, OTS and FDIC directly, requesting that the agencies release to Plaintiffs any

exempt documents concerning their regulatory supervision over Household. After numerous rounds of correspondence between Plaintiffs and the federal agencies, the agencies ultimately agreed to authorize the release of certain documents in response to Plaintiffs' requests.

90. **Defendants' Motion Directing that Plaintiffs Comply with the Court's October 26, 2005 Order and for a Protective Order Quashing Depositions**: On March 8, 2006, defendants filed a motion asking the Court to direct Lead Plaintiffs to comply with the Court's October 26, 2005 discovery Order, which granted each side the right to take up to a total of 35 depositions. Dkt. No. 436. Defendants also sought a protective order quashing a notice of deposition, where Plaintiffs identified an additional 54 fact witnesses to depose. Defendants argued that by noticing the depositions of 54 fact witnesses without first requesting leave of Court, Lead Plaintiffs failed to comply with the Court's order. On April 13, 2006, defendants renewed their motion to quash Plaintiffs' notice of deposition and also sought an order quashing Plaintiffs' 13 non-party deposition subpoenas. Dkt. No. 486. At a hearing on April 18, 2006, the Court granted defendants' motion in part and denied it in part.

91. **Lead Plaintiffs' Motion to Enforce the Court's March 9 and March 17, 2006 Orders**: On April 3, 2006, Lead Plaintiffs filed a motion to force defendants to comply with the Court's March 9 and 17, 2006 Orders. Dkt. No. 470. The March 9, 2006 Order directed the parties to prioritize depositions, while the March 17, 2006 Order directed Household to identify email boxes and files that had been deleted for deponents set forth in certain of Plaintiffs' deposition notices. Lead Plaintiffs argued that an order was necessary because defendants had failed to comply with the Court's prior orders. During an April 18, 2006 hearing, the Court granted Plaintiffs' motion in part, directing defendants to identify which emails, if any, had been deleted for the deponents set forth in Plaintiffs' deposition notices. April 18, 2006 Hr'g Tr. at 27-28. Dkt. No. 536. The Court also increased the number of depositions each side was entitled to take to 55 depositions.

92. **Arthur Andersen's Motion for Determination of the Court as to the Return of Privileged Documents Inadvertently Produced to Plaintiffs**: On April 27, 2006, Arthur Andersen filed a motion for determination of the Court as to whether 17 privileged documents that were inadvertently produced to Plaintiffs should be returned. Dkt. No. 495. Arthur Andersen argued that the documents at issue, which were comprised of audit letters and internal Arthur Andersen memos, were protected under the attorney-client privilege and attorney work product doctrine. On May 12, 2006, the Household defendants filed a motion in support of Arthur Andersen's motion, arguing that the audit-related documents were protected from disclosure by the work product doctrine. Dkt. No. 508. On May 26, 2006, Lead Plaintiffs filed a response to the Household defendants' motion and a cross-motion to compel production of certain documents Household provided to its outside auditors. Dkt. No. 518. Lead Plaintiffs argued that the disputed audit-related documents were not prepared for litigation and, as a result, should not be afforded protection by the work product doctrine. Lead Plaintiffs further argued that any privilege that may have existed was waived by Arthur Andersen's unreasonable delay in requesting that the documents be returned. Lead Plaintiffs also sought an order compelling Household to produce similar documents that it shared with its outside auditors, Arthur Andersen and KPMG, along with documents relating to Household's litigation reserve database and the establishment of and amounts of litigation reserves. Lead Plaintiffs argued that the litigation reserve-related documents, like the audit-related documents, were not protected by the work product doctrine. Additionally, Lead Plaintiffs argued that Household had waived any privilege by sharing the litigation reserve database with Arthur Andersen.

93. On July 6, 2006, after full briefing, the Court granted Arthur Andersen's motion, finding that the audit-related documents constituted attorney work product and were therefore protected from disclosure. The Court also concluded that Household's disclosure of documents to Arthur Andersen, and Arthur Andersen's inadvertent production to Plaintiffs, did not waive the

privilege. Dkt. No. 580. The Court similarly denied Plaintiffs' cross-motion to compel production of documents relating to Household's litigation database and litigation reserves, concluding that the documents were protected by the work product doctrine, and declining to find that any waiver of the privilege had occurred.

94. On July 25, 2006, Lead Plaintiffs filed an objection to Magistrate Judge Nolan's Order regarding the application of the work-product doctrine to audit letters and related documents. Dkt. No. 612. Lead Plaintiffs argued that Magistrate Judge Nolan erred by applying the wrong standard for work product protection – that a document must be prepared or obtained "because of" the prospect of litigation. Lead Plaintiffs also argued that Magistrate Judge Nolan erred by failing to follow Seventh Circuit precedent holding that the work product doctrine only protects those documents created for litigation with the opposing party seeking discovery. Lead Plaintiffs also argued that Magistrate Judge Nolan's findings with respect to the litigation database were clearly erroneous. Specifically, in finding that Household's litigation reserves database was protected, Magistrate Judge Nolan erred by ignoring admissions in sworn affidavits filed by Household demonstrating that the database was not created to aid in litigation. Lastly, Lead Plaintiffs argued that Magistrate Judge Nolan erred in finding that information related to the amount and establishment of litigation reserves was covered by the work product doctrine. On January 17, 2007, after full briefing and an *in camera* review of the documents that Arthur Andersen inadvertently disclosed, Judge Guzmán rejected Plaintiffs' objections and adopted Magistrate Judge Nolan's ruling in its entirety.

95. **Defendants' Motion for Sanctions and an Order to Show Cause why Brian Duffy Should not be Held in Contempt**: On April 6, 2006, the Household defendants filed a motion for sanctions and an order to show cause why Brian Duffy, Plaintiffs' consultant, should not be held in

contempt for his alleged violation of the Protective Order. Dkt. No. 477. On April 20, 2006, the Court denied defendants' motion. Dkt. No. 491.

96. **Defendants' Motion to Compel Responses to Household Defendants' Second Set of Interrogatories to Lead Plaintiffs**: On June 29, 2006, defendants filed a motion to compel responses to the second set of interrogatories to Lead Plaintiffs. Dkt. No. 543. The interrogatories sought information concerning Plaintiffs' predatory lending allegations in the Consolidated Complaint. On July 13, 2006, Lead Plaintiffs filed an opposition to defendants' motion, arguing that defendants' contention interrogatories were premature given that discovery was ongoing. Dkt. No. 582. Lead Plaintiffs further argued that they had already provided adequate responses to certain of defendants' interrogatories by identifying the predatory lending practices underlying their claims. On August 10, 2006, after full briefing, the Court granted defendants' motion in part, ordering Plaintiffs to respond to defendants' contention interrogatories two months prior to the close of fact discovery. Dkt. No. 631. The Court denied defendants' motion to the extent it requested an order compelling Plaintiffs to provide further responses to certain interrogatories, concluding that no further responses were necessary.

97. **Lead Plaintiffs' Motion to Compel the Household Defendants' Responses to the Third Set of Interrogatories**: On June 29, 2006, Lead Plaintiffs filed a motion to compel the Household Defendants to supplement their responses to the third set of interrogatories. Dkt. No. 551. Specifically, Lead Plaintiffs sought an order compelling defendants to (1) identify Household's public statements regarding its predatory lending and charge-off and reaging practices; (2) provide complete answers to interrogatories seeking the identity of the individuals most knowledgeable or responsible for certain subject matters or events; (3) provide information concerning Household's analysis of the impact on its financial statements of switching to bank-like policies; (4) disclose all of the reasons why Household entered into the AG settlement; (5) disclose the estimated cost of

responding to certain interrogatories; and (6) provide information concerning Household's EZ Pay Plan and predatory lending practices. Dkt. No. 552. On August 10, 2006, after full briefing, the Court granted Plaintiffs' motion in part, ordering defendants to respond to the majority of the interrogatories at issue, but denied Plaintiffs' motion with respect to some interrogatories. Dkt. Nos. 631, 658.

98. **Lead Plaintiffs' Motion to Compel the Household Defendants to Produce Responsive Documents to the Class' Third Request for Production of Documents**: On June 29, 2006, Lead Plaintiffs filed a motion to compel the Household Defendants to produce documents responsive to the class' third request for production of documents. Dkt. No. 555. Lead Plaintiffs sought an order compelling defendants to produce documents (1) reflecting or describing the accounts and subaccounts in any Household general ledger; (2) reflecting Household's various predatory practices and revenues earned through those practices; (3) evaluating the adequacy of Household's credit loss reserves and relating to reaging or restructuring of loans; and (4) relating to Household's "blitz purge" of documents. Dkt. No. 556. Lead Plaintiffs argued that the documents sought by the motion were relevant to the evaluation of Household's finances and the predatory lending and reaging aspects of defendants' fraudulent scheme. Lead Plaintiffs further argued that the documents were also relevant to the elements of knowledge, financial impact and materiality. On August 10, 2006, after full briefing, the Court granted Plaintiffs' motion in part and denied it in part. The Court ordered defendants to submit an affidavit setting forth the efforts made to locate responsive documents and confirming that none could be found. Dkt. No. 631. The Court also ordered defendants to direct Plaintiffs to previously produced documents defendants believed were responsive to Plaintiffs' requests. Finally, the Court ordered defendants to produce all documents relating to Household's entire consumer segment for certain of Plaintiffs' requests.

99. **Lead Plaintiffs' Motion for Additional Deposition Time**: On June 29, 2006, Lead Plaintiffs filed a motion for an order authorizing an extension of the deposition time for three fact witnesses and the four named individual defendants. Lead Plaintiffs were forced to seek court intervention after defendants refused to extend the time beyond the seven hours permitted under the Federal Rules of Civil Procedure. Dkt. No. 559. On August 10, 2006, after full briefing, the Court granted Plaintiffs' motion in part and denied it in part. The Court permitted Plaintiffs seven additional hours of deposition questioning for one fact witness, and ordered Plaintiffs to submit a proposal setting forth the specific topics and the amount of time required for each topic for the remaining six witnesses. The Court further ordered the parties to meet-and-confer regarding deposition length. Dkt. No. 631.

100. **Household Defendants' Motion for an Order Enforcing the Protective Order and for Appropriate Sanctions**: On August 7, 2006, the Household Defendants moved the Court for an order enforcing the terms of the protective order and imposing appropriate sanctions. Dkt. No. 619. Defendants claimed Plaintiffs had improperly filed publicly certain privileged and confidential documents in violation of the protective order and that such conduct warranted a determination of contempt and the imposition of sanctions. Defendants subsequently withdrew their motion. Dkt. No. 675.

101. **Lead Plaintiffs' Motion Regarding State Agency Documents and Sanctions**: On August 14, 2006, Lead Plaintiffs filed a motion to compel regarding state agency documents and for sanctions. Dkt. No. 632. Lead Plaintiffs filed the motion after learning that previously produced documents relating to 27 different state regulatory agencies were subject to recall and that Household had been engaged in *ex parte* communications with the relevant state agencies regarding the issue. Lead Plaintiffs sought an order directing Household to (1) produce the requested information; (2) identify all potential deponents who had access to any of the state documents; and

(3) urge the state agencies to authorize release of the previously produced documents. Dkt. No. 633. Lead Plaintiffs also requested that the Court impose sanctions on Household for its conduct. At a hearing on August 22, 2006, the Court directed Plaintiffs to file a written status report setting forth the documents at issue, the states at issue, the individuals contacted, the responses received and the scope of any remaining disputes. Dkt. No. 649.

102. On September 12, 2006, pursuant to the Court's request, Lead Plaintiffs submitted a status report discussing the state regulatory agency issue, explaining the relevancy of the requested documents and arguing that the bank examination privilege did not protect the documents from disclosure. Dkt. No. 667. On October 30, 2006, after additional briefing, including submissions by the affected state agencies, the Court ordered the production of documents from four state agencies, subject to the Protective Order. Dkt. No. 746. On November 16, 2006, after supplemental briefing by both parties, the Court entered an Order addressing the arguments asserted by the nine state agencies that refused production. The Court ordered production from four of the objecting states, but denied Plaintiffs' motion with respect to the remaining five. The Court also ordered Household to produce all internal documents relating to the state agency examinations, to the extent the Court had already ordered production of the state agency records. Dkt. No. 775.

103. **Lead Plaintiffs' Motion to Compel the Household Defendants to Comply with the Court's August 10 and 22 Orders and for Appropriate Sanctions for Non-Compliance**: On September 18, 2006, Lead Plaintiffs filed a motion to compel the Household Defendants to comply with the Court's August 10 and 22, 2006 Orders and for appropriate sanctions for their non-compliance. Dkt. No. 670. Lead Plaintiffs argued that defendants had failed to comply with the Court's prior orders compelling them to provide information in response to Plaintiffs' interrogatories and document requests. On October 10, 2006, after full briefing, the Court granted Plaintiffs' motion in part and denied it in part and denied Plaintiffs' request for sanctions. Dkt. No. 707.

104. **The Household Defendants' Motion to Compel Responses to Defendants' Third Set of Interrogatories**: On August 18, 2006, the Household Defendants filed a motion to compel Plaintiffs to respond to defendants' third set of interrogatories, which asked Plaintiffs to identify the disclosures that revealed defendants' alleged fraud to the market. Dkt. No. 642. Lead Plaintiffs opposed the motion, arguing, as an initial matter, that defendants had exceeded their allotted number of interrogatories. Lead Plaintiffs also argued that the interrogatories sought information concerning inquiry notice, which was no longer relevant following the Court's dismissal of claims prior to 1999 under *Foss v. Bear, Stearns Co.* Dkt. No. 664. Lead Plaintiffs further argued, *inter alia*, that defendants' loss causation interrogatories were premature in that they purported to seek information that was the subject of expert testimony. On September 20, 2006, after full briefing, the Court denied defendants' motion to compel an immediate response to the interrogatories, but directed Plaintiffs to respond to certain of the interrogatories no later than two months prior to the close of fact discovery. Dkt. No. 677. The Court also overruled Plaintiffs' objection that defendants had exceeded their interrogatory limit.

105. On October 4, 2006, Lead Plaintiffs filed an objection to the portion of Magistrate Judge Nolan's September 20, 2006 Order ruling that Household had not yet exceeded its 85 interrogatory limit. Dkt. No. 700. Lead Plaintiffs argued that the Magistrate Judge's rulings on the counting of interrogatories had been inconsistently applied to Household and the Class and had a prejudicial and inequitable impact on the Class. On January 19, 2007, after full briefing by the parties, Judge Guzmán rejected Plaintiffs' objection and adopted Magistrate Judge Nolan's September 20, 2006 Order in full. Dkt. No. 924.

106. **Lead Plaintiffs' Motion to Compel Production of Discovery and Issuance of Letters of Request Under the Hague Convention**: On September 21, 2006, Lead Plaintiffs filed a motion requesting an order compelling Household and its parent company, HSBC Holdings plc, to

produce and consent to the production of documents held by Morgan Stanley & Co. International Limited, or Morgan Stanley & Co. Limited (collectively, "MSIL"). Lead Plaintiffs also sought an order compelling the issuance of two Letters of Request under the Hague Convention seeking international judicial assistance in obtaining evidence directly from MSIL and HSBC. Dkt. No. 678. Lead Plaintiffs explained that the documents at issue consisted of materials generated by MSIL in its capacity as financial advisor to HSBC in connection with HSBC's 2002 acquisition of Household. Dkt. No. 679. Lead Plaintiffs further explained that the MSIL documents, which related to MSIL's valuation of Household's common stock and included material, non-public information about Household, were relevant to establishing facts surrounding the reasons why HSBC was able to acquire Household at a deep discount to historical trading prices. Lead Plaintiffs argued that Household should be compelled to produce the documents, which Plaintiffs asserted were in Household's (and not HSBC's) possession, custody and control. Lead Plaintiffs also argued that Letters of Request under the Hague Convention were necessary so that Lead Plaintiffs could obtain evidence from MSIL and HSBC located in the United Kingdom. After Lead Plaintiffs filed their motion, the Household defendants informed Lead Plaintiffs and the Court that they did not object to the issuance of the Letters of Request. HSBC also agreed to begin a rolling production of documents located in the United States responsive to Plaintiffs' requests and consented to the voluntary production of documents by MSIL. Dkt. No. 723.

107. **Lead Plaintiffs' Motion to Compel Further Responses to the Class' Questions for Ekholdt Concerning Exhibit 13 and the Production of Documents Underlying Wilmer, Cutler & Pickering Reports**: In 2002, Household's Audit Committee retained Wilmer, Cutler & Pickering ("WCP") to investigate allegations by a Household employee concerning the Company's illegal loan restructuring manipulation and its violation of bankruptcy laws. Dkt. No. 712. WCP provided two final reports to the Audit Committee regarding its investigation: the bankruptcy report (concerning

Household's bankruptcy practices) and the restructuring report (concerning Household's loan restructuring practices). On October 16, 2006, Lead Plaintiffs filed a motion to compel Household to produce all underlying documents for the restructuring report, further responses to written deposition questions for percipient witness Per Ekholdt and further responses to deposition questions of audit committee member Louis Levy. Dkt. No. 712. Lead Plaintiffs argued that the restructuring report, along with deposition testimony and documents relating to the restructuring report, went to the heart of the Class' restructuring-related claims and were not privileged. Additionally, Lead Plaintiffs argued that defendants had waived any privilege by producing the restructuring report and related documents to the Class, KPMG and the SEC. On December 6, 2006, after full briefing, the Court denied Plaintiffs' motion, finding that the restructuring report and related documents and communications were protected by the attorney-client privilege and work product doctrine. Dkt. No. 806. The Court also rejected Plaintiffs' waiver argument, concluding defendants' voluntary production of documents to the SEC did not result in a waiver of the privilege.

108. On December 21, 2006, Lead Plaintiffs filed objections to Magistrate Judge Nolan's December 6, 2006 Order. Dkt. No. 844. Lead Plaintiffs argued that Magistrate Judge Nolan erred in departing from the nearly unanimous federal circuit court rejection of the "selective waiver" theory. Lead Plaintiffs further argued that defendants failed to meet their burden of demonstrating that the restructuring report and related documents were privileged and urged Judge Guzmán to find subject matter waiver based on Household's voluntary disclosure of the restructuring report and related materials to the SEC for Household's own benefit. On February 1, 2007, after full briefing, Judge Guzmán rejected Plaintiffs' objections, adopting Magistrate Judge Nolan's ruling in full. Dkt. No. 940.

109. **The Household Defendants' Motion Regarding Deposition Notices and Subpoenas to Named Plaintiffs and Certain Investment Advisors**: On October 27, 2006,

pursuant to the Court's request, the Household Defendants filed a memorandum explaining why the Court's April 2005 Order quashing discovery directed at PACE and its investment advisors did not preclude defendants from taking merits depositions of the named plaintiffs and certain of their investment advisors. Dkt. No. 742. Defendants argued that the depositions sought testimony concerning the merits of Plaintiffs' allegations and were necessary to explore defendants' "truth on the market" defense. Alternatively, defendants asked the Court to reconsider its prior order quashing discovery from the named plaintiffs and their investment advisors. Lead Plaintiffs filed an opposition to defendants' motion, arguing that they failed to meet their burden of establishing that reconsideration was appropriate. Dkt. No. 755. Lead Plaintiffs further argued that the testimony of the named plaintiffs and their investment advisors was not probative of the truth on the market defense. On November 13, 2006, the Court denied defendants' motion, concluding that there was no need to depose the individual named plaintiffs in order to determine what information was on the market at the time of defendants' fraud. The Court also denied defendants' request to reconsider its prior order, reaffirming its prior ruling in full. Dkt. No. 762.

110. On December 1, 2006, the Household Defendants filed an objection to Magistrate Judge Nolan's November 13, 2006 Order denying defendants' request to depose the named plaintiffs. Dkt. No. 786. Lead Plaintiffs filed an opposition on December 19, 2006, arguing that defendants' objection to the substance of the Court's April 2005 Order was untimely and should be denied. Dkt. No. 832. Additionally, Lead Plaintiffs argued that Magistrate Judge Nolan properly rejected defendants' purported bases for individualized discovery prior to the resolution of liability on a class-wide basis. On January 29, 2007, after full briefing, Judge Guzmán overruled defendants' objection to Magistrate Judge Nolan's November 13, 2006 Order and adopted the ruling in full. Dkt. No. 935.

111. **Lead Plaintiffs' Motion for an Order Permitting the Use of Documents Recalled by Defendants as "Inadvertently" Produced**: On December 6, 2006, Lead Plaintiffs moved the Court for an order permitting the use of certain "recalled" documents. Lead Plaintiffs explained that certain documents recalled by defendants as "inadvertently" produced were not protected by the attorney-client privilege and work product doctrine, and defendants had waived any privilege by failing to take reasonable and necessary steps to protect the asserted privilege. Dkt. No. 798. After conducting an *in camera* review of the relevant documents, the Court granted Plaintiffs' motion in part and denied it in part.

112. **Lead Plaintiffs' Motion to Compel Household Defendants to Produce Documents Responsive to the Class' Fourth Request for Production of Documents**: On December 12, 2006, Lead Plaintiffs filed a motion to compel defendants to produce documents responsive to Plaintiffs' fourth request for production of documents. Dkt. No. 819. Lead Plaintiffs' fourth request was designed to capture any documents missing from prior productions through the use of narrow requests seeking specific documents or categories of documents. Dkt. No. 820. On January 10, 2007, after full briefing, the Court granted Plaintiffs' motion in part, ordering defendants to produce documents responsive to certain requests, and denied it in part. Dkt. No. 910.

113. **Household Defendants' Motion to Compel Responses to Defendants' Fourth Set of Interrogatories**: On December 22, 2006, the Household Defendants moved to compel responses to their fourth set of interrogatories to Lead Plaintiffs. Dkt. No. 852. Specifically, defendants sought an order compelling Plaintiffs to identify which statements defendants' misrepresented and what information was withheld from the market, and to provide facts supporting Plaintiffs' loss causation allegations. Dkt. No. 853. On December 29, 2006, Lead Plaintiffs filed an opposition to defendants' motion, arguing that their objections to the interrogatories were valid; namely, the interrogatories posed irrelevant and ambiguous hypothetical questions and were cumulative of other interrogatories.

On January 10, 2007, after full briefing, the Court granted defendants' motion in part and denied it in part. Dkt. No. 910.

114. **Household Defendants' Motion for Sanctions for Failure to Respond and to Compel Responses to Defendants' Court-Authorized Supplement to Defendants' Second Set of Interrogatories**: On December 22, 2006, the Household Defendants filed a motion for sanctions for Plaintiffs' purported failure to respond to defendants' Court-authorized supplement to defendants' second set of interrogatories. Dkt. No. 857. Pursuant to the Court's August 10, 2006 Order, defendants were permitted to serve up to five additional and more specific interrogatories on the topic of defendants' predatory lending practices and the revenues derived from such practices. Defendants' motion claimed Plaintiffs failed to adequately respond to the supplemental interrogatories. On December 29, 2006, Lead Plaintiffs filed an opposition to defendants' motion. Dkt. No. 868. Lead Plaintiffs argued that they had already answered defendants' contention interrogatories and, as the Court ruled in its August 10 Order, "no further response [was] required." Dkt. No. 868 at 3. Lead Plaintiffs further argued that defendants' attacks on the class' interrogatory responses were without merit, as they had fully answered defendants' additional, court-authorized interrogatories by specifying the products that utilized predatory sales practices and the revenues derived from those practices. On January 10, 2007, the Court granted defendants' motion in part, instructing Plaintiffs to answer certain interrogatories as rewritten by the Court. The Court denied defendants' request for sanctions. Dkt. No. 910.

115. **Lead Plaintiffs' Motion to Compel Andrew Kahr Documents Improperly Withheld as Privileged or Destroyed by the Household Defendants**: On January 5, 2007, Lead Plaintiffs filed a motion to compel defendants to produce documents concerning Andrew Kahr that they had improperly withheld as privileged or destroyed. Dkt. No. 895. Mr. Kahr was a consultant retained by Household senior management in January 1999, who had first-hand knowledge of

Household's lending operations and helped develop numerous initiatives to grow Household's revenue. As Lead Plaintiffs detailed in their motion, although Household had produced some documents relating to Mr. Kahr, they had improperly withheld 32 documents on the basis of privilege and failed to produce a database of Kahr-related documents. Lead Plaintiffs argued that the documents were not protected by the attorney-client privilege because they did not reflect communications between an attorney and its client necessary to obtain legal advice, nor were they protected by the work product doctrine. Lead Plaintiffs also urged the Court to view defendants' "disposition" of Kahr-related documents with skepticism, arguing that evidence in the record appeared to indicate that those documents had been destroyed. On January 25, 2007, after full briefing and an *in camera* review of the disputed documents, the Court denied Plaintiffs' motion to compel. Dkt. No. 933.

116. **Lead Plaintiffs' Motion to Compel Household Defendants to Produce Missing Documents, Documents Improperly Withheld or Redacted and for a Finding of Waiver Due to Defendants' Failure to Assert Privilege Over Withheld or Redacted Documents That Are Not On Their Privilege Logs**: On January 8, 2007, Lead Plaintiffs filed a motion to compel defendants to produce (1) 870 documents that defendants had either withheld or produced in redacted form, but failed to include on their privilege logs; (2) 247 documents that defendants had omitted, withheld, or produced in redacted form due to non-responsiveness; and (3) 438 documents that defendants claimed to have produced, but which the Class did not have. Dkt. No. 885. With respect to the first category of documents, Lead Plaintiffs argued defendants had waived any privilege as to documents withheld and redacted that were not included on their privilege logs and, as a result, production to Plaintiffs was required. As to the second category of documents, Lead Plaintiffs argued that defendants' conduct of withholding or redacting documents based on responsiveness violated well-established legal authority, which prohibits the producing party from redacting documents based on

relevancy. Finally, Lead Plaintiffs argued defendants should be compelled to produce the third category of documents, *i.e.*, documents missing from defendants' prior productions. The parties fully briefed the matter, and on January 30, 2007, the Court denied Plaintiffs' motion. In its order, however, the Court noted the "problematic" nature of redacting documents based on non-responsiveness, and ordered the parties to meet-and-confer to resolve any disputes regarding redacted documents that were not otherwise privileged. Dkt. No. 936.

117. **Lead Plaintiffs' Request for an Order Regarding Deposition Protocol**: On January 8, 2007, Lead Plaintiffs filed a status report in which they requested (1) an Order restricting defense counsel from instructing witnesses not to answer questions on any grounds other than privilege; (2) an Order allowing the Class to re-open the deposition of Mr. Detelich and instructing Mr. Detelich to respond to the questions Lead Counsel were precluded from asking as well as any follow-up questions on the same topics; and (3) an Order restricting defendants' counsel from making any statements on the record other than "objection to form." Dkt. No. 883. Lead Plaintiffs explained that the requested relief was necessary due to defense counsel's improper conduct during depositions. During the January 10, 2007 status conference hearing, Magistrate Judge Nolan instructed the parties that they were to refrain from making objections on grounds other than privilege. January 10, 2007 Hr'g Tr. The Court also permitted Lead Plaintiffs to take a telephonic follow-up deposition of Mr. Detelich regarding any questions he was instructed not to answer during his deposition. Dkt. No. 910.

118. **Lead Plaintiffs' Motion for a Report and Recommendation for Evidentiary Sanctions Against the Household Defendants**: On January 31, 2007, Lead Plaintiffs filed a motion requesting that the Court issue a report and recommendation for evidentiary sanctions against the Household Defendants. Lead Plaintiffs filed the motion after defense counsel instructed Douglas Friedrich, the Managing Director of the Household Mortgage Services Group, not to answer

questions about two exhibits during his deposition, in violation of the Court's prior orders regarding deposition protocol. Dkt. No. 938. Lead Plaintiffs sought an order barring defendants from presenting any evidence regarding the subject matters noted in the two Friedrich deposition exhibits. Lead Plaintiffs also requested an order compelling defendants to produce summary documents reflecting the number of employees in Household's Quality Assurance and Compliance ("QAC") group during the period 1999 to 2000. As Lead Plaintiffs explained, the QAC group was responsible for monitoring compliance in the branch sales office and, according to testimony and internal documents, was disbanded in 1999 before being reinstated sometime in 2000. Lead Plaintiffs argued that the time period when there was no QAC was highly probative of the absence of adequate internal controls and defendants' scienter, yet defendants had produced no documents relating to the 1999 to 2000 time period despite certifying that they had produced all QAC documents. Accordingly, Lead Plaintiffs requested that the Court deem admitted the fact that there were no QAC employees from 1999 to 2000, or compel Household to produce summary documents showing the QAC employees for that time period. On March 5, 2007, after full briefing, the Court denied Plaintiffs' motion, but nonetheless ordered defendants to produce Mr. Friedrich for a supplemental deposition regarding the two Friedrich deposition exhibits. Dkt. No. 1001.

119. **Lead Plaintiffs' Motion for Reconsideration of the Court's January 24, 2007 Order Finding Waiver of KPMG Documents, but Precluding Disclosure for Failure to Demonstrate Prejudice**: During the course of discovery, defendants inadvertently produced several opinion letters written by Household's general counsel to KPMG, which summarized pending and threatened litigation against Household and its subsidiaries. Defendants subsequently demanded that Plaintiffs return the inadvertently produced KPMG opinion letters, even though they had failed to timely assert any privilege over them. Defendants claimed that the letters were protected from disclosure by the Court's July 2006 opinion, which found that similar audit opinion letters were

privileged work product. Lead Plaintiffs raised the dispute over the KPMG opinion letters with the Court in a status report and at a status conference hearing, arguing that defendants' delay in seeking recovery of the documents warranted a finding of waiver. On January 24, 2007, after conducting an *in camera* review of the disputed documents, the Court concluded that the KPMG opinion letters were protected by the July 2006 order and should remain confidential. Dkt. No. 931. Although the Court admonished defendants for failing to bring the KPMG documents to its attention in a timely matter, it nonetheless found that Plaintiffs failed to demonstrate any prejudice due to defendants' untimely recall of the documents.

120. On February 7, 2007, Lead Plaintiffs moved for reconsideration of Magistrate Judge Nolan's January 24, 2007 Order. Dkt. No. 941. Lead Plaintiffs argued reconsideration was appropriate because the Court made its decision without giving Plaintiffs the opportunity to make any showing of prejudice, and without allowing Plaintiffs to be heard. Lead Plaintiffs also argued Magistrate Judge Nolan erred in requiring Plaintiffs to demonstrate undue prejudice. On March 5, 2007, Magistrate Judge Nolan denied Plaintiffs' motion for reconsideration. Dkt. No. 1002.

121. On March 19, 2007, Lead Plaintiffs objected to Magistrate Judge Nolan's March 5, 2007 Order, arguing that Magistrate Judge Nolan had committed several errors in denying Plaintiffs' motion for reconsideration. Dkt. No. 1022. On April 12, 2007, Judge Guzmán overruled Plaintiffs' objection to Magistrate Judge Nolan's March 5, 2007 Order finding waiver of KPMG documents but precluding their disclosure, and adopted the ruling in full. Dkt. No. 1046.

122. **Lead Plaintiffs' Motion for Reconsideration of the Court's January 24, 2007 Order or for Alternative Relief Regarding Stock Repurchase Discovery**: Lead Plaintiffs' fifth request for production of documents to the Household Defendants sought documents sufficient to identify information concerning Household's share repurchases. Following a November 30, 2006 status hearing, the Court ordered defendants to produce a stock repurchase list and any underlying

documents if requested by Plaintiffs. In December 2006, defendants produced a general ledger spreadsheet, which was not responsive to Plaintiffs' fifth request because it did not provide the date on which "each share repurchase" occurred and was missing other, relevant information, such as volume and price. Lead Plaintiffs subsequently requested from defendants the documents underlying the stock repurchase. Defendants failed to produce the requested information and Plaintiffs brought their non-compliance to the Court's attention during a January 10, 2007 status conference hearing. In its January 24, 2007 Order, the Court found that to the extent any additional documentation was available regarding Household's stock repurchase program, it would be overly burdensome, costly, and time-consuming to require production. Dkt. No. 934.

123. On February 7, 2007, Lead Plaintiffs moved for reconsideration of Magistrate Judge Nolan's January 24, 2007 Order, arguing that reconsideration was warranted because the Court had insufficient information at the time it made its ruling to weigh any purported burden on defendants against the importance of the documents at issue. Dkt. No. 944. As Lead Plaintiffs explained, identification of the dates and amounts of specific stock repurchases was important evidence relating to defendants' manipulation of Household's stock price. Lead Plaintiffs further explained that the evidence pertained to Plaintiffs' allegations that defendants improperly bolstered the price of Household stock and related to defendants' "loss causation" theory. On February 22, 2007, defendants produced stock repurchase data responsive to Plaintiffs' requests and, as a result, Plaintiffs subsequently withdrew their motion for reconsideration. Dkt. No. 978.

124. **Lead Plaintiffs' Motion for a Protective Order Quashing Defendants' Interrogatories**: On February 13, 2007, Lead Plaintiffs filed a motion for a protective order quashing defendants' interrogatories served on the last day of the close of fact discovery. Dkt. No. 955. Lead Plaintiffs argued that a protective order was necessary because defendants' interrogatories – served on the day fact discovery closed – were improper and untimely. On March

9, 2007, after full briefing, the Court granted Plaintiffs' motion in part and denied it in part. Dkt. No. 1018. The Court concluded that some of defendants' interrogatories were proper and ordered Plaintiffs to respond to them, but found that other interrogatories were untimely and need not be answered.

125. **The Household Defendants' Motion to Compel Responses to Defendants' Fifth Set of Interrogatories**: On February 21, 2007, the Household Defendants moved to compel Plaintiffs to respond to defendants' fifth set of interrogatories. Dkt. No. 968. Specifically, defendants sought an order compelling Plaintiffs to (1) identify the relevant lending laws and the Household products and practices that violated those laws; (2) identify facts and documents that explained Plaintiffs' "prepayment penalties" claims; and (3) identify documents that demonstrated senior management's participation in illegal lending practices. Dkt. No. 969-2. On March 14, 2007, the Court granted defendants' motion in part, ordering Plaintiffs to provide information regarding the first and second categories of information, but denied defendants' motion as to the third category of information. Dkt. No. 1019.

126. **The Household Defendants' Motion to Compel Responses to Defendants' Interrogatories Nos. 56 and 64**: On May 4, 2007, the Household Defendants filed a motion to compel responses to Interrogatory No. 56, which asked Plaintiffs to quantify the number of Household's loans which included undisclosed or illegal prepayment penalties, and Interrogatory No. 64, which asked Plaintiffs to identify the truth revealed to the market by certain disclosures. Dkt. No. 1063. On May 11, 2007, Lead Plaintiffs filed an opposition to defendants' motion, arguing that defendants' motion should be denied because they had already provided complete responses to both interrogatories. Dkt. No. 1079. Lead Plaintiffs subsequently agreed to provide defendants with an amended response to Interrogatory No. 56. On June 14, 2007, the Court granted defendants' motion in part, ordering Plaintiffs to provide a more detailed response to Interrogatory No. 64, but

denied the motion with respect to Interrogatory No. 56 in light of Plaintiffs' agreement to provide additional information.

b. Discovery Disputes with the Household Defendants and Ernst & Young Regarding the Production of Ernst & Young Documents

127. On October 16, 2006, Lead Plaintiffs filed a motion to compel Household to produce all documents relating to Household's consultations with Ernst & Young LLP ("E&Y"). Dkt. No. 708. Specifically, Lead Plaintiffs sought documents relating to Household's retention of E&Y to study Household's compliance with state predatory lending laws during the Class Period, refunds owed to consumers based on violations of predatory lending laws during the Class Period, and other related issues. Lead Plaintiffs argued that E&Y performed what amounted to an independent factual evaluation of Household's lending practices and the reports generated as a result of its investigation were factual compilations, not legal opinions. As a result, Lead Plaintiffs argued, the E&Y documents were not protected from disclosure by the attorney-client privilege or the work product doctrine. Lead Plaintiffs further argued that even if the documents were privileged, the exception articulated in *Garner v. Wolfinbarger*, 430 F.2d 1093 (5th Cir. 1970), which allows shareholders access to communications between a corporation and its attorneys, applied. Alternatively, Lead Plaintiffs argued that any privilege had been waived by Household's disclosure of E&Y documents to the Attorneys General, the SEC and the OTS. On December 6, 2006, after full briefing, the Court granted Plaintiffs' motion. While the Court determined that the documents at issue were protected by the attorney-client privilege and work product doctrine, it found that the exception set forth in *Garner* applied and concluded Plaintiffs had established good cause to overcome the privilege. Dkt. No. 806.

128. On December 21, 2006, defendants filed objections to Magistrate Judge Nolan's December 6, 2006 Order compelling defendants to produce documents pertaining to Household's

consultation with E&Y. Defendants argued that Magistrate Judge Nolan's application of the *Garner* exception and the conclusion that Plaintiffs had shown good cause to overcome the privilege was clearly erroneous. Dkt. No. 841. On February 1, 2007, after full briefing, Judge Guzmán overruled defendants' objections and adopted Magistrate Judge Nolan's December 6, 2006 ruling in full. Dkt. No. 940.

129. On February 22, 2007, Lead Plaintiffs filed a motion to compel production of E&Y documents and for sanctions for defendants' continuing violations of Magistrate Judge Nolan's December 6, 2006 Order and Judge Guzmán's February 1, 2007 Order. Dkt. No. 974. Lead Plaintiffs argued defendants had failed to produce E&Y's work papers and at least 187 internal E&Y documents, despite being ordered by the Court to do so on two separate occasions. In opposing Plaintiffs' motion, defendants argued that the documents were dated after the Class Period and related to other E&Y engagements that were not relevant to Plaintiffs' allegations. Dkt. No. 986. After filing their motion to compel, Lead Plaintiffs learned that Household was in possession of 425 boxes of E&Y work papers relating to the Household compliance engagement. Upon discovery of the existence of the 425 boxes, Lead Plaintiffs filed supplemental briefing to notify the Court of the development, requesting that defendants be ordered to immediately produce the 425 boxes. Dkt. No. 989.

130. On February 27, 2007, the Court granted Plaintiffs' motion in part and denied it in part. The Court concluded defendants need not produce any of the 187 documents relating to other engagements or dated after the Class Period, reasoning that the *Garner* exception did not apply to post-Class Period documents. Dkt. No. 999. With respect to the 425 recently-discovered boxes, the Court declined to find that defendants had waived their privilege by failing to disclose the documents earlier, but ordered defendants to review the work papers, produce all non-privileged documents, and provide a privilege log by March 30, 2007.

131. On March 8, 2007, Lead Plaintiffs moved for reconsideration of Magistrate Judge Nolan's February 27, 2007 Order. Dkt. No. 1010. Lead Plaintiffs argued reconsideration was appropriate because the Court relied on erroneous facts in reaching its conclusion that Household need not produce attorney-client privileged documents relating to the E&Y compliance created after the Class Period. Lead Plaintiffs pointed out that the Court's December 6, 2006 Order, in which it applied the *Garner* exception to overcome defendants' claim of privilege, did not include any temporal limitation. Lead Plaintiffs further argued that Judge Guzmán's February 1, 2007 Order adopting Magistrate Judge Nolan's ruling in full likewise did not limit the E&Y documents to a specific date range. Lastly, Lead Plaintiffs argued that the Court's conclusion that defendants were unaware of the 425 boxes of E&Y work papers before February 2007 was unsupported by the factual record. During a March 12, 2007 status conference hearing, Magistrate Judge Nolan denied Plaintiffs' motion for reconsideration. Dkt. No. 1017.

132. On March 16, 2007, Lead Plaintiffs filed objections to Magistrate Judge Nolan's March 12, 2007 denial of their motion for reconsideration. Dkt. No. 1020. Lead Plaintiffs argued, *inter alia*, that the Magistrate Judge did not have authority to reconsider defendants' post-Class Period arguments, which Judge Guzmán already considered and rejected in overruling defendants' objections. On April 9, 2007, after full briefing, Judge Guzmán overruled Plaintiffs' objections and adopted Magistrate Judge Nolan's February 27, 2007 ruling in full. Dkt. No. 1039.

133. On April 24, 2007, Lead Plaintiffs filed a motion to compel Household to produce documents pertaining to the E&Y compliance engagement that defendants failed to list on their privilege log. Lead Plaintiffs argued that defendants' failure to list those and other E&Y documents on their privilege log warranted a finding of waiver of any privilege that might attach to the documents. Dkt. No. 1049.

134. On April 27, 2007, Magistrate Judge Nolan entered an additional order regarding the E&Y compliance documents, ordering defendants to produce from the belatedly disclosed 425 boxes of E&Y work papers any documents prepared during the Class Period. Dkt. No. 1060. The April 27, 2007 Order also ordered defendants to produce any additional E&Y documents in their possession that were related to the compliance engagement and dated within the Class Period and to identify on a privilege log any additional E&Y compliance documents dated after the Class Period. On May 9, 2007, defendants sought reconsideration of Magistrate Judge Nolan's April 27, 2007 order requiring production or logging of all documents in defendants' files regarding the E&Y compliance engagement. Dkt. Nos. 1071, 1076.

135. The parties' dispute over the E&Y documents continued. Pursuant to the Court's request, the parties subsequently submitted additional briefs addressing whether the E&Y compliance engagement work papers were privileged. In their submissions, Lead Plaintiffs argued that the E&Y work papers were not protected by the attorney-client privilege because they did not constitute "communications" between an attorney and client and, in any event, any privilege had been waived due to defendants' failure to adopt adequate precautions to protect the privilege. Lead Plaintiffs further argued that defendants should not be permitted to manipulate the date of documents such that they fell outside the Class Period and outside the ambit of the Court's prior orders. Dkt. No. 1078.

136. On June 13, 2007, after multiple rounds of briefing by the parties, Magistrate Judge Nolan issued an opinion that was intended to "fully and finally resolve all outstanding issues related to the E&Y documents." Dkt. No. 1110 at 1. The Court concluded that the 115 boxes of substantive E&Y documents (the balance, 278 boxes, included non-substantive computer records) were protected by the attorney-client privilege, which Household had taken appropriate precautions to protect. However, the Court reiterated that documents created during the Class Period must be

produced under the *Garner* exception and clarified that the proper date to consider was either the last date the document was altered or the date of the manual sign-off, whichever was later. The Court also affirmed its order requiring defendants to produce and/or log additional E&Y documents in their possession, but amended it to permit defendants to limit their search and production to nine custodians. Dkt. No. 1110.

137. On March 10, 2008, the Household Defendants filed a motion for a finding of contempt and for appropriate sanctions. Defendants argued Plaintiffs violated the protocols of the Protective Order by refusing to return or destroy a document they claimed the Court had explicitly held was privileged and by providing that document to Plaintiffs' expert, Ms. Ghiglieri. The document at issue concerned the E&Y compliance engagement and was dated after the Class Period; therefore, defendants argued, it was not subject to the *Garner* exception set forth in the Court's prior orders. In a response filed on March 13, 2008, Plaintiffs responded to defendants' spurious allegations, pointing out that the document at issue was actually an internal Household document dated March 2003 (not a post-Class Period E&Y document, as defendants claimed), had previously been used by Plaintiffs in one court filing, two depositions and Ms. Ghiglieri's expert report without any objection by defendants, and at no time prior to filing their motion had defendants requested its return. Dkt. No. 1202. On April 9, 2008, after full briefing, the Court denied defendants' motion, finding that any privilege had been waived by defendants' untimely objections. Dkt. No. 1218.

c. Discovery Disputes with Third Parties

138. In addition to disputes with defendants, nearly every third party Lead Plaintiffs served with a subpoena objected, requiring Lead Counsel to devote many hours to negotiating the scope of those productions. With the majority of these third parties, Lead Plaintiffs were able to successfully resolve issues concerning the scope of the documents to be produced and/or depositions to be given,

without court intervention. With some third parties, however, the Court's assistance was necessary to resolve the disputes.

139. **Lead Plaintiffs' Motion for Authorization Pursuant to the Walsh Act for Issuance of Subpoena for Andrew Kahr**: On December 4, 2006, Lead Plaintiffs filed a motion seeking an order pursuant to the Walsh Act authorizing the issuance of a subpoena for the deposition of Andrew Kahr and production of documents under Mr. Kahr's possession or control. As Lead Plaintiffs explained in their motion, Mr. Kahr, a key witness, was a consultant retained by Household senior management in January 1999, who had first-hand knowledge of Household's lending operations and helped develop numerous initiatives to grow Household's revenue. Dkt. No. 789. Lead Plaintiffs explained that the Court's assistance was necessary because Mr. Kahr resided in France and defendants refused to cooperate in helping Plaintiffs secure Mr. Kahr's attendance at a deposition. On December 13, 2006, the Court granted Plaintiffs' motion, permitting Plaintiffs to issue a subpoena for Mr. Kahr under the Walsh Act, seeking both his testimony and documents. Dkt. No. 824.

140. **Lead Plaintiffs' Motion to Enforce Compliance with Subpoena By Non-Party Wells Fargo & Company**: On January 16, 2007, Lead Plaintiffs filed a motion in the United States District Court for the Northern District of California to compel third-party Wells Fargo to comply with Lead Plaintiffs' subpoena for documents and deposition testimony. Specifically, Lead Plaintiffs sought documents and deposition testimony concerning Wells Fargo's negotiations with and due diligence into Household in connection with a possible purchase of Household. Lead Plaintiffs and Wells Fargo subsequently resolved the dispute, with Wells Fargo agreeing to produce responsive documents and to provide deposition testimony.

141. **Lead Plaintiffs' Motion to Compel Production of E-Mails and Deposition testimony by Morgan Stanley**: On February 14, 2007, pursuant to leave of the Court, Lead

Plaintiffs moved to compel Morgan Stanley to produce emails responsive to Plaintiffs' subpoena from three Morgan Stanley employees. Lead Plaintiffs were forced to file the motion after over a year of efforts to cooperate with Morgan Stanley on its document production proved to be futile. Lead Plaintiffs explained that the requested emails related to Morgan Stanley's financial evaluation of Household's common stock, negotiations leading to the Household and HSBC merger, and its analyst coverage of Household during the Class Period. Lead Plaintiffs also asked the Court to order the depositions of two Morgan Stanley employees to occur before March 16, 2007. Dkt. No. 956. After Lead Plaintiffs filed their motion to compel, Morgan Stanley agreed to produce the requested emails and deponents. As a result, Lead Plaintiffs subsequently withdrew their motion. Dkt. No. 966.

142. **Lead Plaintiffs' Motion to Compel Deposition Dates for John Keller, Christopher Bianucci and Ernst & Young and Production of Documents by Ernst & Young**: On April 24, 2007, Lead Plaintiffs filed a motion to compel the production of John Keller and Christopher Bianucci for deposition and the production of relevant documents in E&Y's possession. Dkt. No. 1051. Messrs. Keller and Bianucci were the lead Household audit partners at Arthur Andersen for most of the Class Period and also directed the E&Y compliance engagement. Lead Plaintiffs intended to depose Messrs. Keller and Bianucci regarding the work performed by Andersen as Household's external auditor and the work performed by E&Y during the compliance engagement. Lead Plaintiffs were forced to file the motion after counsel for Messrs. Keller and Bianucci refused to make them available for depositions and refused to produce relevant documents pending the resolution of issues regarding Household's production of E&Y compliance-related documents. On April 27, 2007, the Court ordered E&Y to produce any relevant documents created prior to the end of the Class Period from the files of nine custodians identified by Plaintiffs. The

Court also ordered Messrs. Keller and Bianucci to make themselves available for deposition. Dkt. No. 1060.

G. Expert Witness Discovery

143. To assist Lead Counsel in investigating and proving defendants' three-part fraudulent scheme, as well as demonstrating the elements of Plaintiffs' §10(b) and Rule 10b-5 claims, including loss causation and damages, Plaintiffs retained the services of three expert witnesses.

144. Lead Plaintiffs designated Professor Daniel Fischel, a renowned economist and nationally recognized expert on damages in securities fraud cases, to opine on the issue of loss causation and damages. After an extensive review of all the economic evidence, Professor Fischel submitted a 27-page expert report with exhibits in which he concluded that the economic evidence was consistent with Plaintiffs' claim that defendants' alleged fraud caused investors in Household's common stock to incur losses. In his report, Professor Fischel described the two separate analyses he conducted to determine the amount of artificial inflation in Household's stock price and the causal link to the economic losses suffered by class members as a result of the gradual revelation of defendants' alleged fraud. The first analysis (the "specific disclosures" model) was an event study and regression analysis through which Professor Fischel found statistically significant declines caused by ten individual fraud-related disclosures. Using the specific disclosure analysis, Professor Fischel identified artificial inflation of $7.97 per share during the Class Period. The second analysis, also an event study and regression analysis, utilized a "Leakage Model" to address situations in which fraud was revealed slowly over time. Under the Leakage Model, Professor Fischel quantified artificial inflation of up to $23.94 per share over the disclosure period of November 15, 2001 through October 11, 2002.

145. Professor Fischel also submitted a 28-page rebuttal report with exhibits to respond to defendants' loss causation expert, Mukesh Bajaj, who opined that Professor Fischel's analysis

suffered from several fundamental flaws and resulted in incorrect and unsupportable conclusions. In connection with rendering his expert opinion and submitting two expert reports, Professor Fischel and his staff spent many hours analyzing Household's public disclosures, reviewing analyst reports issued about Household during the Class Period, comparing the performance of Household stock to an index of comparable stocks, and performing event studies and regression analyses for the specific disclosure and leakage models. Professor Fischel also spent several days preparing for and providing deposition testimony. In total, Professor Fischel issued six expert reports, some in advance of the first trial, and others prior to the second trial. Professor Fischel and his staff also spent a significant amount of time assisting Lead Counsel in analyzing defendants' expert reports, preparing counsel to depose defendants' expert witnesses, preparing to testify and testifying at the 2009 trial, preparing counsel to cross-examine defendants' expert(s), both at the 2009 trial and at the retrial, and preparing to testify at the retrial.[6]

146. Lead Plaintiffs also retained Harris Devor to opine on whether the consolidated financial statements of Household and Household Finance Corporation were fairly stated in accordance with GAAP during the Class Period. Mr. Devor submitted a detailed, 149-page expert report in which he concluded that Household's and HFC's Class Period consolidated financial statements were not in conformity with GAAP and that the overall effect of non-conformity was material. Mr. Devor's report described Household's specific misstatements and improper accounting practices, which resulted in the material misstatement of Household's and HFC's overall financial statements. Mr. Devor's report also described Household's restatement, defendants' improper lending practices and Household's credit quality concealment techniques and their non-compliance with GAAP. In connection with rendering his opinion and submitting his expert report, Mr. Devor

[6] As set forth below, the parties engaged in additional discovery from their respective loss causation experts in connection with the remand proceedings.

and his staff reviewed over 80 days of deposition testimony, hundreds of exhibits and thousands of documents produced by defendants and third-parties, including Household's outside auditors Arthur Andersen and KPMG. Mr. Devor also spent several days preparing for and providing deposition testimony. Further, Mr. Devor and his staff spent significant time assisting Lead Counsel in analyzing defendants' expert reports, preparing counsel to depose defendants' expert witnesses, preparing to testify and testifying at the 2009 trial, and preparing counsel to cross-examine defendants' expert at the 2009 trial. In 2016, Mr. Devor had to prepare to testify again at the retrial. In addition to working with his own staff to prepare for the retrial, Mr. Devor travelled to Chicago to meet with Lead Counsel and their in-house forensic accountant in May 2016, and returned to Chicago on June 5, shortly before the case settled.

147. Additionally, Plaintiffs retained Catherine Ghiglieri as an industry expert to determine if Household engaged in predatory lending, to review and opine on the financial impact of Household discontinuing certain lending practices at the end of 2002, and to review and opine on Household's reaging and restructuring practices. Ms. Ghiglieri submitted a detailed, 168-page report describing Household's predatory lending and reaging practices and concluding (1) that Household engaged in numerous, systemic, and company-wide predatory lending practices; (2) Household's systemic weaknesses provided the atmosphere for predatory lending practices to occur and flourish; (3) the financial impact to Household of its predatory lending practices was significant; and (4) Household masked delinquencies and charge-offs in a variety of ways, including but not limited to reaging and restructuring. Ms. Ghiglieri also submitted a 70-page rebuttal report in which she reviewed and addressed the opinions expressed in the reports submitted by defendants' experts, John Bley, Carl LaSusa, and Robert Litan. In connection with rendering her opinion and submitting two expert reports, Ms. Ghiglieri reviewed dozens of regulatory publications and news articles regarding predatory lending, more than two dozen depositions and hundreds of documents produced by

Household and third parties. Ms. Ghiglieri also spent several days preparing for and providing deposition testimony. Further, Ms. Ghiglieri spent a significant amount of time assisting Lead Counsel in analyzing defendants' expert reports, preparing counsel to depose defendants' expert witnesses, preparing to testify and testifying at the 2009 trial, and preparing counsel to cross-examine defendants' expert at the 2009 trial. In 2016, Ms. Ghiglieri prepared to testify again at the retrial, including travelling to Chicago on two occasions to meet with Lead Counsel in advance of trial.

148. On February 5, 2008, Lead Plaintiffs served subpoenas on several of defendants' experts, seeking information and materials relating to their proposed testimony. Lead Plaintiffs expended substantial time negotiating the scope of each expert's production and ultimately sought the Court's assistance in resolving a dispute with defendants concerning the scope of expert discovery, as discussed below. Lead Counsel also expended a significant amount of time reviewing the information produced by each expert and preparing to take their depositions.

149. The chart below lists the date and place of the expert witness depositions taken or defended by Lead Counsel prior to the 2009 trial:

Deponent	Date	Location
Bajaj, Mukesh	3/25/2008	New York, NY
Bley, John	3/14/2008	New York, NY
Cross, Charles	4/9/2008	Tacoma, WA
Devor, Harris	2/20/2008	New York, NY
Fischel, Daniel	3/21/2008	Chicago, IL
Ghiglieri, Catherine	2/13/2008	San Francisco, CA
LaSusa, Carl	3/6/2008	Chicago, IL
Litan, Robert	2/27/2008	Washington, D.C.
Weil, Roman	3/12/2008	New York, NY

H. Disputes Regarding Expert Witness Discovery

150. On October 5, 2007, the Household Defendants filed a motion to compel discovery pursuant to Fed. R. Civ. P. 26(a)(1)(C) or for a recommendation of preclusion. Defendants sought to compel Plaintiffs to produce their damages analysis, or in the alternative, for a recommendation that Plaintiffs be precluded from presenting a calculation of damages in this matter. Dkt. No. 1135. Defendants claimed that Plaintiffs refused to provide defendants with their proposed methodology for calculating class-wide damages. On October 10, 2007, Lead Plaintiffs filed an opposition to defendants' motion to compel, arguing that they complied with their Rule 26(a)(1)(C) disclosure obligations by submitting a statement describing their damages theories (Dkt. No. 177) and Professor Fischel's expert report, which quantified damages per share for each day of the class period. Dkt. No. 1141. On October 17, 2007, after full briefing, the Court granted defendants' motion to compel, ordering Plaintiffs to clarify certain aspects of Professor Fischel's expert report and identify their proposed method of calculating damages should Plaintiffs prevail on the issue of liability. Dkt. No. 1144. Pursuant to the Court's Order, Plaintiffs subsequently submitted a supplemental statement regarding damages.

151. On November 14, 2007, defendants filed a motion pursuant to the Court's October 17, 2007 Order, arguing that Plaintiffs' supplemental statement regarding damages was deficient and failed to respond to the instructions in the Court's October 17, 2007 Order. Dkt. No. 1153. Defendants claimed they were entitled to further information regarding Plaintiffs' damages methodologies and calculations, including information regarding the artificial inflation present in Household's stock prior to the start of the Class Period. On November 20, 2007, the Court entered an order denying defendants' motion in part and ordering the parties to meet-and-confer regarding the issue of pre-Class Period inflation. Dkt. No. 1159.

152. On December 10, 2007, defendants submitted a notice concerning expert testimony that identified defendants' five retained experts along with 23 witnesses – current and former Household employees – who defendants claimed may give testimony "as to matters as to which they have specialized knowledge and whose testimony may, at least in part, fall within the Court's ruling in *Sunstar, Inc. v. Alberto-Culver Co.*, No. 01 C 736, 2006 U.S. Dist. LEXIS 85678 (N.D. Ill. Nov. 16, 2006)." On January 17, 2008, Lead Plaintiffs filed a submission with the Court, arguing that defendants should be ordered to disclose the specific opinions their 23 non-retained experts would offer at trial and the bases of those opinions. Dkt. No. 1168. Alternatively, Lead Plaintiffs argued that the witnesses should be removed from defendants' expert disclosures. On January 31, 2008, after additional briefing from the parties, the Court ordered defendants to submit a revised expert disclosure notice identifying only the individuals who may provide expert testimony at trial and to provide a detailed statement of the specific opinions any non-retained experts may offer at trial and the bases for those opinions. Dkt. No. 1172. In response to the Court's order, defendants urged Magistrate Judge Nolan to reconsider, arguing that they need not provide the additional information for non-retained experts. On February 7, 2008, following a telephonic status conference hearing on the issue, Magistrate Judge Nolan withdrew her January 31, 2008 Order, directing defendants to provide Plaintiffs with a stipulation regarding the 23 witnesses. The parties thereafter attempted to reach a joint stipulation regarding the 23 witnesses in which both sides would agree that the testimony of the witnesses was not "classic" expert testimony.

153. On February 25, 2008, after the parties' efforts to enter into a stipulation on the issue failed, Lead Plaintiffs filed a motion to enforce the Court's January 31, 2008 Order. Lead Plaintiffs requested that the Court compel defendants to strike witnesses from their expert witness list and provide a detailed statement of the specific opinions any non-retained experts would offer at trial, including the bases for those opinions. Dkt. No. 1184. Lead Plaintiffs also sought an order

compelling defendants' expert witnesses to produce documents responsive to Plaintiffs' subpoenas. On February 26, 2008, the Court entered an order allowing Lead Plaintiffs to submit their own notice identifying the specific witnesses they believed may fall within the purview of *Sunstar*. On February 27, 2008, pursuant to the Court's direction, Plaintiffs submitted a notice concerning expert testimony, listing 32 witnesses of their own. On March 10, 2008, after full briefing on Plaintiffs' motion to compel, the Court denied Plaintiffs' motion to compel defendants' experts to produce documents in response to Plaintiffs' subpoenas. Dkt. No. 1198.

154. On February 14, 2008, defendants filed a motion to compel Plaintiffs to supplement their initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iii). Dkt. No. 1178. Defendants argued Plaintiffs had refused to provide information regarding when the artificial inflation arose in Household's stock, and claimed such information was needed to understand and rebut Plaintiffs' theory of loss causation and damages. Dkt. No. 1179. Lead Plaintiffs filed an opposition on February 21, 2008, arguing that Professor Fischel's two expert reports and their supplemental statements on damages comprehensively explained Plaintiffs' damages theory and its application. Dkt. No. 1182. On February 27, 2008, the Court denied defendants' motion to compel, rejecting defendants' assertion that Plaintiffs were required to provide information about pre-Class Period damages. Dkt. No. 1189.

I. Discovery Status Conference Hearings

155. As part of the discovery process, Lead Counsel appeared either telephonically or in person at more than two dozen status conference hearings before Magistrate Judge Nolan, during which the status of discovery and any outstanding discovery disputes were discussed. Lead Counsel also attended numerous status conference hearings before Judge Guzmán. In advance of the status conferences, Lead Plaintiffs submitted detailed status reports providing an update on the status of discovery-related issues and explaining Plaintiffs' position with respect to certain issues. Lead

Plaintiffs spent hundreds of hours drafting status reports and preparing for and attending the status conference hearings.

J. The Fruits of Lead Plaintiffs' Discovery Efforts

156. As a direct result of Plaintiffs' hard-fought discovery efforts, Plaintiffs obtained over four million pages of documents from defendants and third parties, including various federal and state regulatory reports that concerned the predatory lending and improper reaging aspects of defendants' alleged fraud. Careful examination and analysis of millions of pages of documents required a massive effort by teams of attorneys who reviewed, analyzed and organized the documents, selected the documents that proved or could undermine Plaintiffs' allegations, identified relevant witnesses and established procedures to identify additional documents and information that had not been produced. Throughout the document review process, Lead Plaintiffs had to understand what information the documents conveyed, determine how they were relevant to defendants' three-part fraudulent scheme and the elements Plaintiffs were required to prove to prevail on their claims, and apply that understanding to other documents that had been produced. In total, Plaintiffs' review, analysis and organization of the document productions in this case was conducted over a nearly three-year period.

157. Lead Counsel believe the evidence developed during discovery supported Plaintiffs' allegations that defendants (1) engaged in widespread predatory lending practices, (2) arbitrarily "reaged" or "restructured" delinquent accounts to conceal true levels of defaults; and (3) manipulated the accounting of expenses associated with various credit card partnership agreements in violation of GAAP. The evidence also demonstrated defendants' scienter and helped establish loss causation. As demonstrated at the 2009 trial, the documentary and testimonial evidence Plaintiffs developed during discovery was critical to proving to the jury that defendants violated §§10(b) and 20(a) and Rule 10b-5.

IV. THE ARTHUR ANDERSEN SETTLEMENT

158. On June 16, 2005, Plaintiffs and Arthur Andersen reached a settlement, pursuant to which Arthur Andersen agreed to pay cash consideration of $1,500,000. Arthur Andersen also agreed to cooperate with Lead Plaintiffs in providing certain document discovery and witnesses for deposition and/or trial.

159. On December 14, 2005, Plaintiffs moved the Court for an Order (1) preliminarily approving the Stipulation of Settlement with Arthur Andersen; (2) approving the form and method for providing notice of the settlement to Class Members; and (3) scheduling a Final Settlement Hearing. Dkt. No. 363. On January 17, 2006, the Court entered an Order preliminarily approving the partial settlement. Dkt. No. 378. On January 23, 2006, the Court entered an additional order regarding the proposed Notice of Pendency of Proposed Partial Settlement of Class Action, directing Plaintiffs to make certain textual changes to the notice. Dkt. No. 394. Pursuant to the Court's directive, on January 27, 2006, Plaintiffs filed a revised order preliminarily approving the settlement with Arthur Andersen. Dkt. No. 395. On January 31, 2006, the Court entered the revised order preliminarily approving the Arthur Andersen settlement. Dkt. No. 405. Also on January 31, 2006, a notice was sent to Class Members informing them of the Arthur Andersen settlement, of the certification of the Class, and notifying Class Members of the right to be excluded from the litigation.

160. On March 30, 2006, Lead Plaintiffs filed a motion for final approval of the settlement with Arthur Andersen. Dkt. No. 452. On April 6, 2006, the Court approved the settlement, entering final judgment and an order of dismissal with prejudice as to Arthur Andersen. Dkt. No. 485.

V. DEFENDANTS' SUMMARY JUDGMENT MOTION

161. On August 30, 2007, the Household Defendants filed a motion to implement the Court's February 28, 2006 Order granting their *Foss* motion to dismiss. Dkt. No. 1120. According

to defendants, Plaintiffs' theory of fraud was based solely on artificial inflation resulting from alleged misrepresentations and/or omissions that arose before the July 30, 1999 start date for the Class Period. Dkt. No. 1121. Thus, defendants argued, all of Plaintiffs' claims were precluded by the Court's *Foss* order. On August 31, 2007, Plaintiffs filed an opposition to defendants' motion to implement, arguing that the motion was procedurally improper and should instead be considered a summary judgment motion. Dkt. No. 1124. Lead Plaintiffs also argued defendants' motion was premature because the parties had not yet completed expert discovery. At the September 4, 2007 presentment of defendants' motion, the Court ruled that defendants' motion was premature and stated it would prefer to rule on any summary judgment motion after the close of expert witness discovery.

162. On May 12, 2008, the Household Defendants filed a motion for summary judgment on the issue of loss causation. Dkt. No. 1227. Specifically, defendants argued Plaintiffs failed to present evidence sufficient to show that defendants' alleged misrepresentations artificially inflated the price of Household stock and that the value of the stock declined once the market learned of defendants' deception, as required to prevail on a "fraud on the market" theory. Defendants further argued that Plaintiffs' alternative loss causation theory failed because it relied on pre-Class Period inflation time-barred under the Court's *Foss* ruling, which shortened the beginning of the Class Period from October 23, 1997 to July 30, 1999.

163. On June 12, 2008, Plaintiffs filed a 25-page opposition to defendants' summary judgment motion, a 34-page response to defendants' Rule 56.1 statement and a 14-page Rule 56.1 statement of additional facts. Dkt. Nos. 1239-1241. Lead Plaintiffs argued defendants failed to meet their burden of proving that no genuine issue of material fact existed on the element of loss causation. In support, Plaintiffs pointed to the two extensive reports of Plaintiffs' expert, Professor Fischel, who opined that defendants' Class Period misrepresentations independently caused artificial

inflation to exist on each day of the Class Period and that the value of Household's stock declined when the market learned of defendants' fraud. Dkt. No. 1239. Lead Plaintiffs argued that Professor Fischel's quantification of the amount of fraud-related inflation in Household's stock through the use of an event study and regression analysis was fully in conformance with the loss causation law set forth in Supreme Court and Seventh Circuit precedent. Lead Plaintiffs also responded to defendants' erroneous assertion that the absence of any statistically significant price increase in response to each of defendants' misrepresentations barred Plaintiffs from establishing loss causation. Finally, Plaintiffs argued that, contrary to defendants' theory, Class Period inflation was in no way related to or dependent on any pre-Class Period inflation.

164. On June 26, 2008, defendants filed a reply in further support of their motion for summary judgment. On July 28, 2010, after the first trial in this case, the Court denied defendants' summary judgment motion as moot. Dkt. No. 1693.

VI. PRE-TRIAL PREPARATION FOR THE 2009 TRIAL

A. Lead Plaintiffs' Pre-Trial Preparation for the 2009 Trial

165. At a status conference hearing on June 30, 2008, the Court set a trial on the issues of liability and damages for March 30, 2009. Lead Counsel began preparing this case for trial in earnest immediately thereafter. This preparation included re-reviewing and analyzing tens of thousands of pages of documents and carefully selecting the documents to be used as trial exhibits. Lead Counsel created lengthy, detailed exhibit lists, identifying thousands of documents that supported Plaintiffs' allegations, summarizing those documents and identifying the foundation that would permit each document to be received into evidence.

166. Lead Counsel also reviewed, summarized and designated the deposition testimony of every individual who was deposed in the litigation. In doing so, Lead Counsel reviewed and analyzed thousands of pages of deposition testimony elicited from more than 50 percipient and

expert witnesses, reviewed the deposition exhibits presented to each witness and reviewed the relevant testimony of other witnesses. Lead Counsel also reviewed exhibits listed on Plaintiffs' trial exhibit list that were not shown to the witness at deposition, but might be relevant to his or her trial testimony. Lead Counsel then prepared Plaintiffs' witness list, began to assemble witness files for the more than two dozen witnesses whose testimony would be relied upon at trial, and drafted and served trial subpoenas on each witness.

167. Lead Counsel began researching and drafting the motions *in limine* they planned to file and prepared to defend those they anticipated defendants would file. Additionally, Lead Counsel began researching and drafting jury instructions, the verdict form, *voir dire* questions and other documents that would be included in the 2009 Pretrial Order, as discussed below. Lead Counsel also began preparing demonstrative exhibits to be used at trial.

168. At the end of February 2009, a team of approximately 20 Robbins Geller attorneys, paralegals, forensic accountants, secretaries and support staff relocated from the Firm's San Diego and San Francisco offices to Chicago, Illinois, in advance of trial.

B. The 2009 Pretrial Order

169. Lead Counsel expended hundreds of hours preparing the 2009 Pretrial Order and its voluminous exhibits, which the parties jointly filed with the Court on January 30, 2009. While preparing the 2009 Pretrial Order and performing the tasks discussed below, Lead Counsel spent a substantial amount of time researching and analyzing the applicable evidentiary rules and case law, holding numerous in-depth internal meetings to discuss trial logistics and strategy, re-reviewing and analyzing hundreds of documents and dozens of deposition transcripts, conducting meet and confer discussions with defense counsel regarding the substantive contents of the 2009 Pretrial Order, and coordinating with defense counsel for the timely exchange of the 2009 Pretrial Order materials.

170. In connection with filing the 2009 Pretrial Order, Lead Counsel completed the following: (1) negotiated with defense counsel to agree on and drafted a comprehensive stipulation of all uncontested facts; (2) drafted Plaintiffs' statement of contested issues of fact and law; (3) worked with defense counsel to agree on and draft a description of the case to be read to prospective jurors; (4) finalized an exhibit list containing over 1,400 exhibits and responded to defendants' evidentiary objections to Plaintiffs' exhibits; (5) reviewed and asserted evidentiary objections to defendants' exhibit list, which contained over 1,000 exhibits; (6) identified the potential witnesses to be called at trial and responded to defendants' objections to Plaintiffs' proposed witness list; (7) reviewed and asserted objections to defendants' proposed witness list; (8) drafted a statement setting forth the qualifications of Plaintiffs' expert witnesses to be read to the jury at the time the expert took the witness stand; (9) designated the page and line number of the deposition testimony to be shown to the jury via video for more than a dozen witnesses; (10) responded to defendants' objections to Plaintiffs' deposition designations and counter-designated additional deposition testimony in response to those objections; (11) reviewed and objected to defendants' deposition designations; (12) drafted an itemized statement of damages; (13) drafted Plaintiffs' proposed jury instructions, comprised of 71 separate instructions to be read to the jury; (14) responded to defendants' objections to Plaintiffs' proposed jury instructions; (15) reviewed and asserted objections to defendants' proposed jury instructions; (16) drafted a proposed verdict form and responded to defendants' objections to Plaintiffs' proposed verdict form; (17) reviewed and objected to defendants' proposed verdict form; (18) worked with counsel for defendants to agree on and draft a joint submission of proposed *voir dire* questions and corresponding objections; (19) negotiated with defense counsel to agree on and draft a proposed joint jury questionnaire; and (20) drafted the [Proposed] Pretrial Order and worked with counsel for defendants to finalize and file the [Proposed] Pretrial Order.

C. 2009 Pre-Trial Motions

1. Lead Plaintiffs' Motion for Evidentiary Sanctions

171. On November 26, 2008, Lead Plaintiffs filed a 64-page motion requesting evidentiary sanctions for the Household Defendants' destruction of evidence. Dkt. No. 1260. Lead Plaintiffs argued defendants were on notice as early as September 2000 of potential litigation regarding Household's sales practices and, as a result, were under a duty to preserve documents they knew or reasonably should have known were relevant to any pending or anticipated action stemming from the Company's sales practices. Lead Plaintiffs pointed to numerous examples of Household's intentional destruction of documents after defendants were on notice to preserve potentially relevant documents. Lead Plaintiffs requested that the Court administer several adverse jury instructions as sanctions for defendants' spoliation of evidence.

172. On January 20, 2009, defendants filed an opposition to Plaintiffs' spoliation motion and a cross-motion to exclude the declarations of former Household employees Plaintiffs submitted in support of their motion. Dkt. Nos. 1279, 1284. Defendants argued Plaintiffs failed to disclose the existence of the purported secret declarants during the course of discovery. Lead Plaintiffs filed a reply in further support of their spoliation motion and an opposition to defendants' cross-motion on January 20, 2009. Dkt No. 1310. On March 13, 2009, after full briefing, the Court denied Plaintiffs' motion for evidentiary sanctions for spoliation of evidence and granted defendants' cross-motion in part and denied it in part. Dkt. No. 1504.

2. Motions *in Limine* and *Daubert* Motions

173. As discussed in detail below, Lead Plaintiffs filed seven motions *in limine* seeking to exclude defendants from introducing certain evidence at trial, and motions to exclude the testimony of three of defendants' expert witnesses under *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579 (1993) and Fed. R. Evid. 702 ("*Daubert* motions"). Lead Plaintiffs also opposed seven motions *in*

limine filed by defendants, including a 105-page "omnibus" motion *in limine* seeking to exclude 14 separate categories of evidence, and motions to exclude each of Lead Plaintiffs' three expert witnesses. In preparation for filing Lead Plaintiffs' motions *in limine* and opposing defendants' motions, Lead Counsel expended a significant amount of time researching and analyzing the evidentiary rules and case law supporting Lead Plaintiffs' arguments, re-reviewing hundreds of potential trial exhibits and deposition testimony, and re-reviewing and analyzing the expert reports and testimony of both Lead Plaintiffs' and defendants' expert witnesses.

a. Plaintiffs' Motions *in Limine* and *Daubert* Motions

174. **Motion to Preclude Evidence Regarding Defendants' Truth on the Market Defense and Defendants' Stock Trading**: Plaintiffs sought an Order precluding defendants from introducing certain evidence concerning debt securitizations done by Household Finance Corp. Lead Plaintiffs argued defendants' failure to produce documents concerning the debt securitizations during discovery and failure to identify them in response to Lead Plaintiffs' interrogatories warranted an order of preclusion. Dkt. No. 1335. On March 11, 2009, after full briefing, the Court denied Plaintiffs' motion *in limine*. Dkt. No. 1500.

175. **Miscellaneous Motion *in Limine***: Lead Plaintiffs' miscellaneous motion *in limine* sought rulings from the Court relating to particular types of evidence that Lead Plaintiffs believed should be excluded from trial and the manner in which evidence should be presented at trial. Specifically, Lead Plaintiffs' motion sought (1) an order granting Lead Plaintiffs the same number of peremptory challenges as defendants combined; (2) permission to examine witnesses identified with defendants by leading questions; (3) an order precluding defendants from introducing live testimony from persons unavailable to Plaintiffs and introducing deposition testimony of persons in their control; (4) an order excluding percipient witnesses from the courtroom; (5) an order precluding counsel from communicating with a witness until the witness's testimony concluded; and (6) an

order excluding evidence of and reference to a former partner and Lexecon. Dkt. No. 1336. On March 11, 2009, after full briefing, the Court granted in part and denied in part Plaintiffs' motion. Dkt. No. 1505.

176. **Motion to Exclude Defendants' Cumulative Expert Testimony**: Plaintiffs moved to preclude defendants from calling both of their predatory lending expert witnesses, John Bley and Robert Litan, to testify at trial. Lead Plaintiffs argued that both Messrs. Bley and Litan intended to offer identical and cumulative opinions on the definition of predatory lending; defendants' understanding of the term; and whether or not defendants engaged in predatory practices. Lead Plaintiffs further argued that because such cumulative and repetitive testimony was a waste of the Court's and jury's time, only one of defendants' experts should be permitted to testify at trial. Dkt. No. 1338. On March 16, 2009, after full briefing, the Court granted Lead Plaintiffs' motion. Dkt. No. 1507.

177. **Motion to Exclude Defense Documents or Testimony Which Refer to Advice from Counsel that Defendants Complied with Federal and State Laws**: in their operative answer, defendants did not assert an advice of counsel affirmative defense. Additionally, throughout discovery, defendants withheld and recalled documents on the grounds of attorney-client privilege. Lead Plaintiffs' motion *in limine* sought an Order precluding defendants from using communications with counsel and counsel's legal advice to negate the element of scienter, including any evidence or testimony regarding reliance on counsel's opinions or advice regarding the legality of Household's lending practices and products. Dkt. No. 1339. On March 13, 2009, after full briefing, the Court granted Plaintiffs' motion in part. Dkt. No. 1505.

178. **Motion to Exclude Any Argument that Defendants Fully Disclosed All Litigation Risks to Household's Outside Auditors and to Exclude Any Evidence of or Reference to the Adequacy of Household's Class Period Litigation Reserves**: defendants intended to argue at trial

that they fully disclosed to Arthur Andersen and KPMG all risks stemming from Household's lending practices and that this full disclosure negated any evidence of scienter. During discovery, however, defendants withheld from production as privileged work product documents and materials that would directly refute defendants' claims of "full disclosure." Lead Plaintiffs were also forced to return many inadvertently produced audit-related documents after the Court ruled the documents were protected by the work product doctrine. Based on defendants' successful assertion of privilege during discovery, Plaintiffs sought to preclude defendants from arguing at trial that they fully disclosed to Arthur Andersen and KPMG all information about Household's business model, products, financial results and the regulatory, legislative, political and litigation risks to which the Company was subjected. Lead Plaintiffs also sought to preclude defendants form introducing evidence concerning the adequacy of Household's Class Period litigation reserves. Dkt. No. 1340. On March 16, 2009, after full briefing, the Court granted Plaintiffs' motion. Dkt. No. 1511.

179. **Motion to Preclude at Trial Any References to the Unsubstantiated Post-Class Period Allegations of Voter Fraud Against ACORN**: during the Class Period, the Association of Community Organizations for Reform Now ("ACORN"), a grassroots community organization of low and moderate income people, began alerting Household and its management to borrower complaints concerning Household's deceptive sales practices. Long after the Class Period ended, unsubstantiated allegations aimed at ACORN regarding voter fraud began surfacing, including during the 2008 Presidential election. Lead Plaintiffs' motion sought to preclude reference to and evidence of alleged voter fraud by ACORN. Dkt. No. 1342. On March 13, 2009, after full briefing, the Court granted Plaintiffs' motion. Dkt. No. 1505.

180. **Motion to Preclude Defendants from Offering Expert Testimony from Any of Their Identified Witnesses Other than Their Three Retained Experts**: defendants' witness list identified 17 fact witnesses as possible expert witnesses. Lead Plaintiffs sought an Order barring

defendants from offering any expert testimony from these witnesses because defendants failed to comply with the expert disclosure requirements of Fed. R. Civ. P. 26 and the Local Rules for the Northern District of Illinois. Dkt. No. 1343. On March 16, 2009, after full briefing, the Court granted Plaintiffs' motion. Dkt. No. 1509.

181. **Motion to Exclude Certain Testimony of Defendants' Expert Roman Weil**: Plaintiffs sought to exclude defendants' expert, Roman Weil, from offering his expert opinion concerning Household's reaging and restructuring policies. Specifically, Plaintiffs requested an Order preventing Weil from (1) opining that Household's re-aging practices were "common" in Household's industry because such techniques enhanced cash flow; (2) opining that Household's loan loss reserves were adequate or comparing Household's reserves to other companies' reserves; and (3) offering his opinions concerning defendants' states of mind. Dkt. No. 1345. Lead Plaintiffs argued that Weil's opinions were inadmissible under Fed. R. Evid. 702. On March 13, 2009, after full briefing, the Court granted Plaintiffs' motion. Dkt. No. 1506.

182. **Motion to Exclude Certain Testimony of Defendants' Expert John Bley**: Plaintiffs sought to exclude portions of the testimony of defendants' proposed expert John Bley, who defendants retained to rebut the opinions reached by Plaintiffs' expert, Catherine Ghiglieri, regarding defendants' use of predatory lending practices. Dkt. No. 1346. On March 13, 2009, after full briefing, the Court granted Plaintiffs' motion in part and denied it in part. Dkt. No. 1503.

183. **Motion to Exclude Testimony of Defendants' Expert Dr. Robert Litan**: Lead Plaintiffs sought an Order precluding Dr. Litan from offering his opinion that (1) Household fully disclosed its loan products and predatory lending activities; (2) Household did not use the Alternative Mortgage Transaction Parity Act to circumvent state law; (3) Household had legitimate business reasons for settling with the state Attorneys General; and (4) defendants did not act with scienter. Lead Plaintiffs argued that none of Dr. Litan's opinions met the standard for admissible

expert testimony. Dkt. No. 1341. On March 16, 2009, after full briefing, the Court granted Plaintiffs' motion in part and denied it in part. Dkt. No. 1507.

b. Defendants' Motions *in Limine* and *Daubert* Motions

184. **Motion to Exclude the Testimony of James Bernstein**: defendants' motion sought to exclude Plaintiffs from calling at trial James Bernstein, a former Minnesota state bank regulator. Dkt. No. 1312. Lead Plaintiffs identified Mr. Bernstein in February 2008 as a potential expert witness, withdrew his name from their list of potential witnesses and subsequently re-identified him as a potential expert witness prior to trial. Defendants argued Plaintiffs should be precluded from calling Mr. Bernstein as a trial witness due to Plaintiffs' previous representations that he would not be called at trial. Lead Plaintiffs subsequently informed defendants that they would not be calling Mr. Bernstein as a trial witness, thereby rendering defendants' motion moot. Dkt. Nos. 1491-1492.

185. **Motion to Preclude Lead Plaintiffs from Advancing Certain Statements at Trial**: defendants' motion *in limine* sought to preclude Plaintiffs from advancing certain statements at trial as a basis for defendants' liability. Specifically, defendants sought to preclude Plaintiffs from advancing (1) pre-Class Period statements; (2) statements they asserted were inactionably vague or immaterial puffery; and (3) statements made by reporters who quoted or paraphrased Household's spokespersons. Dkt. No. 1317. On March 13, 2009, after full briefing, the Court granted defendants' motion in part and denied it in part. Dkt. No. 1502.

186. **Motion to Exclude Allegedly False and Misleading Statements Not Identified by Lead Plaintiffs in Discovery**: defendants moved to preclude Plaintiffs from offering into evidence certain misrepresentations on which Plaintiffs based their fraud claims, but which defendants asserted Plaintiffs did not identify during discovery. Dkt. No. 1321. On March 16, 2009, after full briefing, the Court denied defendants' motion. Dkt. No. 1510.

187. **Motion to Exclude the Testimony of Lead Plaintiffs' Previously Concealed Trial Witnesses**: defendants sought an Order excluding the testimony of nine former branch-level employees of Household. Defendants argued Plaintiffs unjustifiably failed to disclose the existence of the purported "secret" witnesses during the course of discovery and that such "concealment" mandated exclusion of the witnesses as a discovery sanction. Dkt. Nos. 1325-1326. On March 13, 2009, after full briefing, the Court granted defendants' motion in part and denied it in part. Dkt. No. 1504.

188. **Omnibus Motion *in Limine* to Exclude or Limit 14 Categories of Evidence**: defendants moved for an Order precluding Plaintiffs from introducing into evidence or limiting at trial references to the following categories of evidence:

(a) **the SEC Consent Decree**: defendants requested an Order precluding Plaintiffs from making any references to the Offer of Settlement and Consent Decree entered into between Household and the SEC after the Class Period regarding the Company's reaging disclosures. Defendants argued the Consent Decree was inadmissible settlement evidence and its probative value was substantially outweighed by the risk of unfair prejudice, delay and needless presentation of cumulative evidence. On March 17, 2009, after full briefing, the Court granted defendants' motion in part, but allowed Plaintiffs to introduce documents that merely referred to Household's offer of settlement and/or the SEC consent decree. Dkt. No. 1516.

(b) **federal and state regulatory examinations**: defendants sought to exclude Plaintiffs from offering excerpts from certain reports of examination issued by state and federal regulators during the Class Period, arguing that the reports were inadmissible under Fed. R. Evid. 403 for a multitude of reasons. On March 17, 2009, after full briefing, the Court denied defendants' motion to exclude federal and state regulators' reports of examination and related documents. Dkt. No. 1516.

(c) **complaints in other litigations**: defendants requested an Order precluding Plaintiffs from making any references to complaints in other litigation involving defendants or

related companies. Defendants argued the complaints were hearsay not within any exception, prohibited as evidence of knowledge of wrongdoing, and any potential relevance of the complaints was substantially outweighed by the danger of unfair prejudice. On March 17, 2009, after full briefing, the Court denied defendants' motion to bar Plaintiffs from making any reference to complaints filed in other litigation involving defendants during the Class Period. Dkt. No. 1516.

(d) **civil and regulatory settlements**: defendants sought an Order preventing Plaintiffs from making any references to civil and regulatory settlements involving defendants. Defendants argued that settlement-related evidence was inadmissible under Fed. R. Evid. 408 and should also be excluded under Rule 403 on the grounds that the admission of such evidence would lead to unfair prejudice, undue delay and jury confusion. On March 17, 2009, after full briefing, the Court granted defendants' motion in part. Dkt. No. 1516.

(e) **settlement-related refunds**: as part of the regulatory process and in connection with settlement of disputed claims, Household occasionally granted refunds to customers to rectify alleged errors or other disputed amounts that had been brought to Household's attention through the process of negotiating with state regulators. Defendants sought to preclude Plaintiffs from making any reference to these settlement-related refunds, arguing that Rule 408 prohibited the use of settlement-related refund information as evidence of liability or to prove the amount of the disputed claims. Defendants also argued that the settlement-related refund information should be excluded under Rule 403 as unfairly prejudicial. On March 17, 2009, after full briefing, the Court granted defendants' motion in part and denied it in part. Dkt. No. 1516.

(f) **settlement-related policy changes**: defendants sought to exclude Plaintiffs from introducing evidence of settlement-related lending policy changes, arguing that Plaintiffs' proposed use of the evidence would violate Rule 407's prohibition against the use of subsequent remedial measures to demonstrate culpable conduct, the evidence was inadmissible settlement-related evidence, and the unfairly prejudicial nature of the evidence outweighed its probative value. On March 17, 2009, after full briefing, the Court granted defendants' motion in part and denied it in part. Dkt. No. 1516.

(g) **individual customer complaints**: defendants requested an Order precluding Plaintiffs from making any reference to individual customer complaints to support their argument that Household engaged in a widespread predatory lending scheme. Defendants argued the complaints should be excluded because they were inadmissible hearsay, lacked any probative value, unfairly prejudiced defendants, and would require case-by-case mini-trials of each issue involved in each complaint. On March 17, 2009, after full briefing, the Court denied defendants' motion. Dkt. No. 1516.

(h) **Elaine Markell opinion**: Elaine Markell was a former Vice President of Household Mortgage Services ("HMS"). Ms. Markell testified during her deposition that she raised concerns about Household's and HMS's use of reaging and restructuring to hit projected delinquency numbers, believed that Household and HMS manipulated or misreported delinquency rates and was ultimately stripped of all responsibilities when she complained that Household's delinquency numbers were being misrepresented. Defendants sought to exclude Ms. Markell's testimony concerning Household's loan restructuring policies. Defendants argued her testimony amounted to expert opinion, but that she lacked expertise in the subject matter to which she would testify. Defendants also argued she was incompetent to give lay opinion testimony. On March 17, 2009, after full briefing, the Court denied defendants' motion in part and granted it in part. Dkt. No. 1516.

(i) **the video created by Dennis Hueman**: defendants sought to exclude a video memorializing Household training techniques taught by Dennis Hueman, the Company's Southwestern Division General Manager during the class Period. Defendants asserted the video was inadmissible hearsay not subject to any exception and that its probative value was substantially outweighed by the danger of unfair prejudice, confusion and delay. On March 17, 2009, after full briefing, the Court denied defendants' motion. Dkt. No. 1516.

(j) **the deposition of former state regulator Charles Cross**: defendants moved for an Order precluding Plaintiffs from introducing into evidence at trial the deposition testimony of former Washington state regulator Charles Cross given in separate consumer class-action litigation.

Defendants argued the probative value of the prior Cross testimony was substantially outweighed by the danger of unfair prejudice, waste of time and confusion. On March 17, 2009, after full briefing, the Court denied defendants' motion. Dkt. No. 1516.

(k) **memoranda relating to consultant Andrew Kahr**: defendants requested an Order precluding Plaintiffs from making any references to Andrew Kahr and the memoranda he authored, arguing that the probative value was outweighed by the danger of unfair prejudice and confusion. On March 17, 2009, after full briefing, the Court denied defendants' motion. Dkt. No. 1516.

(l) **"Project Whiskey" due diligence and related documents**: in May 2002, Wells Fargo made an offer to buy Household for approximately $66 per share (code-named "Project Whiskey"). After conducting due diligence, Wells Fargo walked away from buying Household, noting in internal documents that Household was likely overstating its earnings and misrepresenting its delinquency and credit quality information to investors. Defendants sought to preclude Plaintiffs from introducing evidence relating to the proposed merger, including internal Household communications and documents prepared by Wells Fargo and Household's advisor Goldman Sachs relating to the merger negotiations. Defendants argued the opinions expressed by the Wells Fargo due diligence team were inadmissible hearsay and that the minimal probative value of the Wells Fargo-related evidence was outweighed by the risk of prejudice and confusion. On March 17, 2009, after full briefing, the Court denied defendants' motion. Dkt. No. 1516.

(m) **references to defendants' invocations of privilege concerning Ernst & Young engagement**: defendants requested an Order precluding Plaintiffs from (a) introducing into evidence at trial any information concerning, or making any reference to, any documents relating to the E&Y Compliance Engagement that defendants withheld from production on privilege grounds; and (b) drawing, or attempting to induce the jury to draw, any negative inferences about the substance of any E&Y privileged documents or about defendants' invocation of privilege as to such documents. On March 17, 2009, after full briefing, the Court granted defendants' motion. Dkt. No. 1516.

(n) **Household's restatement of earnings**: defendants sought to preclude Plaintiffs from introducing into evidence at trial any information concerning, or reference to, Household's restatement of earnings as proof that defendants acted with scienter. Defendants claimed that the fact that a restatement occurred was not relevant to the question of whether defendants acted with scienter. On March 17, 2009, after full briefing, the Court denied defendants' motion without prejudice. Dkt. No. 1516.

189. **Motion to Exclude the Expert Testimony of Catherine Ghiglieri**: defendants sought to exclude the testimony of Plaintiffs' predatory lending expert, Catherine Ghiglieri, arguing that Ms. Ghiglieri's report was inadmissible under Fed. R. Evid. 702. Defendants argued Ghiglieri was not qualified to testify as an expert on issues relating to lending practices or account management practices and that her report was inadmissible because it failed the reliability prong of *Daubert*. Dkt. No. 1358-3. On March 17, 2009, after full briefing, the Court denied defendants' motion. Dkt. No. 1515.

190. **Motion to Exclude the Expert Testimony of Charles Cross**: defendants sought to exclude the testimony of Charles Cross, a former bank regulator for the State of Washington Department of Financial Institutions, who issued the Washington DFI Report. The DFI report evaluated 19 individual customer complaints from the state of Washington that, in Cross's opinion, violated certain state and federal regulations and demonstrated that Household was engaged in nationwide deceptive sales practices. Defendants argued that Cross's opinion that Household engaged in nationwide predatory lending practices was an unsupported extrapolation from unreliable sources. Defendants also argued that Cross's opinions regarding the 19 individual complaints were not relevant to issues in the case and his opinions were the result of his biased mission to find violations. Dkt. No. 1358-3. On March 17, 2009, after full briefing, the Court denied defendants' motion. Dkt. No. 1514.

191. **Motion to Exclude the Expert Testimony of Harris Devor**: defendants sought to preclude Plaintiffs' accounting expert, Harris Devor, from offering his opinion regarding Household's restatement, Household's improper lending practices and Household's disclosure of the Attorneys General settlement. Dkt. No. 1358-4. On March 23, 2009, after full briefing, the Court granted defendants' motion in part and denied it in part. Dkt. No. 1528.

192. **Motion to Exclude the Expert Testimony of Daniel Fischel**: defendants sought an Order precluding Plaintiffs' loss causation expert, Daniel Fischel, from testifying at trial. Defendants argued that Professor Fischel's loss causation analysis was not useful to the fact finder, that his conclusion that there was economic evidence consistent with Plaintiffs' allegations was inadmissible, and that both the specific disclosure and leakage models should be excluded. Dkt. No. 1364. On March 23, 2009, after full briefing, the Court denied defendants' motion. Dkt. Nos. 1526, 1527.

D. The 2009 Pre-Trial Conference

193. The 2009 pretrial conference was held over the course of eight days. In preparation for attending the 2009 pretrial conference, Lead Counsel spent hundreds of hours reviewing, *inter alia*: (1) Plaintiffs' motions *in limine* and *Daubert* motions, including the relevant case law and evidentiary rules; (2) Plaintiffs' deposition designations and defendants' objections thereto; (3) defendants' deposition designations, Plaintiffs' objections and defendants' counter-designations; (4) Plaintiffs' proposed trial exhibits, defendants' objections thereto and Plaintiffs' responses; and (5) defendants' proposed trial exhibits, Plaintiffs' objections and defendants' responses. During the eight-day pretrial conference, Lead Counsel, among other things:

- discussed with the Court certain administrative issues concerning trial, including, but not limited to, the length of trial and number of hours allocated to each side, the number of jurors, the process for jury selection, the use of weekly summations, the use of juror notebooks, and the use of demonstrative exhibits;

- argued Plaintiffs' motions *in limine*;
- opposed defendants' motions *in limine* and *Daubert* motions;
- discussed with the Court the admissibility of the parties' deposition designations, including vigorously advocating for the admissibility of Plaintiffs' deposition designations, responding to defendants' evidentiary objections to Plaintiffs' designations, and asserting evidentiary objections to the admissibility of defendants' designations;
- participated in off-the-record meet-and-confer discussions with defense counsel concerning the parties' evidentiary objections to each side's proposed trial exhibits, which numbered in the several hundred;
- advocated Plaintiffs' proposed jury instructions, responded to defendants' objections to Plaintiffs' proposed jury instructions, and asserted objections to defendants' proposed jury instructions;
- argued a motion concerning the confidentiality of certain Wells Fargo due diligence-related documents that Plaintiffs intended to use at trial; and
- advocated for the admissibility of Plaintiffs' demonstrative exhibits, responded to defendants' evidentiary objections to Plaintiffs' demonstrative exhibits, and raised evidentiary objections to defendants' demonstrative exhibits.

VII. THE 2009 TRIAL

194. The trial began on March 30, 3009. Opening statements were held on March 31, 2009 and the first witness was called on April 1, 2009. During the course of the 26-day trial, a total of 22 witnesses testified, including each of the Individual Defendants, Plaintiffs' three expert witnesses, and two of defendants' expert witnesses. Plaintiffs introduced over 200 exhibits into evidence.

195. Once trial was underway, Lead Counsel expended hundreds of hours:

- preparing for direct and cross examination, including reviewing the exhibits to be used with each witness, re-reviewing each witness's deposition testimony for potential impeachment evidence, reviewing the testimony of other witnesses on the same subject matter, reviewing expert witness reports, consulting with Plaintiffs' expert witnesses and creating witness outlines;
- preparing for the weekly interim summations;

- researching and analyzing the relevant case law and writing memoranda which addressed evidentiary issues that arose during trial, such as the admissibility of settlement-related evidence;

- researching, drafting and filing briefs which addressed issues that arose during trial, including whether defendants had a duty to disclose predatory lending practices in Household's Forms 10-K and 10-Q and issues concerning Plaintiffs' proposed verdict form;

- revising and submitting Plaintiffs' proposed jury instructions and continuing to discuss with the Court the parties' proposed jury instructions;

- preparing demonstrative exhibits for closing statements;

- reviewing and summarizing trial testimony and exhibits in preparation for defendants' anticipated post-trial motions;

- preparing an opposition brief to defendants' motion for judgment as a matter of law; and

- preparing closing arguments.

196. During trial, Lead Plaintiffs presented compelling evidence to the jury that Household engaged in systemic and nationwide predatory lending practices. Lead Plaintiffs were permitted to introduce certain evidence regarding Household's settlement with the Attorneys General, even though defendants had previously prevailed on a motion *in limine* to exclude such evidence, after defendants opened the door to the admission of that evidence at trial. Lead Plaintiffs also presented evidence that defendants manipulated the credit quality of Household's loan portfolio through the improper use of reaging and restructuring to conceal the true level of delinquencies and mask the poor quality of its loans. Through expert witness testimony and documentary evidence, Plaintiffs also established defendants' liability for the restatement and demonstrated loss causation. Additionally, Plaintiffs elicited critical testimony from trial witnesses that strengthened their case, including defendant Aldinger's stunning admission that Household's disclosures in its 2001 Form 10-K were materially false and misleading.

197. On April 22, 2009, defendants filed a 46-page motion for judgment as a matter of law pursuant to Rule 50(a) after Plaintiffs had been fully heard. Dkt. No. 1567. Defendants argued they were entitled to judgment as a matter of law on the grounds that (1) Plaintiffs failed to prove loss causation; (2) Plaintiffs' 10b-5 claims were time-barred; (3) Plaintiffs failed to prove that the alleged misrepresentations were material; (4) Plaintiffs did not prove fraud in connection with Household's restatement; (5) Household's recognition of actual revenues and growth from consumer lending activities was not actionable as securities fraud; (6) Plaintiffs' theory of fraud in connection with disclosures of delinquency and reage data was misleading and too insubstantial to present to the jury; (7) Household's public disclosures of the Company's business model, challenged practices and related investment risks precluded a finding of fraudulent concealment; (8) Plaintiffs failed to prove scienter; (9) Plaintiffs introduced no evidence of an actionable statement or omission by defendant Gilmer; and (10) Plaintiffs introduced no evidence to establish §20(a) liability as to any defendant.

198. On April 27, 2009, Plaintiffs filed a 54-page opposition to defendants' motion. Citing trial exhibits and testimony, Plaintiffs responded to each of the arguments raised in defendants' motion, demonstrating why defendants' motion for judgment as a matter of law should be denied. Dkt. No. 1581. On April 30, 2009, defendants filed a 14-page renewed motion for judgment as a matter of law, asserting that defendants were entitled to judgment as a matter of law based on Plaintiffs' failure to prove loss causation and scienter. Dkt. Nos. 1596-1597.

199. Closing arguments were held on April 30, 2009, and jury deliberations began on May 4, 2009. On May 7, 2009, the jury returned a verdict in favor of Plaintiffs, finding that (1) Household and the Individual Defendants violated §10(b) of the 1934 Act and Rule 10b-5; and (2) Household, Aldinger and Schoenholz violated §20(a) of the 1934 Act in connection with public statements made about Household during the period March 23, 2001 to October 11, 2002. The jury found that defendants did not violate the federal securities laws related to any statements made prior

to March 23, 2001. Additionally, the jury selected Professor Fischel's leakage model as the model that most reasonably estimated the amount of Plaintiffs' damages. The jury also found Household 55% responsible for Plaintiffs' loss, Aldinger 20% responsible, Schoenholz 15% liable and Gilmer 10% liable. Dkt. No. 1611.

VIII. 2009 POST-TRIAL MOTIONS

A. The Parties' Proposals Regarding Phase II

200. On May 28, 2009, pursuant to the Court's request, the parties submitted their respective proposals for the second phase of this case, including whether notice should be sent to the Class informing them of the jury's verdict, the contents of the proof of claim form, whether defendants were entitled to rebut the presumption of reliance, and the calculation of damages. Dkt. Nos. 1622, 1623.

B. Defendants' Motions for Judgment as a Matter of Law and for a New Trial

201. On July 20, 2009, defendants filed a 60-page motion for judgment as a matter of law pursuant to Rule 50(b) and a 116-page motion for new trial pursuant to Rule 59. Dkt. Nos. 1634, 1637. The Court subsequently directed defendants to file one consolidated memorandum, no more than 65 pages long, in support of both of their post-trial motions. Dkt. No. 1649. On August 3, 2009, defendants filed a 65-page consolidated motion for judgment as a matter of law and for a new trial. Dkt. No. 1650. Defendants asserted 12 separate arguments for why they were entitled to judgment as a matter of law and/or a new trial, including, *inter alia*, Plaintiffs failed to prove loss causation, Plaintiffs failed to prove materiality, Plaintiffs' predatory lending theory was untenable as a matter of law, the jury's verdict was inconsistent and the Court's evidentiary rulings resulted in an unfair trial. Dkt. No. 1650.

202. Lead Plaintiffs filed a 65-page opposition to defendants' consolidated motion on September 3, 2009. Plaintiffs cited to the trial testimony, exhibits and case law that refuted each of

defendants' arguments and made persuasive arguments demonstrating why defendants' motions should be denied. Dkt. No. 1656. On September 18, 2009, defendants filed a reply in further support of their motions. Dkt. No. 1664. On July 28, 2010, the Court entered an Order denying defendants' motions for judgment as a matter of law and motion for new trial as moot and premature. The Court reasoned that judgment could not be entered until the case concluded; thus, the remedies under Rules 50(b) and 59 were unavailable.

C. Lead Plaintiffs' Motion for Entry of Judgment

203. On March 22, 2010, Plaintiffs filed a motion for entry of judgment. Dkt. No. 1670. Lead Plaintiffs argued the Court should enter judgment to protect the interests of the Class in light of Household's financial condition and HSBC's express intention to ignore any judgment in this case. As Plaintiffs explained to the Court, Household had repeatedly stated in its post-verdict SEC filings that it expected to prevail on its outstanding motions or on appeal to the Seventh Circuit and refused to establish any litigation reserve. HSBC, Household's parent company, made similar statements in its SEC filings that it would contest the enforceability of any judgments obtained against it or its subsidiaries. Dkt. No. 1672. Defendants filed an opposition on April 15, 2010 and Plaintiffs filed a reply in further support of their motion on April 26, 2010. Dkt. Nos. 1684, 1687. On July 28, 2010, the Court struck Plaintiffs' motion for entry of judgment as premature, concluding that a final judgment could not be entered until the second phase of this case had concluded. Dkt. No. 1697.

IX. PHASE II

A. The Court-Ordered Protocol for Phase II

204. On November 22, 2010, the Court entered an Order creating the protocol for Phase II of this case. Dkt. No. 1703. The Court determined that Phase II would address the issue of defendants' rebuttal of the presumption of reliance as to particular individuals as well as the calculation of damages as to each Plaintiff. With regard to the presumption of reliance, the Court

concluded that defendants had an opportunity to present to the jury two of the three methods of rebutting the presumption as set forth by the Supreme Court in *Basic Inc. v. Levinson*, 485 U.S. 224, 247 (1988) when they raised a "truth-on-the-market" defense at trial. The Court concluded, however, that Phase II would afford defendants the opportunity to rebut the presumption using the third method set forth in *Basic*, *i.e.*, that the link between the alleged misrepresentation and either the price received or paid by the plaintiff was severed. To that end, the Court determined that the Notice and Claim Questionnaire sent to class members would require each class member to answer the following question, which went to the heart of the issue of individual reliance:

> 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?
> NO ___ YES ___

205. With regard to the calculation of class members' claims, the Court held that damages would be as follows: (1) for shares purchased during the Damages Period but not sold, damages would be the amount of artificial inflation at the time of purchase; (2) for shares purchased before the class period and sold during the Damages Period at a gain or a loss, damages would be Plaintiff's out-of-pocket loss less any gain obtained or loss avoided because of artificial inflation at the time of the sale; and (3) for shares purchased during the Damages Period, damages would be the artificial inflation at the time of purchase less the artificial inflation at the time of sale. The Court further held that damages would be limited by the 90-day bounce back rule provided for in the PSLRA and that the first-in-first-out ("FIFO") method of calculating damages would be used.

206. On December 20, 2010, defendants filed a motion for reconsideration of the Court's November 22, 2010 Order regarding the protocol for Phase II. Dkt. No. 1710. Defendants argued that the Court-ordered Phase II protocol deprived them of their Seventh Amendment right to have a jury determine all contested issues of material fact with respect to every essential element of

Plaintiffs' securities fraud claims. At a hearing on January 5, 2011, the Court modified its Order to allow defendants to proceed with discovery from class members. The Court gave defendants 120 days to conduct any discovery from class members they deemed necessary to rebut the presumption of reliance. Dkt. No. 1724.

B. Phase II Discovery

207. On January 7, 2011, defendants served document requests on the Lead Plaintiffs. In the weeks that followed, defendants served nearly identical notices of Rule 30(b)(6) depositions, document requests and interrogatories on a total of 98 institutional class members and the three Lead Plaintiffs. The discovery requests were overbroad, burdensome and beyond the scope of what defendants needed to rebut the presumption of reliance under the remaining method set forth in *Basic*. Accordingly, on January 25, 2011, Lead Plaintiffs filed a motion for a protective order to limit defendants' discovery. Dkt. No. 1731. Lead Plaintiffs argued that defendants' discovery was designed to harass class members into not filing claims, sought information irrelevant to rebutting the presumption of reliance, and improperly attempted to relitigate issues already determined by the jury. Dkt. No. 1732. Lead Plaintiffs further argued that the scope of defendants' discovery was particularly egregious given their numerous representations to the Court that they only intended to seek discovery from the top 10 to 15 institutional investors.

208. On January 31, 2011, the Court granted Plaintiffs' motion for a protective order in part. Dkt. No. 1737. The Court agreed with Plaintiffs that many of defendants' discovery requests sought information regarding the truth-on-the-market defense, which had already been fully litigated and rejected. The Court did, however, permit defendants to propound discovery seeking any non-publicly available information relied upon by individual purchasers, so long as the discovery did not impose an unnecessary burden on unnamed class members. The Court also limited defendants to 15

depositions based on their prior representations that they only intended to seek discovery from that number of class members.

209. During the first two weeks of February 2011, defendants served revised interrogatories and document requests on institutional class members. In late March 2011, defendants served interrogatories, document requests, deposition notices and third party subpoenas on even more institutional class members and third parties. In total, defendants served written discovery on over 100 purported class members, including the three Lead Plaintiffs, served approximately 20 deposition notices pursuant to Rule 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. Defendants also withdrew or postponed many of the document and deposition subpoenas served on third parties.

210. Lead Counsel expended a significant amount of time reviewing and analyzing defendants' interrogatories, document requests, deposition notices and subpoenas, contacting the institutional class members and third parties served with discovery to explain the purpose of defendants' discovery efforts and to determine whether Lead Counsel could assist these third parties with their responses and objections, preparing responses and objections to defendants' document requests, interrogatories, deposition notices and subpoenas, and attending the depositions that defendants noticed.

211. On April 4, 2011, defendants filed a motion to compel discovery allowed by the Court's January 31, 2011 Order. Dkt. No. 1745. Specifically, defendants sought an Order compelling certain institutional class members to provide responses to defendants' revised interrogatories and document requests, insofar as they sought documents and information reflecting non-publicly available information on which class members relied in deciding to purchase or sell

Household stock. Dkt. No. 1746. On April 5, 2011, Lead Plaintiffs filed an opposition to defendants' motion to compel. Dkt. No. 1749. Lead Plaintiffs argued that defendants' interrogatories and document requests sought internal or private analysis of Household based on publicly available information, which the Court had explicitly ruled was not discoverable. On April 7, 2011, the Court denied defendants' motion to compel. Dkt. No. 1751.

212. On May 20, 2011, defendants filed a motion to bar any and all claims submitted by or on behalf of Wells Fargo or, in the alternative, an order compelling Wells Fargo to answer Household's interrogatories and document requests, produce responsive documents and designate a 30(b)(6) witness to testify at a deposition. Dkt. No. 1758. Defendants subsequently withdrew their motion.

213. In addition to serving written discovery, during May 2011 defendants took 12 Rule 30(b)(6) depositions of institutional class members, including two of the Lead Plaintiffs, as set forth in the table below:

Deponent	Date	Location
Glickenhaus, James	3/23/11	New York, NY
Putnam Investment Management	5/09/11	Boston, MA
IUOE	5/10/11	Huntington, WV
Virtus Funds	5/12/11	Hartford, CT
Oppenheimer Funds Inc.	5/17/11	New York, NY
Teachers Retirement System of Georgia	5/17/11	Atlanta, GA
Capital Research & Management Co.	5/19/11	Los Angeles, CA
Government of Singapore Investment Corp.	5/19/11	Singapore
Capital Guardian Trust	5/20/11	Los Angeles, CA
Davis Select	5/23/11	New York, NY
Ohio STRS	5/24/11	Columbus, OH
State Street	5/24/11	Boston, MA

Lead Counsel attended each of the depositions and, in some instances, defended the deposition on behalf of the institutional class members.[7]

214. In June 2011, defendants requested an extension of the discovery period. Lead Plaintiffs strenuously objected, and in an Order dated August 16, 2011, the Court denied defendants' request. Dkt. No. 1775.

C. Phase II Presumption of Reliance Briefing

215. On August 24, 2011, the Court ordered defendants to file and serve on Plaintiffs a list of claims as to which they contended the evidence in the record rebutted the presumption of reliance, along with a citation to those portions of the record which supported their contention. Dkt. No. 1777. On October 14, 2011, defendants filed a 32-page submission regarding rebuttal of the presumption of reliance, resurrecting the same loss causation arguments that the jury had rejected and arguing that the jury's verdict, in and of itself, rebutted the presumption of reliance. Dkt. No. 1780. Defendants also argued that they had rebutted the presumption of reliance as to (1) claimants who answered "yes" to the proof of claim form question; (2) traders they claimed would have invested in Household even if aware of the misrepresentations, including index and quantitative traders; (3) claimants that disavowed reliance on the integrity of the market; (4) specific investors such as Lead Plaintiff Glickenhaus and Davis Selected Advisors; and (5) claimants who failed to comply with court-approved discovery. Lastly, defendants argued that the Court's procedures deprived them of their Seventh Amendment right to a jury trial.

216. On November 28, 2011, Plaintiffs filed a 36-page response to defendants' submission. Dkt. No. 1782. Lead Plaintiffs' opposition made forceful arguments, particularly in light of the relative paucity of case law addressing the rebuttable presumption of reliance following a

[7] The 30(b)(6) deposition of Government of Singapore Investment Corp. was held via video conference. Lead Counsel represented the deponent at defense counsel's office in New York.

verdict on liability. Lead Plaintiffs first argued that defendants had failed to adduce evidence rebutting the presumption of reliance and that defendants' attacks on particular class members were without merit. Lead Plaintiffs also argued that defendants' loss causation arguments should be rejected, again, and responded to defendants' assertion that the verdict rebutted the presumption of reliance. Finally, Lead Plaintiffs addressed defendants' argument that their Seventh Amendment right to a jury trial had been violated.

217. On September 21, 2012, the Court entered an Order regarding defendants' presumption of reliance submission. Dkt. No. 1822. The Court first ruled that, as to claimants who responded "no" to the claim form question, those claimants were entitled to judgment as to liability because defendants failed to create a triable issue of fact as to the reliance on price. The Court next declined to find that the jury verdict itself rebutted the presumption of reliance as to the entire class. The Court also rejected defendants' argument that they had rebutted the presumption of reliance as to Lead Plaintiff Glickenhaus, index fund traders, and institutional class members who testified that they rejected or doubted the validity of the efficient capital market theory. The Court did, however, rule that defendants created a triable issue of fact as to the reliance of claimants who (1) responded "yes" to the claim form question; (2) submitted duplicate claims with conflicting answers to the claim form question; and (3) submitted multiple claims with different answers to the claim form question. The Court further ruled that defendants were entitled to judgment on any claims for which the claimant did not answer the claim form question or supplemental discovery. Finally, to facilitate resolution of the claims that need not be tried, the Court appointed Phillip S. Stenger as the Special Master to identify (1) the claims on which Plaintiffs were entitled to judgment as a matter of law and the amount of each such allowed claim; (2) the claims on which defendants were entitled to judgment as a matter of law; and (3) the claims that must be resolved at trial.

D. Discovery Directed to Claimants Who Answered "Yes" to the Claim Form Question

218. On December 9, 2013, the parties submitted a joint proposed schedule for discovery as to the 181 claimants who responded "yes" to the question on the proof of claim form (List 2 claimants). *See* Dkt. No. 1949. Under the proposed schedule, defendants had until August 29, 2014 to complete discovery from "yes" claimants. The parties subsequently agreed to extend the deadline for discovery from "yes" claimants to October 31, 2014. *See* Dkt. No. 1999. Defendants served written discovery on 181 claimants, comprised of 11 interrogatories and 4 document requests. Lead Counsel expended a significant amount of time reviewing and analyzing defendants' interrogatories and document requests, contacting the class members served with discovery to explain the purpose of defendants' discovery efforts and to determine whether Lead Counsel would serve responses and objections on their behalf, preparing responses and objections to defendants' interrogatories and document requests, and working with class members to collect and produce responsive documents. As part of this process, Lead Counsel was often required to contact and work with the external financial advisors for these claimants to obtain responsive information.

X. THE CLAIMS FILING AND ADJUDICATION PROCESS

219. On January 11, 2011, the Court entered an Order approving the form and manner of notice to class members. Dkt. No. 1721. On January 24, 2011, Gilardi & Co. LLC ("Gilardi"), the Court-appointed claims administrator in this case, sent the Notice of Verdict and Proof of Claim Form to potential class members. In total, Gilardi sent claim packages to 646,719 potential class members and nominees. Lead Counsel also established a website, www.householdfraud.com, which provided potential class members with a summary of the litigation and jury verdict. Via the website, class members could obtain additional information about the case, including a copy of the notice of verdict and proof of claim form, the Consolidated Complaint and any other pleadings, orders and

documents filed in this litigation. Class members were given until May 24, 2011 to submit a proof of claim.

220. Gilardi immediately began processing claims as it received them. Gilardi processed paper and electronic claims to determine whether the claims, among other things, (1) actually related to the acquisition and sale of Household common stock during the relevant time period; (2) were incomplete in some way; (3) were duplicative of other claims submitted on behalf of or by the class member; (4) contained any data errors, pricing errors or other anomalies; and (5) contained any other potential deficiency. Gilardi managed the ongoing process of notifying class members of deficiencies with their claims and corresponded with them to obtain additional or corrected information, as necessary. In addition to the determination of claim eligibility, Gilardi also calculated the allowed loss for each claim, using the method for calculating the recognized loss adopted by the Court.

221. Gilardi also converted all claims to electronic images, which were then uploaded to a secure website for viewing by Lead Counsel. Lead Counsel then conducted a painstaking review of each individual claim to ensure that none of the claims included communications from class members potentially protected by the attorney client privilege. Once Lead Counsel confirmed that the claim forms did not contain any privileged communications, they were made available for defendants' review.

222. In March 2011, during a conference call with an industry group of custodian banks, the Bank Depository User Group, Lead Counsel learned of a serious issue that would impact the claims process. In short, the custodian banks informed Lead Counsel that they were not in a position to answer the reliance question set forth in the Proof of Claim form on behalf of their investor clients because they were not the decision-makers regarding the relevant investments as to those clients. The custodian banks also explained that it would be extremely difficult, if not impossible, to obtain

an answer from their investor clients by the May 24, 2011 deadline. Lead Counsel immediately requested a status conference with the Court to address the issue and to obtain guidance to resolve the problem. Dkt. No. 1743. At a status conference hearing on April 7, 2011, Lead Counsel discussed with the Court the issues raised by the custodian banks, and in an Order dated April 11, 2011, the Court directed Plaintiffs to file a proposal as to the most efficient way to proceed in order to obtain responses to the claim form question in light of the issues raised by the custodian banks. Dkt. No. 1753.

223. On May 6, 2011, Lead Plaintiffs submitted a proposed plan for obtaining responses to the claim form question from the custodian banks. Dkt. No. 1756. Specially, Lead Plaintiffs proposed that the custodian banks and third-party filers limit their efforts to entities and individuals that had claims with an allowed loss of $250,000 or more. As Plaintiffs explained, a monetary threshold of $250,000 would reduce the number of claimants that needed to be contacted from over 12,000 to 746, while still capturing claimants who would receive 81.3% of the damages. Dkt. No. 1756. Lead Plaintiffs further proposed that a Court-approved one-page notice be prepared for and sent to each claimant with an allowed loss of $250,000, advising the claimant that a claim had been submitted on their behalf, setting forth the allowed loss and advising them to answer the proof of claim question. Lead Plaintiffs also proposed that the custodian banks and third-party filers should be given 90 days from receipt of the notice to return executed forms. On May 31, 2011, the Court approved Plaintiffs' proposal, subject to a minor modification to the text of the proposed notice. On or about June 10, 2011, Gilardi sent the one-page, Court-approved notice to 641 class members whose initial claims were valued in excess of $250,000. In connection with this supplemental notice process, Lead Counsel spent hundreds of hours tracking responses and communicating with third-party filers, custodian banks and class members to ensure that they understood the supplemental notice process and the need to respond to Gilardi on or before the September 12, 2011 deadline.

Moreover, Lead Counsel contacted and worked with many custodian banks, third-party claims filers, Gilardi and other class members to obtain declarations to, among other things, lay a business record foundation for their claim information.

224. The claims administration process was substantially completed by December 2011. In a December 22, 2011 report filed with the Court, Gilardi identified the 45,921 claims that generated an allowed loss. Dkt. No. 1790. Gilardi also provided additional information about claims that continued to contain a technical deficiency of some type, but, in Gilardi's view, would not make a claim ineligible for payment. Additionally, Gilardi submitted a list identifying the claims that it recommended should be rejected, along with a reason why Gilardi believed the claim was invalid. During the claims filing process, Gilardi staff spent more than 19,000 man-hours processing and auditing claims and communicating with claimants and their representatives. Lead Counsel also expended thousands of hours communicating with Gilardi, potential claimants and defense counsel regarding the claims filing process.

225. On January 27, 2012, the Court entered an Order setting forth the next steps in the claims adjudication process. Specifically, the Court ordered defendants to enumerate within 30 days the claims to which they objected either in terms of (a) calculation of amount; (b) authority of the claimant to submit the claim; or (c) some other mechanical deficiency in the claim submission itself. The Court ordered Plaintiffs to respond within 30 days. Dkt. No. 1795.

226. On February 27, 2012, in accordance with the Court's January 27, 2012 Order, defendants objected to 28,735 claims identified in Gilardi's report. According to defendants, the claims were defective for one or more reasons, including: (a) claims filed by third parties without evidence of the third parties' authority to file on behalf of the beneficial owners; (b) claims containing incomplete or defective proofs of claim; (c) claims containing overstated claim amounts; (d) claims with a "yes" answer, or lacking an answer to the proof of claim form question; (e)

untimely claims; and (f) claims filed by individuals or entities that were not members of the certified class. Dkt. No. 1800. On March 28, 2012, Plaintiffs filed a 59-page response with over 130 attached exhibits to defendants' objections to certain claims included in Gilardi's report. Dkt. No. 1802. Lead Plaintiffs provided a detailed response to each of defendants' objections, including citing to the deposition testimony of and affidavits submitted by institutional class members, and explained why defendants' objections should be overruled. Lead Plaintiffs' response was the culmination of countless conversations and communications with class members, custodian banks and third-party filers conducted between October 2011 and March 28, 2012. Fortunately, Lead Counsel had anticipated many of the arguments that defendants would ultimately raise and as a result, were in a position to respond within the 30-day time period allotted by the Court.

227. On April 19, 2012, the Court entered an Order recommending that defendants' objections to certain claims be referred to Magistrate Judge Nolan for the issuance of a report and recommendation. Dkt. Nos. 1810, 1811. During an April 25, 2012 status conference, the parties were informed that Magistrate Judge Nolan would be retiring effective September 30, 2012 and, as a result, she did not know if it would be possible to complete a report and recommendation before her retirement. On May 7, 2012, as a result of the views expressed by Magistrate Judge Nolan during the status conference, Lead Plaintiffs filed a motion for withdrawal of the referral to Magistrate Judge Nolan. Dkt. No. 1815. Given Judge Guzmán's intimate familiarity with the case, its procedural posture and the claims process, Lead Plaintiffs urged Judge Guzmán to reconsider the recommendation and, instead, decide some of the issues presented in defendants' objections himself. The Court subsequently entered an Order taking Plaintiffs' motion under advisement. Dkt. No. 1818.

228. Following the filing of defendants' objections to certain claims, the parties continued to participate in meet-and-confer discussions in an effort to narrow defendants' objections. On May

9, 2012, defendants filed an update regarding objections to certain claims included in Gilardi's report and on May 18, 2012, Lead Plaintiffs filed a response to defendants' update. Dkt. Nos. 1817, 1820.

229. In an order dated September 21, 2012, the Court appointed Phillip S. Stenger as the Special Master to identify (1) the claims on which Lead Plaintiffs were entitled to judgment as a matter of law and the amount of each such allowed claim; (2) the claims on which defendants were entitled to judgment as a matter of law; and (3) the claims that must be resolved at trial.

230. During a status conference hearing on October 4, 2012, Lead Plaintiffs raised with the Court an issue regarding its September 21, 2012 Order dismissing the claims of those who failed to answer the claim form question. Specifically, Lead Plaintiffs sought clarification on whether the Court intended its ruling to apply to class members with claims of $250,000 or less who filed through a custodial bank or a third-party claims filing service. Lead Counsel explained that, in their view, the Court's May 31, 2011 Order excused those claimants from answering the claim form question. When the Court clarified that it did intend its ruling to apply to those claimants, Lead Plaintiffs urged the Court to reconsider its ruling or give Lead Counsel the opportunity to obtain an answer to the claim form question from those class members. Lead Counsel argued that barring those claimants from any recovery would violate due process, as they were never given the opportunity to answer the claim form question. The Court then stated it would allow the parties to submit position papers before making a final determination on the issue. Dkt. No. 1833.

231. On November 15, 2012, the parties filed submissions addressing the portion of the Court's September 21, 2012 Order dismissing the claims of those who failed to answer the claim form question. Dkt. Nos. 1834-1835. In their submission, Plaintiffs argued that the record clearly reflected that the Court excused claimants, who filed through a third-party with an allowed loss less than $250,000, from answering the reliance question. Plaintiffs cited to numerous examples in the record that supported their position and argued it would be a denial of due process to reject these

claims in light of the record. Plaintiffs urged the Court to reinstate the dismissed claims or, in the alternative, approve a supplemental notice to be sent to all 22,667 claimants in the category, requiring an answer to the proof of claim form question. Dkt. No. 1835.

232. On December 6, 2012, the Court entered an Order vacating the portion of its September 21, 2012 Order dismissing class members' claims of less than $250,000 that were submitted by a custodian bank or other third-party filer and gave Plaintiffs' counsel until May 1, 2013 to issue directly to class members the notice and claim form previously sent to them through a custodian bank or other agent. The Court gave class members until June 30, 2013 to complete and return the claim form. Dkt. No. 1836. Thereafter, Lead Counsel engaged in conference calls with custodian banks and third-party filers to explain the supplemental notice process and to obtain their input on the most effective manner of providing the notices to the underlying claimants. The Court also ordered the Special Master to identify from the forms already submitted the claims for which the answer to the claim question was no, determine the recoverable loss amount for such claims and submit a report on the findings so that the Court could enter final judgment on those claims. Gilardi subsequently sent a supplemental notice to approximately 30,000 additional class members whose claims were less than $250,000 and were filed by a custodian or other third-party filer. Claimants were required to return the supplemental claim form by June 30, 2013.

233. On December 18, 2012, the parties met and conferred with the Special Master and agreed that they would provide the Special Master with lists that would identify (1) the claims the parties agreed were resolved by the Court's prior orders; and (2) the claims with outstanding objections that would need to be resolved by the Special Master. On January 16, 2013, defendants provided Lead Counsel with claims lists in which they asserted objections to over 6,500 claims that they had failed to address in their February 27, 2012 objections. On January 22, 2013, Plaintiffs submitted to the Special Master a list of claims that included:

- List No. 1: all claims as to which the parties agreed there was no outstanding ministerial objections;

- List No. 2: all claims as to which the parties agreed that the claimant answered "yes" to the claim form question and such claimants were entitled to a trial as to damages;

- List No. 3: all claims that would be rejected under Judge Guzmán's previous orders; and

- List No. 4: claims that the parties agreed required a decision by the Special Master, including claims that (a) defendants objected to on February 27, 2012 and which the parties had been unable to resolve; (b) approximately 6,501 new objections concerning claims submitted by a custodian bank or third-party filer that were not identified by claim number in defendants' February 27, 2012 objections, but that defendants contend were subject to the Court's September 21, 2011 and December 6, 2012 Orders; (c) approximately 1,405 claims as to which defendants lodged objections on February 27, 2012, but subsequently asserted one or more additional objections.

234. On January 31, 2013, the parties met with the Special Master in Grand Rapids, Michigan, during which each party presented an overview of the claims objections and their positions on each. The parties agreed to work together to clean up certain subcategories of the "List 4" claims and jointly submit an updated list to the Special Master by February 11, 2013. As to certain other subcategories of the "List 4" claims, the Special Master agreed to implement a sampling procedure in order to determine the general and recurring issues. The Special Master also directed the parties to submit briefs addressing whether defendants waived certain objections by failing to raise them in their February 27, 2012 filing.

235. On February 18, 2013, Lead Plaintiffs submitted a brief to the Special Master arguing that defendants had waived their objections to certain claims by failing to raise them in their February 27, 2012 submission. On February 25, 2013, Lead Plaintiffs submitted an additional letter to the Special Master addressing Lead Plaintiffs' position with respect to three categories of claims, including claimants who provided an explanation to the claim form question.

236. On May 17, 2013, the Special Master submitted a report and recommendation on defendants' objections to three categories of claims. The Special Master recommended that defendants' objections to two categories of claims be deemed waived because they were not raised timely. With respect to the third category of claims, the Special Master recommended that the defendants' objections should not be deemed waived. Dkt. No. 1847. On June 6, 2013, Judge Guzmán adopted and confirmed the Special Master's May 17, 2013 Report and Recommendation. Dkt. No. 1853.

237. On July 11, 2013, the Special Master submitted an additional report and recommendation, recommending that Lists 1, 2 and 3 be approved by the Court. Dkt. No. 1860. On July 25, 2013, Lead Plaintiffs submitted a response to the Special Master's July 11, 2013 Report and Recommendation. In it, Lead Plaintiffs raised issues that had arisen with respect to seven "List 3" claims; namely, that five of the seven claimants had recently submitted the supplemental interrogatory response. Lead Plaintiffs also requested that two claimants be given the opportunity to answer the supplemental interrogatory and that all seven claimants be removed from "List 3." Dkt. No. 1862. Defendants responded to Plaintiffs' filing on August 16, 2013 and Lead Plaintiffs filed a reply on August 20, 2013. Dkt. Nos. 1872-1873. On August 22, 2013, the Court denied Plaintiffs' response. Dkt. No. 1874. On October 4, 2013, the Court adopted the Special Master's July 11, 2013 Report and Recommendation with respect to the claims on Lists 1, 2 and 3. *See* Dkt. No. 1886.

238. The parties subsequently continued to work through defendants' objections to certain claims. Defendants were provided the opportunity to identify any additional claims to which they would withdraw their objections and any claims to which they would maintain their objections. On July 2, 2015, the Special Master issued a report and recommendation on defendants' category "E" and "F" objections. Dkt. No. 2015. Defendants' category E objections were to claims for which the initial claim was submitted after the claim form deadline. Defendants argued that in order for

untimely claims to be accepted, the claimant must show excusable neglect for failure to meet the court ordered deadline. Dkt. No. 2015 at 5. Plaintiffs argued that the Court's January 11, 2011 Order allowed for late claims to be accepted by lead counsel if proceedings were not materially delayed. Alternatively, Plaintiffs argued that any late claims should be reviewed on a claim-by-claim basis. The Special Master denied defendants' objections to claims not filed by the May 24, 2011 deadline as well as their objections to claims for which the one-page follow-up response was received after the September 12, 2011 deadline. However, the Special Master recommended that December 22, 2011 be a firm deadline for the claim forms and follow-up notices originally due on May 24, 2011 and September 12, 2011, respectively.

239. Defendants' category F objections were to claims filed by individuals or entities that defendants argued were not members of the certified class. Dkt. No. 2015 at 9. Defendants argued that Household's employees, the HSBC-North America Tax Reduction Investment Plan, an employee benefit plan, and participants in the HSBC ADS Fund, were "affiliates" of Household who were excluded from the Class under the class definition. Dkt. No. 2015 at 10. The Special Master recommended that defendants' objections to claims from employees of Household and claims submitted by HSBC-North America Tax Reduction Investment Plan should be upheld, but claims from participants in the HSBC ADS Fund should be accepted and defendants' objections to such participants should be denied. Dkt. No. 2015 at 22.

240. On July 23, 2015, Plaintiffs filed objections to the Special Master's July 2, 2015 report and recommendation on defendants' category E and F objections. Dkt. No. 2023. Specifically, Plaintiffs objected to the Special Master's recommendations with respect to defendants' category F.1, F.2 and F.4 objections. Dkt. No. 2023 at 1. Plaintiffs argued that defendants failed to comply with the Court's February 2012 Order requiring defendants 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 those objections. Plaintiffs argued that defendants' submission of evidence in support of those objections was untimely and inadmissible. Plaintiffs further argued that the Special Master's report and recommendation did not address defendants' failure to submit admissible evidence and, as such, defendants' objections should be overruled.

241. On August 26, 2015, the parties met with the Special Master, during which they agreed to provide a current, agreed upon version of Lists 1, 2, 3 and 4 by October 12, 2015. The parties also agreed to review the documentation previously submitted to the Special Master in connection with the E and F objection categories in order to jointly provide the Special Master with a request as to which documents should be submitted to the Court under seal. The parties further agreed that, in light of the Seventh Circuit's opinion in this case (discussed below), after the submission of the agreed upon lists, the Phase II work with which the Special Master was charged would be put on hold pending further developments in Phase I of the case. The parties subsequently provided updated Lists 1, 2, 3 and 4 to the Special Master. Consistent with the parties' agreement, the resolution of defendants' objections was then placed on hold pending the conclusion of the remand proceedings.

XI. THE PARTIES' RENEWED POST-TRIAL MOTIONS

A. Defendants' Renewed Motion for Judgment as a Matter of Law or for a New Trial

242. On June 20, 2013, the Court entered an Order allowing defendants to file new post-trial motions. Dkt. No. 1856. On July 30, 2013, defendants filed a 65-page renewed motion for judgment as a matter of law, or in the alternative, a new trial. Dkt. No. 1866. Defendants largely repeated the same arguments made in their original post-trial motions, discussed at Section VIII.B., *supra*, and raised additional arguments based on recent Supreme Court authority and the contention

that the Phase II proceedings deprived them of the right to a proper adjudication of the element of reliance. Dkt. No. 1867. On August 30, 2013, Plaintiffs filed a 65-page opposition to defendants' motion. Dkt. No. 1876. Defendants filed a reply in further support of their motion on September 13, 2013. Dkt. No. 1882. On October 4, 2013, the Court denied defendants' motion for judgment as a matter of law or for a new trial. Dkt. No. 1887.

B. Lead Plaintiffs' Motion for Entry of Judgment and for an Award of Prejudgment Interest

243. On July 30, 2013, Plaintiffs filed a motion for entry of judgment pursuant to Fed. R. Civ. P. 54(b) and for an award of prejudgment interest. Dkt. No. 1868. Lead Plaintiffs urged the Court to enter final judgment in favor of the 10,902 "List 1" claimants, *i.e.* the claims resolved as of the Special Master's July 11, 2013 Report and Recommendation, arguing that there was no just reason to delay entering judgment if defendants' post-trial motions were denied. Dkt. No. 1870. Lead Plaintiffs also requested that the Court award prejudgment interest to Plaintiffs. On August 30, 2013, defendants filed a response to Plaintiffs' motion and on September 13, 2013, Plaintiffs filed a reply. Dkt. Nos. 1875, 1883. On October 4, 2013, the Court granted Plaintiffs' motion for entry of judgment and award of prejudgment interest, ruling that Plaintiffs were to be awarded prejudgment interest at the average prime rate compounded annually from October 11, 2002 to the date of judgment. The Court also expressly determined that there was no just reason for delay and directed that a final judgment be entered in favor of the List 1 claimants in the amounts specified in the Special Master's July 11, 2013 Report and Recommendation, plus prejudgment interest. Dkt. No. 1887.

XII. ENTRY OF JUDGMENT

244. On October 17, 2013, the Court entered final judgment pursuant to Fed. R. Civ. P. 54(b) in the amount of $1,476,490,844.21 plus prejudgment interest in the amount of

$986,408,772.00, for a total amount of $2,462,899,616.21, along with postjudgment interest and taxable costs. Dkt. No. 1898.

XIII. DEFENDANTS' APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

245. On November 12, 2013, defendants filed a notice of appeal to the United States Court of Appeals for the Seventh Circuit from the final judgment entered on October 17, 2013. *See* Dkt. No. 1906. The same day, defendant Household deposited with the Clerk of Court a supersedeas bond in the amount of $2,466,348,175.67 to stay execution of the judgment pending defendants' appeal. *See* Dkt. No. 1905.

246. On November 18, 2013, Plaintiffs filed an objection to the form of supersedeas bond, asserting four deficiencies with respect to the form of the bond: (1) it misstated the date of the judgment; (2) it did not bind the Individual Defendants; (3) it did not explicitly bind the Sureties' successors in interest; and (4) its "Promise to Pay" provision was impermissibly vague. Dkt. No. 1914. The Court subsequently referred Plaintiffs' objection to Magistrate Judge Rowland (Dkt. No. 1942) and on December 18, 2013, Magistrate Judge Rowland overruled Plaintiffs' objection to the form of supersedeas bond. Dkt. No. 1957.

247. On February 12, 2014, defendants filed their 69-page opening brief with the United States Court of Appeals for the Seventh Circuit. On appeal, defendants raised issues with respect to three elements: loss causation, the court's instruction on what it means to "make" a false statement, and reliance. Defendants sought judgment in their favor as a matter of law and, in the alternative, a new trial. With respect to loss causation, defendants broadly attacked Plaintiffs' expert's loss causation model. Specifically, defendants argued that Plaintiffs' loss causation evidence was legally insufficient because (1) Plaintiffs made no attempt to prove how Household's stock price became inflated in the first instance; (2) Plaintiffs failed to account for non-fraud firm-specific explanations

for the decline in value of Household's stock during the Class Period; and (3) the leakage model failed to show that a misrepresentation that affected the integrity of the market price also caused a subsequent decline; that is, the model assumed that all of the inflation in Household's stock price at the outset of the Class Period exited the stock price by the end of the Class Period without identifying any specific disclosures. *See Glickenhaus Institutional Group v. Household Int'l, Inc.*, Case No. 13-3532, Dkt. No. 52, at 34-41.

248. Defendants also argued that the jury's *ad hoc*, partial adoption of the leakage model resulted in an irrational and unsupported verdict. First, defendants argued that the jury's verdict, which assigned the full $23.94 of inflation under the leakage model to a single statement made on March 23, 2001 relating only to predatory lending, was foreclosed by the leakage model itself. Second, defendants argued that there was no record evidence to support the jury's finding that $23.94 of inflation was introduced into the stock price by a single statement (partially) republished on March 23, 2001, but actually made 10 days earlier. Finally, defendants criticized the jury's verdict on the remaining 16 statements found actionable, arguing that none of the statements bore any rational relationship to the inflationary movements in Household's stock price. *Id*. at 49-50.

249. On appeal, defendants also challenged the Court's jury instruction on what it means to "make" a false statement. At the trial, the Court directed jurors to address whether "the defendant made, approved or furnished information to be included in a false statement of fact . . . ." *Id*. at 51. Defendants argued that the Court's instruction was erroneous in light of the Supreme Court's decision in *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011).

250. Defendants also attacked the Court's Phase II proceedings, which defendants argued deprived them of a meaningful opportunity to rebut the presumption of reliance. Specifically, defendants criticized the Court's use of the claim form question to rebut the presumption of reliance and the limitations placed on defendants during Phase II discovery. Defendants also argued that the

Phase I verdict rebutted the presumption of reliance with respect to all but two of the 17 statements found fraudulent.

251. On March 28, 2014, Plaintiffs filed a 68-page answering brief. Plaintiffs' answering brief made compelling arguments in response to each of the arguments raised in defendants' brief. *Glickenhaus*, Dkt. No. 73. Plaintiffs argued that the jury's loss causation verdict was supported by the substantial, legally sufficient evidence from the trial. Plaintiffs argued that their expert analyzed and accounted for firm-specific, non-fraud disclosures, and that defendants' failure to cross-examine Plaintiffs' expert on this subject foreclosed any later request for judgment as a matter of law. Plaintiffs further argued that they proved when and how inflation entered Household's stock price via the jury's determination of the first false or misleading statement and that defendants waived any arguments seeking a new trial based on the leakage quantification model.

252. Plaintiffs also argued that the Court's instruction on what it means to "make" a false statement did not entitle defendants to a new trial, as the district court properly instructed the jury and the Supreme Court's decision in *Janus* did not change the relevant analysis. Plaintiffs further argued that defendants had failed to establish any prejudice arising from the purportedly erroneous jury instruction. Finally, Plaintiffs argued that defendants failed to rebut the presumption of reliance, despite the district court affording them ample opportunity to do so during Phase II proceedings and that the jury's verdict did not rebut reliance.

253. On April 11, 2014, defendants filed their reply brief. On May 29, 2014 a three-judge panel of the Seventh Circuit heard oral argument on defendants' appeal. On May 21, 2015, the Seventh Circuit issued its opinion in this case. *See Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015). The Seventh Circuit rejected defendants' "broad" attacks on Plaintiffs' expert's leakage model, but reversed and remanded the case for a new trial on the issues of loss causation, whether the Individual Defendants "made" certain statements under the Supreme Court's

decision in *Janus*, and proportionate responsibility. The Seventh Circuit rejected defendants' arguments with respect to reliance and left undisturbed the district court's Phase II proceedings. Similarly, the jury's findings that the statements at issue were material, false and misleading remained undisturbed.

254. Following the Seventh Circuit's decision, on June 4, 2015, Plaintiffs filed a petition for panel rehearing. Plaintiffs' petition concerned the panel's holding that defendants were entitled to a new trial on the element of loss causation based on Plaintiffs' expert's testimony regarding his analysis of company-specific non-fraud factors. Plaintiffs argued that the holding conflicted with Federal Rule of Evidence 705 and Seventh Circuit precedent allowing experts to provide opinion testimony without testifying to the underlying facts or data once the admissibility of their opinions is determined under *Daubert*. *See Glickenhaus*, Dkt. No. 95. Specifically, Plaintiffs argued that Professor Fischel's testimony that he analyzed whether company-specific nonfraud information could have accounted for Household's stock price decline during the disclosure period was uncontroverted and complied with Rule 705.

255. On July 1, 2015, the panel denied Plaintiffs' petition for rehearing. *See* Dkt. No. 2018. On July 9, 2015, the Seventh Circuit issued its mandate, reversing the judgment of the district court with costs and remanding for a new trial in accordance with its decision. Dkt. No. 2019.

256. In connection with defendants' appeal, Plaintiffs' counsel expended thousands of hours reviewing the district court record, including re-reading testimony and exhibits from the 2009 trial, researching, reviewing and analyzing case law, reviewing and analyzing defendants' opening brief, preparing Plaintiffs' answering brief, preparing for oral argument, reviewing and analyzing the Seventh Circuit's opinion in this case, conducting research in connection with the petition for rehearing, and preparing the petition for rehearing.

XIV. REMAND PROCEEDINGS

A. Parties' Positions on Scope of Retrial and Remand Proceedings

257. On remand, this case was reassigned to the Honorable Jorge L. Alonso in accordance with the Circuit and Local Rules. Dkt. No. 2024. On August 25, 2015, the parties filed a Joint Status Report setting forth their respective positions on the scope of the retrial and their proposals for the conduct of the case going forward. Plaintiffs argued that, following the Seventh Circuit's decision, the only issue left to be retried on the element of loss causation was the impact, if any, of non-fraud company-specific information. Conversely, defendants argued that the entire element of loss causation was subject to retrial, along with the amount of inflation caused by each of the 17 misrepresentations at issue. With respect to the *Janus* issue, the parties agreed that Household was not entitled to a new trial because it "made" all 17 misrepresentations at issue, Aldinger and Schoenholz were only entitled to a new trial on 8 statements and Gilmer was entitled to a new trial on all but one statement. *See* Dkt. No. 2035. However, the parties disagreed as to the scienter findings the new jury would be required to make. The parties also agreed that the new jury would be asked to determine the percentage of proportionate liability attributable to each defendant. The parties also set forth competing schedules for the remand proceedings, including supplemental expert discovery consistent with the Seventh Circuit's opinion.

258. On August 26, 2015, the Court held a status hearing. That same day, the Court entered an agreed order cancelling, releasing and discharging defendants' supersedeas bond. Dkt. No. 2038. The Clerk of Court returned the bond to counsel for Household that same day. Dkt. No. 2040.

259. On September 8, 2015, the Court entered an order on the scope of the retrial and the remand proceedings. Dkt. No. 2042. With respect to loss causation, the Court ruled that in the new trial, Plaintiffs must prove that defendants' misrepresentations were '"a substantial cause of the

economic loss plaintiffs suffered."' *Id*. at 1. The Court also ruled that Plaintiffs must re-prove '"the amount of per share damages, if any, to which plaintiffs are entitled.'" *Id*. at 2. With respect to scienter, the Court held that "the existence-of-scienter findings from the first trial stand," thus, the new jury would only be required to determine the specific state of mind – knowledge or recklessness – with which the defendant made the statement. *Id*. at 5. The Court's Order also set forth the schedule for the remaining remand proceedings and set a trial date of June 6, 2016.

B. Defendants' Motion for an Award of Costs

260. On September 16, 2015, Household filed a motion for an award of costs pursuant to Federal Rule of Appellate Procedure 39(e). Household argued that, on account of the reversal of the judgment with costs, it was entitled to recover the costs of appeal enumerated in FRAP 39(e), including the "premiums paid for a supersedeas bond or other bond to preserve rights pending appeal." Dkt. No. 2047 at 2. Accordingly, defendants sought an award of costs for the $455 filing fee along with $13,280,827 in supersedeas bond premiums that Household's parent company HSBC North America Holdings, Inc. paid for bond premiums for the period November 11, 2013 through August 26, 2016. *Id*. at 3.

261. On October 7, 2015, Plaintiffs filed an opposition to Household's motion for an award of costs, urging the Court to exercise its discretion and deny Household's motion. Dkt. No. 2050. Plaintiffs argued that (1) Household failed to provide any evidentiary support that the costs were reasonable and necessary, particularly because a less expensive alternative to a supersedeas bond was available; (2) the Seventh Circuit's decision rejecting the vast majority of defendants' arguments weighed in favor of denying Household's request for costs; (3) the complex issues of fact and law raised in this close and difficult case also weighed in favor of denying Household's request; and (4) requiring Plaintiffs or their lawyers to pay millions of dollars in costs would lead to the inequitable result of punishing Plaintiffs while rewarding Household and would have a chilling

effect on future securities class action litigation. Alternatively, Plaintiffs argued that Lead Plaintiffs should only be required to pay 0.06% of the cost of the bond premiums, which was proportionate to their combined recovery as compared to the $2.46 billion judgment.

262. On October 21, 2015, Household filed a reply in support of its motion for an award of costs. Dkt. No. 2056. On November 5, 2015, the Court granted defendants' motion for an award of costs, ordering Plaintiffs to pay Household a total of $13,281,282.00 in appellate costs. Dkt. No. 2061. Lead Counsel wired $13,281,282.00 to defendants on November 30, 2015.

C. Loss Causation Expert Witness Proceedings on Remand

263. In its September 8, 2015 Order, consistent with the Seventh Circuit's opinion, the Court outlined the procedure for expert discovery on remand. Dkt. No. 2042 at 6. On September 23, 2015, Plaintiffs served the Second Supplemental Report of Daniel R. Fischel ("Second Supplemental Report"). Professor Fischel's Second Supplemental Report addressed three issues following the Seventh Circuit's decision: (1) whether his analysis of the evidence and stock price movements demonstrated loss causation; (2) whether the Quantification Including Leakage he presented at the 2009 trial and accepted by the jury to measure artificial inflation required any adjustment to account for significant, firm-specific, nonfraud related information; and (3) whether he could provide a reasonable estimate of the effect of predatory lending alone for the three trading days prior to March 28, 2001. Professor Fischel opined that his analysis demonstrated loss causation. He also opined that no adjustment to the Quantification Including Leakage was required due to significant, firm-specific, non-fraud related information. Finally, Professor Fischel estimated the effect of predatory lending alone for the three trading days prior to March 28, 2001 at $3.06 per share.

264. On October 23, 2015, defendants served the reports of three newly retained loss causation expert witnesses: Professors Allen Ferrell, Christopher James and Bradford Cornell. Each of defendants' three experts responded to and criticized Professor Fischel's Second Supplemental

Report and opined that Professor Fischel's quantification including leakage did not reliably estimate damages. Professor Ferrell opined that (1) Professor Fischel's Second Supplemental Report was deficient because it addressed just 27 days during the leakage period; (2) the leakage model suffered from a fundamental methodological flaw in that it estimated inflation and damages per share in excess of the total price decline Professor Fischel attributed to the market impact of leakage of fraud-related information; (3) there was significant firm-specific, nonfraud information which Professor Fischel failed to address, let alone account for, throughout the leakage period; (4) the leakage model's deficiencies could not be cured by claiming that positive firm-specific information canceled out negative firm-specific information over the course of the leakage period.

265. Professor James identified several macroeconomic factors and regulatory and legislative changes that he opined were non-fraud firm-specific because they may have disproportionately affected Household relative to the indices such as the S&P 500 Index or the S&P Financial Index during the Observation Window.

266. Professor Cornell, the author of the article on which Professor Fischel based the leakage model, opined that his article provided no support for Professor Fischel's application of the leakage model in this case. Professor Cornell criticized Professor Fischel's leakage model because it attributed any decline in the security price that was not due to movements in the market or the industry to the disclosure of the fraud and opined that Professor Fischel's use of a 228-trading day Observation Window resulted in compounding of errors. Cornell also opined that Professor Fischel's Second Supplemental Report was conclusory and failed to establish that his leakage model adequately accounted for nonfraud factors.

267. Also on October 23, 2015, defendants filed a motion to exclude Professor Fischel's testimony under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and Fed. R. Evid. 702. Dkt. No. 2059. Defendants argued that Professor Fischel failed to explain in

nonconclusory terms the basis for his opinion that no firm-specific, nonfraud related information contributed to the decline in Household's stock price during the relevant period. Dkt. No. 2059 at 2. Defendants also argued that Professor Fischel's Second Supplemental Report failed to meet the standards governing the admissibility of expert testimony under *Daubert* and Fed. R. Evid. 702. Specifically, defendants criticized Professor Fischel for addressing only 27 days out of the 228-trading day Observation Window and argued that with respect to 15 of the 27 days, Professor Fischel was unable to identify the disclosure of any information related to the fraud that could have accounted for the statistically significant residual price decline on those days. *Id*. at 11-12. Defendants also criticized Professor Fischel for failing to analyze the 171 days during the disclosure period in which there was not a statistically significant residual price movement. Defendants argued that by addressing only 27 days during the 228-day Observation Window, Professor Fischel's report failed to comply with the "sufficient facts or data" requirement of Rule 702. *Id*. at 15. Defendants also argued that Professor Fischel's report failed to meet any of the other established guideposts by which reliability is determined. *Id*. at 15-20. Finally, defendants argued that their experts, Professors Ferrell and James, had identified "numerous instances" of significant, firm-specific, non-fraud related information during the 228-day Observation Window.

268. On November 23, 2015, Plaintiffs served the Second Rebuttal Report of Daniel R. Fischel. Professor Fischel's Second Rebuttal Report responded to the criticism raised by Professors Ferrell, James and Cornell and reviewed the purportedly "firm-specific, nonfraud related information" identified in their reports. Professor Fischel reiterated the substantial evidence of leakage in this case, identified the flaws in defendants' experts' reports and opined that defendants' experts failed to identify any firm-specific, nonfraud related information that significantly distorted his Quantification Including Leakage or his Quantification Using Specific Disclosures.

269. Also on November 23, 2015, Plaintiffs filed their opposition to defendants' motion to exclude the testimony of Professor Fischel. Dkt. No. 2066. Plaintiffs made forceful arguments in response to each of the arguments raised in defendants' *Daubert* motion. Plaintiffs argued that Professor Fischel's methodology met the standards under *Daubert* and Rule 702 and complied with the Seventh Circuit's directive. Dkt. No. 2066 at 1. Plaintiffs pointed out that the Seventh Circuit's opinion required Professor Fischel to account for "significant negative information about Household unrelated to [fraud-related] corrective disclosures (and not attributable to market or industry trends)" which is exactly what Professor Fischel did. *Id*. at 7. Plaintiffs also argued that Professor Fischel's report described in non-conclusory terms the basis for his opinion that the leakage model's results were not distorted by firm-specific non-fraud disclosures and disputed defendants' contention that Professor Fischel ignored all other days in the Observation Window. *Id*. at 9-14. Plaintiffs further argued that defendants failed to identify significant firm-specific, non-fraud factors that could have affected Household's stock price, as the factors defendants' experts identified were either fraud related or not specific to Household. *Id*. at 22-24.

270. On November 24, 2015, Plaintiffs filed a motion to preclude defendants from substituting new expert witnesses. Dkt. No. 2068. Plaintiffs argued that defendants should not be permitted to swap out their prior loss causation expert, Professor Bajaj, for three new loss causation experts, 13 years after the inception of this litigation and only months before the retrial was set to begin. Plaintiffs also argued that defendants failed to seek leave of Court to designate their new experts and could not demonstrate that they would suffer any manifest injustice if their three experts were excluded. *See generally* Dkt. No. 2068.

271. On December 18, 2015, defendants filed an opposition to Plaintiffs' motion to preclude defendants from substituting new expert witnesses. Dkt. No. 2072. Defendants argued that Plaintiffs' motion rehashed arguments the Court already rejected and that they had no obligation to

move the Court and demonstrate manifest injustice before designating their new experts. Defendants also argued that it would be manifestly unjust to preclude defendants from designating new experts to respond to Professor Fischel's new testimony, as well as to address his earlier testimony and reports. On January 8, 2016, Plaintiffs filed a reply in support of their motion to preclude defendants from substituting new experts. Dkt. No. 2090.

272. On December 21, 2015, defendants filed a reply in further support of their motion to exclude the testimony of Professor Fischel. Dkt. No. 2073. Defendants also filed the rebuttal reports of Professors Ferrell, James and Cornell. Defendants' experts' rebuttal reports responded to Professor Fischel's criticism and, with respect to Professor Ferrell's rebuttal report, offered an alternative quantification of inflation for the first time in nearly 14 years of litigation.

273. On January 6, 2016, Plaintiffs filed a motion to strike the expert rebuttal reports of Professors Ferrell, James and Cornell. Plaintiffs argued that defendants' experts' rebuttal reports violated the Court's September 8, 2015 Order, which allowed defendants to serve expert rebuttal reports only in the event that '"plaintiffs provided an alternative loss-causation model in their rebuttal report."' Dkt. No. 2086 at 1. In addition to violating the September 8, 2015 Order, Plaintiffs argued that the rebuttal reports improperly contained opinions and analysis that should have been included in the experts' initial reports. Defendants filed an opposition to Plaintiffs' motion on January 14, 2016 and Plaintiffs filed a reply in further support of their motion to strike on January 20, 2016. *See* Dkt. Nos. 2097, 2099.

274. On February 1, 2016, the Court entered an order (1) denying Plaintiffs' motion to preclude defendants from substituting experts; (2) denying Plaintiffs' motion to strike the rebuttal reports of defendants' experts, but allowing Plaintiffs an opportunity to file a sur-rebuttal expert report; and (3) denying defendants' *Daubert* motion to exclude the testimony of Professor Fischel. Dkt. No. 2102. With respect to defendants' *Daubert* motion, the Court rejected defendants'

argument that Professor Fischel was required to address days on which the price of Household stock increased or did not experience a statistically significant decrease. The Court also rejected defendants' contention that Professor Fischel failed to employ a proper methodology and declined to revisit defendants' attacks on the validity of the leakage model generally. Concluding that Professor Fischel had sufficiently opined that no firm-specific, nonfraud-related information contributed to the decline in Household's stock price, the Court observed that the burden shifted to defendants to identify firm-specific, nonfraud-related information that could have affected the stock price. Dkt. No. 2102 at 5. The Court then found that the categories of disclosures that defendants characterized as firm-specific and unrelated to the fraud were neither, holding that defendants had failed to identify any significant, firm-specific, nonfraud related information that could have affected Household's stock price. Dkt. No. 2102 at 22.

275. On February 17, 2016, Plaintiffs served the Sur-Rebuttal Report of Professor Fischel. Professor Fischel's sur-rebuttal report responded to the rebuttal reports of Professors Ferrell, James and Cornell and concluded that the rebuttal reports had no effect on his opinion and therefore no adjustment to Professor Fischel's Quantification Including Leakage or Quantification Using Specific Disclosures was required.

276. During the remand proceedings, Plaintiffs also deposed each of defendants' three new loss causation expert witnesses and defended the deposition of Professor Fischel.[8] The chart below lists the dates and places of the expert witness depositions taken or defended by Lead Counsel in connection with the remand proceedings:

Deponent	Date	Location
Cornell, Bradford	3/10/16	Los Angeles, CA

[8] As discussed below, pursuant to the Court's ruling at the Pretrial Conference, Plaintiffs were permitted to re-depose Professor Ferrell.

Deponent	Date	Location
Ferrell, Allen	2/27/16	Boston, MA
Ferrell, Allen	5/27/16	Chicago, IL
Fischel, Daniel	2/24/16	Chicago, IL
James, Christopher	3/14/16	Los Angeles, CA

D. The Individual Defendants' Motions for Summary Judgment

277. On February 24, 2016, the Individual Defendants filed motions for summary judgment addressing the issue of whether they "made" certain statements under the Supreme Court's decision in *Janus*. Dkt. Nos. 2108, 2110-1 and 2113. The parties subsequently entered into a stipulation, agreeing that (1) Schoenholz did not make the statements contained in the December 4, 2001 Goldman Sachs Presentation, but did make the statements attributed to him in certain Company press releases, and did so recklessly; (2) Gilmer did not make the statements contained in various SEC filings, press releases, the April 9, 2002 Financial Relations Conference Presentation, or the December 4, 2001 Goldman Sachs Presentation; and (3) Aldinger did not make the statements contained in the April 9, 2002 Financial Relations Conference Presentation, but did make the statements attributed to him in certain Company press releases, and did so recklessly. Dkt. No. 2122. As a result, the Individual Defendants moved to withdraw their motions for summary judgment. The Court granted Individual Defendants' request to withdraw the motions on March 17, 2016. Dkt. No. 2123.

XV. 2016 PRE-TRIAL PREPARATION

A. Plaintiffs' 2016 Pre-Trial and Trial Preparation

278. In connection with the retrial in this case, Lead Counsel re-reviewed in detail the transcripts from all 26 days of the 2009 trial. Lead Counsel also reviewed and analyzed the Seventh Circuit's opinion in this case to determine its implications on the retrial. Lead Counsel also reviewed and analyzed all exhibits admitted into evidence at the prior trial, both by Plaintiffs and

defendants, and selected the documents to be used as trial exhibits. Lead Counsel created lengthy, detailed exhibit lists, identifying documents that supported Plaintiffs' allegations, categorizing the documents by issue, determining whether the documents would be used in Plaintiffs' case-in-chief, rebuttal case or for impeachment and identifying the foundation that would permit each document to be received into evidence.

279. Lead Counsel also reviewed, summarized and designated trial testimony and deposition testimony that would be used at the retrial, including reviewing the deposition exhibits and trial exhibits presented to each witness, along with the relevant trial and deposition testimony of other witnesses. Lead Counsel began analyzing the motions *in limine* they planned to file and prepared to defend those they anticipated defendants would file. Additionally, Lead Counsel reviewed the verdict form and jury instructions from the 2009 trial, including any rulings with respect to the verdict form and jury instructions, in preparation for the Pretrial Order, discussed below. Lead Counsel also reviewed all other rulings made during the 2009 trial.

280. Lead Counsel also began preparing for direct and cross examination, including reviewing the exhibits to be used with each witness, re-reviewing each witness's deposition (and trial) testimony for potential impeachment evidence, reviewing expert witness reports, consulting with Plaintiffs' expert witnesses and creating witness outlines. Lead Counsel also held in-person meetings with each of their expert witnesses, reviewing the prior deposition and trial testimony of each witness and preparing each witness to testify at the retrial.

281. Additionally, Lead Counsel began preparing for opening statements and began creating demonstrative exhibits to be used during trial. Lead Counsel began researching potential dispositive motions that they anticipated defendants would file during trial.

282. At the beginning of May 2016, a team of approximately 14 Robbins Geller attorneys, other professionals, secretaries and support staff relocated from the Firm's San Diego and Boca Raton offices to Chicago, Illinois, in advance of trial.

B. The 2016 Pretrial Order

283. Lead Counsel expended hundreds of hours preparing the 2016 Pretrial Order and its voluminous exhibits, which the parties jointly filed with the Court on April 22, 2016. Dkt. No. 2151. While preparing the 2016 Pretrial Order and performing the tasks discussed below, Lead Counsel spent a substantial amount of time researching and analyzing the applicable evidentiary rules and case law, including the Seventh Circuit's opinion in this case, holding numerous in-depth internal meetings to discuss trial logistics and strategy, re-reviewing and analyzing the transcript from the 2009 trial, conducting meet and confer discussions with defense counsel regarding the substantive content of the 2016 Pretrial Order, and coordinating with defense counsel for the timely exchange of Pretrial Order materials.

284. In connection with filing the 2016 Pretrial Order, Lead Counsel completed the following: (1) negotiated with defense counsel to agree on a stipulation of uncontested facts; (2) drafted Plaintiffs' proposed short description of the case to be read to prospective jurors; (3) drafted a proposed statement of the prior proceedings to be read and given to the jury; (4) worked with defense counsel to agree on a joint written questionnaire to prospective jurors; (5) drafted separate proposed *voir dire* questions and objected to defendants' proposed *voir dire* questions; (6) finalized an exhibit list containing over 450 exhibits and responded to defendants' evidentiary objections to Plaintiffs' exhibits; (7) reviewed and asserted evidentiary objections to defendants' exhibit list, which contained over 300 exhibits; (8) identified the potential witnesses to be called at trial and reviewed and asserted objections to defendants' proposed witness list; (9) drafted a statement setting forth the qualifications of Plaintiffs' expert witnesses to be read to the jury at the time the expert

took the witness stand and objected to defendants' statement of qualifications of expert witnesses to be read to the jury; (10) designated the page and line numbers of all depositions to be shown to the jury via video and objected to defendants' completeness designations; (11) designated the page and line number of 2009 trial testimony to be read to the jury and objected to defendants' completeness designations; (12) drafted an itemized statement of damages; (13) worked with defense counsel to draft a joint proposed set of jury instructions; (14) drafted additional proposed jury instructions; (15) objected to defendants' additional proposed jury instructions; (16) drafted a proposed verdict form; (17) reviewed and objected to defendants' proposed verdict form; (18) drafted a statement of contested issues of fact and law; (19) drafted the [Proposed] Pretrial Order and worked with defense counsel to finalize and file the [Proposed] Pretrial Order.

C. 2016 Pre-Trial Motions

285. As discussed in detail below, Lead Plaintiffs filed nine motions *in limine* regarding the admissibility of certain evidence at trial, and an omnibus motion to exclude defendants' three expert witnesses from testifying at trial under *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579 (1993) and Fed. R. Evid. 702. Lead Plaintiffs also opposed defendants' five motions *in limine* and defendants' motion for reconsideration. In preparation for filing Lead Plaintiffs' motions *in limine* and opposing defendants' motions, Lead Counsel expended a significant amount of time researching and analyzing the evidentiary rules and case law supporting Lead Plaintiffs' arguments, re-reviewing hundreds of potential trial exhibits and deposition testimony, and re-reviewing and analyzing the expert reports and testimony of both Lead Plaintiffs' and defendants' expert witnesses.

1. Plaintiffs' Omnibus *Daubert* Motion

286. On March 30, 2016, Plaintiffs filed a 36-page omnibus motion to exclude defendants' three experts from testifying at trial. Dkt. No. 2128. Plaintiffs argued that Professors Ferrell and James should be precluded from testifying at trial because the "numerous" disclosures they identified

as company-specific, nonfraud-related were, in fact, neither and such testimony would confuse the jury, prejudice Plaintiffs and was unreliable. Plaintiffs also argued that Professor Ferrell's and James' testimony that certain information "may have" or "could have" contributed to Household's stock priced decline was too speculative to satisfy *Daubert* and would not assist the jury. Additionally, Plaintiffs argued that Professor Ferrell should be excluded for violating Rule 30(c)(2) by failing to answer questions at his deposition and for failing to disclose the "basis and reasons" and the "facts or data" he considered in rendering certain opinions in violation of Rule 26(a)(2).

287. Plaintiffs argued that Professor James should be precluded from testifying at trial that Household's stock price declined during the Leakage Period as a result of company-specific, nonfraud information, as Professor James' selection of the "peer group" against which he compared Household's performance was entirely subjective, unreliable and inconsistent with his own methodology. Plaintiffs also argued that Professor James purportedly employed a technique that appeared nowhere in his reports or in academic articles on loss causation and damages.

288. Plaintiffs argued that Professor Cornell's opinion that Professor Fischel failed to reliably control for value-relevant, firm-specific, non-fraud information during the Leakage Period, which he concluded rendered Professor Fischel's estimation of inflation "unreliable," was classic *ipse dixit* that must be excluded. Plaintiffs also argued that Professor Cornell was merely serving as the "mouthpiece" of Ferrell and James, which rendered his opinions improper and inadmissible.

289. Plaintiffs also argued that all three of defendants' experts should be precluded from offering expert testimony at trial on those issues which they inappropriately raised for the first time in their rebuttal reports. Finally, Plaintiffs argued defendants should be precluded from putting on needlessly cumulative expert testimony at trial, as the overlapping and often identical testimony of defendants' three experts demonstrated that defendants were improperly attempting to "outnumber" Plaintiffs' loss causation expert at trial.

290. On April 25, 2016, defendants filed a 33-page opposition to Plaintiffs' omnibus motion to exclude defendants' experts. Dkt. No. 2152. Defendants argued that Plaintiffs' motion sought to convince the Court to usurp the role of the jury by excluding appropriate testimony that called into question the probative weight jurors should give to the analysis being advanced by Professor Fischel. Defendants also argued that Professors Ferrell's and James' opinions were not impermissibly speculative, as their reports were consistent with the Seventh Circuit's directive that defendants identify some firm-specific, nonfraud-related information that "could have" affected Household's stock price. Defendants further argued that Plaintiffs' other criticisms of Ferrell's and James' opinions were grounds for cross-examination, not exclusion of their testimony. Defendants also criticized Plaintiffs' argument on the impact of the Court's February 1, 2016 Order denying defendants' motion to exclude Professor Fischel, contending that courts are not permitted to make ultimate factual findings in ruling on a *Daubert* motion. Additionally, Defendants argued that Professor Ferrell did not fail to consider or refuse to answer questions posed at his deposition and did not violate Fed. R. Civ. P. 26(a)(2).

291. Defendants also argued that Plaintiffs' criticism of Professor James' opinions went to the weight, rather than the admissibility of his testimony. With respect to Professor Cornell, defendants argued that there was no basis to exclude his opinion that Professor Fischel misapplied Professor Cornell's article, as such testimony was relevant and helpful to the jury. Finally, defendants argued that the Court had already rejected Plaintiffs' argument that defendants' experts should be precluded from testifying about the opinions set forth in their rebuttal reports and that the testimony of defendants' experts was not cumulative.

292. On May 9, 2016, Plaintiffs filed a 16-page reply in further support of their omnibus motion to exclude defendants' experts. Dkt. No. 2169. On May 18, 2016, the Court heard argument on Plaintiffs' omnibus *Daubert* motion. The Court issued its ruling from the bench, granting

Plaintiffs' motion in part and denying it in part. The Court granted Plaintiffs' motion with respect to Professor James, concluding that the reasoning or methodology underlying his testimony was not scientifically valid under *Daubert*. The Court granted Plaintiffs' motion in part as to Professor Cornell, holding that Professor Cornell would be excluded from testifying that Professor Fischel's model did not adequately measure inflation, but would be permitted to testify that Professor Fischel's leakage model was flawed because it did not follow the method set forth in Professor Cornell's article. The Court denied Plaintiffs' motion as to Professor Ferrell, but indicated it would instruct the jury that in determining loss causation and damages, they should disregard evidence about market and industry factors and general trends in the economy. The Court also ruled that Plaintiffs would be permitted to re-depose Professor Ferrell on the limited issue of his underlying support for relying on Institutional Investor magazine for the selection of his peer index.

2. Plaintiffs' Motions *in Limine*

a. Plaintiffs' Motion *in Limine* No. 1

293. Plaintiffs' motion *in limine* No. 1 sought to permit Plaintiffs to present evidence of defendants' fraud at the retrial. Dkt. No. 2133. Plaintiffs argued that the jury would have to understand the nature of defendants' fraud, including the conduct giving rise to the prior jury's determination that defendants made false or misleading statements about predatory lending, reaging and the restatement, in order to determine what is non-fraud information, and whether and to what extent it impacted Professor Fischel's models, and to allocate responsibility for Plaintiffs' losses. Plaintiffs further argued that under the Seventh Circuit's decision in *Watts v. Laurent*, 774 F.2d 168, 181 (7th Cir. 1985), there was a strong presumption that evidence from the liability phase may be relevant in some way to damages. After full briefing, on May 18, 2016, the Court granted Plaintiffs' motion, finding that evidence of defendants' fraud was relevant on the issue of allocation of

responsibility, but observed that the issue would be revisited if proportionate liability was no longer at issue.

b. Plaintiffs' Motion *in Limine* No. 2

294. Plaintiffs' motion *in limine* No. 2 sought to (1) preclude defendants from relitigating falsity, materiality, scienter and reliance; (2) deem the findings from the prior proceedings, the Seventh Circuit's opinion and the Court's February 1, 2016 Order uncontested; and (3) preclude defendants from referring to the 23 statements for which the prior jury found no liability. Dkt. No. 2134. On May 18, after full briefing, the Court granted Plaintiffs' motion in part and denied it in part. The Court ruled that whatever evidence defendants introduced at the retrial would have to be relevant to loss causation, damages, or allocation of responsibility or a mix of those elements. The Court denied Plaintiffs' motion to deem the findings from the Seventh Circuit's opinion uncontested as to all but one finding, in which it agreed with Plaintiffs that the Seventh Circuit did make a finding that Professor Fischel's leakage and specific disclosure model controlled for market and industry factors and general trends in the economy. With respect to the prior jury's findings, the Court granted Plaintiffs' motion as to three of the four findings and reserved ruling on the fourth. The Court denied Plaintiffs' motion as to the Court's February 1, 2016 Order on defendants' motion to exclude Professor Fischel, holding that it did not make any findings in that order. Finally, the Court ruled that defendants would be permitted to cross-examine Professor Fischel about the impact, if any, of the prior jury's finding of no liability for 23 statements. *See also* Dkt. No. 2190.

c. Plaintiffs' Motion *in Limine* No. 3

295. Plaintiffs' motion *in limine* No. 3 sought an order that the *in limine*, *Daubert* and evidentiary rulings from the first trial would apply at the retrial, arguing that those decisions were the law of the case, which gave rise to a presumption that earlier rulings will stand and which could only be overcome for compelling reasons. Plaintiffs' motion *in limine* No. 3 was fully briefed, but was

subsequently resolved in large part by the Court's ruling on defendants' motion *in limine* No. 1 and the parties' stipulation on the scope of the retrial and evidentiary issues, discussed in more detail below. On May 23, 2016, during the Pretrial Conference, the Court ruled on the only outstanding issue left to be resolved by motion *in limine* No. 3, precluding defendants from introducing evidence of a settlement entered into by Professor Fischel's firm, Lexecon.

d. Plaintiffs' Motion *in Limine* No. 4

296. Plaintiffs' motion *in limine* No. 4 sought to bar (1) testimony or evidence concerning allegedly company-specific non-fraud information that purportedly distorted Professor Fischel's leakage and specific disclosures models; (2) testimony or argument that Professor Fischel's leakage model is not a valid method for quantifying artificial inflation; (3) use of material by defendants' experts that are not cited in the experts' reports, and (4) cumulative expert witness testimony. Dkt. No. 2136. After full briefing, the Court heard argument on Plaintiffs' motion during the Pretrial Conference on May 23, 2016. The Court denied Plaintiffs' motion *in limine* as to category No. 1 and reserved ruling on Category No. 2. Category No. 3 was subsequently resolved by agreement of the parties and Category No. 4 was resolved by the Court's ruling on Plaintiffs' omnibus *Daubert* motion, discussed above.

e. Plaintiffs' Motion *in Limine* No. 5

297. Plaintiffs' motion *in limine* No. 5 objected to defendants' proposed Verdict Form, including their "Question One" and their attempt to add "Defendants' Specific Disclosures Model" as an option for the jury to select in determining damages. Dkt. No. 2137. Defendants' proposed Question One required the jury to determine, for each of the 17 misstatements the first jury found to be false, material and made with scienter, whether Plaintiffs proved that their losses were caused by that specific false and misleading statement or omission. Plaintiffs argued that defendants' Question One was confusing, burdened the jury and was contrary to the law. Plaintiffs also argued that

"Defendants' Specific Disclosure Model" could not be submitted to the jury because it lacked any inflation-per-share analysis for the first eight months of the class period and was untimely disclosed on the eve of trial. After full briefing, on May 23, 2016, the Court overruled Plaintiffs' objection as to "Question One" on defendants' proposed verdict form and reserved ruling on the addition of "Defendants' Specific Disclosures Model" to the verdict form.

f. Plaintiffs' Motion *in Limine* No. 6

298. Plaintiffs' motion *in limine* No. 6 sought to preclude fact witnesses from offering impermissible opinion testimony. Specifically, defendants had designated William Aldinger, Gary Gilmer, David Schoenholz, Edgar Ancona and Craig Streem as "may call" fact witnesses, but none of those witnesses had been designated as experts. Plaintiffs anticipated that defendants may seek to adduce expert or opinion testimony from those witnesses regarding trends in the market or in Household's industry and sought an order from the Court prohibiting defendants from doing so. Dkt. No. 2138. The parties' stipulation on the scope of the trial resolved Plaintiffs' motion as to all but one witness, Craig Streem. On May 23, 2016, after full briefing on Plaintiffs' motion, the Court denied Plaintiffs' motion as to Craig Streem on the grounds that the issue was too abstract to rule on in a vacuum, but stated Plaintiffs would be permitted to object to any questionable testimony during the trial, at which time the Court would address any objection.

g. Plaintiffs' Motion *in Limine* No. 7

299. Plaintiffs' motion *in limine* No. 7 sought to preclude defendants from calling James Glickenhaus, the representative of Lead Plaintiff Glickenhaus & Co., from testifying at trial. Plaintiffs' motion also sought to prevent defendants from offering Glickenhaus & Co.'s trading records and related information at trial. Dkt. No. 2139. Plaintiffs argued that Lead Plaintiff's testimony and trading records were entirely irrelevant to the issues that were to be decided at the retrial, *i.e.*, class-wide issues of liability. On May 23, 2016, after full briefing, the Court granted

Plaintiffs' motion on relevancy grounds, finding that the slight relevancy of the testimony and trading records was outweighed by the potential for confusion.

h. Plaintiffs' Motion *in Limine* No. 8

300. Plaintiffs' motion *in limine* No. 8 sought an order prohibiting defendants from offering evidence or argument relating to the aggregate damages suffered by the Class. Plaintiffs argued the motion was necessitated by defendants' counsel's comments during closing arguments at the first trial, during which defendants' counsel sought to prejudice the jury by arguing that the $7.97 inflation number in Professor Fischel's Specific Disclosures Model might seem like a small number, but could nonetheless cause a lot of harm. Dkt. No. 2140. Plaintiffs also argued that evidence of aggregate damages was irrelevant to the retrial issues. On May 23, 2016, after full briefing, the Court granted Plaintiffs' motion.

i. Plaintiffs' Motion *in Limine* No. 9

301. Plaintiffs' motion *in limine* No. 9 sought to permit Plaintiffs to offer prior trial testimony of defendants' former loss causation expert, Mukesh Bajaj. Dkt. No. 2141. Plaintiffs argued Bajaj's testimony at the first trial was relevant since it was at odds with the testimony of defendants' three new loss causation/damages experts. Plaintiffs also argued Bajaj's testimony was non-hearsay under Fed. R. Evid. 801(d)(2). Plaintiffs' motion was fully briefed, and on May 23, 2016, the Court granted Plaintiffs' motion.

3. Defendants' Motions *in Limine*

a. The Individual Defendants' Motion *in Limine* to Bar Evidence Regarding Their Financial Condition

302. The Individual Defendants' motion *in limine* sought to preclude Plaintiffs from introducing evidence, making argument, or eliciting testimony regarding the Individual Defendants' respective financial conditions, including but not limited to their personal wealth, income, compensation, assets, stock options, or benefits. The Individual Defendants argued that their

financial condition had no relevance to the issues identified for the retrial and would unfairly prejudice them and unnecessarily invade their privacy. Dkt. Nos. 2131-2132. The Individual Defendants' motion overlapped with defendants' motion *in limine* No. 1, discussed in detail below, and was subsequently resolved by the parties' stipulation regarding the scope of trial.

b. Defendants' Motion *in Limine* No. 1

303. Defendants' motion *in limine* No. 1 sought to exclude evidence not relevant to causation or inflation. Specifically, defendants sought to exclude nine separate categories of information: (a) evidence relating to defendant Household's retention of consultant Andrew Kahr; (b) an unauthorized "training" video created by Household employee Dennis Hueman; (c) evidence regarding the compensation or stock transactions of defendants Aldinger, Schoenholz and Gilmer; (d) evidence regarding Household's post-class period amendment of its 2001 Form 10-K; (e) evidence relating to Household's entry into various state and regulatory settlements both during and after the class period and evidence regarding the settlement negotiations; (f) evidence regarding the consent decree that Household entered into with the SEC on March 18, 2003; (g) evidence relating to the due diligence conducted by Wells Fargo in connection with a 2002 proposed merger between Wells Fargo and Household (code-named "Project Whiskey") and Household's internal communications regarding Project Whiskey; (h) evidence regarding an alleged 2001 purge by Household of documents relating to certain of its lending practices; and (i) other nonpublic documents regarding Household's alleged predatory lending and reaging practices. Dkt. Nos. 2144-2145. After full briefing on defendants' motion, on May 18, 2016, the Court granted defendants' motion as to categories (e), (f) and (g) but denied the motion as to categories (a), (b), (c), (d), (h) and (i). *See also* Dkt. No. 2190.

c. Defendants' Motion *in Limine* No. 2

304. Defendants' motion *in limine* No. 2 sought to preclude reference to prior proceedings, including (a) testimony or other evidence from or about Dr. Mukesh Bajaj; (b) the first jury's acceptance of the leakage model and the amount of the partial judgment and prejudgment interest awarded after the first trial; (c) characterizations of the first jury's findings and references to purported misstatements other than the 17 misstatements found by the first jury; and (d) the Seventh Circuit's opinion in this case and the Court's ruling on defendants' *Daubert* motion. Dkt. Nos. 2146-2147. Defendants' motion *in limine* No. 2 was fully briefed. Category (a) of defendants' motion was denied in connection with the Court's ruling on Plaintiffs' motion *in limine* No. 9, discussed above, and the remainder of defendants' motion was mooted via the parties' stipulation on the scope of trial.

d. Defendants' Motion *in Limine* No. 3

305. Defendants' motion *in limine* No. 3 sought to preclude Professor Fischel from expressing at trial any opinion not previously disclosed to defendants. Dkt. No. 2148. After full briefing, on May 23, 2016, the Court denied defendants' motion.

e. Defendants' Motion *in Limine* No. 4

306. Defendants' motion *in limine* No. 4 sought an order excluding evidence that (1) defendants contacted Plaintiffs' expert Professor Fischel to clear conflicts prior to the trial in 2009 and defense counsel's statements about Professor Fischel during prior proceedings; and (2) defendants' experts have in the past worked with Compass Lexecon, Professor Fischel's company. Dkt. No. 2149. After full briefing, the Court granted defendants' motion in part, excluding evidence regarding defendants' efforts to hire Professor Fischel prior to the first trial and the complimentary statements defense counsel made about Professor Fischel during the first trial. However, the Court

denied defendants' motion as to complimentary statements defendants' current experts made about Professor Fischel and Compass Lexecon.

f. Defendants' Motion *in Limine* No. 5

307. Defendants' motion *in limine* No. 5 sought to preclude any reference to non-parties HSBC Bank PLC or HSBC Finance Corp., including the financial condition of either company, on the grounds that such evidence was irrelevant and unfairly prejudicial. Dkt. No. 2150. After full briefing, the Court denied defendants' motion.

D. Defendants' Motion for Reconsideration

308. On May 20, 2016, defendants filed a motion for partial reconsideration of the Court's ruling regarding purported "finding of fact" by the Seventh Circuit. Dkt. No. 2192. Defendants asked the Court to reconsider its ruling that the Seventh Circuit made a finding that "Professor Fischel's Leakage and Specific Disclosure Models controlled for market and industry factors – his regression analysis took care of that." *Id*. Defendants argued the Seventh Circuit's statement was not a finding or fact, as appellate courts are not empowered to make findings of fact. Defendants also argued that the Seventh Circuit's statement involved a disputed factual issue for the jury to decide. Defendants further argued that deeming the statement to be uncontested would be plain legal error that would provide a ground for reversal on appeal.

309. On May 25, 2016, Plaintiffs filed an opposition to defendants' motion for reconsideration of ruling regarding purported "finding of fact" by the Seventh Circuit. Dkt. No. 2196. In opposition to defendants' motion, Plaintiffs argued that defendants' motion was premised on the erroneous assertion that whether Professor Fischel's models controlled for market and industry factors was a disputed factual matter. In reality, Plaintiffs argued, defendants conceded on appeal that Professor Fischel's regression analysis controlled for market and sector movements. Dkt. No. 2196 at 6. Plaintiffs argued that the Seventh Circuit conclusively decided the issue they sought

to re-raise with the jury when it concluded that Professor Fischel's models accounted for the impact on Household of industry, market and general economic factors. *Id*. at 7. Plaintiffs also argued that the Seventh Circuit's finding was the law of the case and that defendants' reformulation of "firm-specific, non-fraud information" was directly contrary to the Seventh Circuit's plain language.

310. On May 27, 2016, defendants filed a reply in further support of their motion for reconsideration. Dkt. No. 2198. On May 31, 2016, the Court heard argument on defendants' motion. That same day, the Court granted defendants' motion for reconsideration, concluding that the retrial was not limited to determining whether Professor Fischel's models adequately accounted for Household-specific, nonfraud factors. Dkt. No. 2200 at 3. Accordingly, the Court vacated its oral ruling limiting the evidence on loss causation solely to whether Professor Fischel's models adequately accounted for Household-specific, nonfraud factors. *Id*. at 4.

E. The Parties' Stipulation Regarding Evidentiary Issues and Scope of Trial

311. In the weeks leading up to the retrial, Lead Counsel spent a substantial amount of time strategizing internally and negotiating with defense counsel in an effort to resolve ongoing disputes regarding certain evidentiary issues and the scope of the retrial. On May 24, 2016, the parties filed a stipulation and proposed order regarding evidentiary issues and the scope of the trial. Dkt. No. 2195. The stipulation provided that defendants Household, Aldinger and Schoenholz would be jointly and severally liable for any judgment, while Gilmer would be severally liable for 2% of any judgment. *Id*. Under the stipulation, the parties further agreed that proportionate fault and allocation would not be adjudicated at the trial or presented to the jury for determination. The parties also agreed on a "Statement of Prior Proceedings," which would be considered evidence in the trial; as a result, it could be used to examine witnesses and given to the jury. Additionally, the stipulation resolved certain evidentiary disputes, including the specific witnesses each side would be

permitted to call at trial and the scope of that testimony, the admissibility of certain categories of evidence and any constraints placed on the admissibility of that evidence, and the length of the trial. *See generally id.*

F. 2016 Pre-Trial Conference

312. The 2016 pretrial conference was held over the course of four days. In preparation for attending the pretrial conference, Lead Counsel spent many hours reviewing, *inter alia*, (1) Plaintiffs' motions *in limine* and omnibus *Daubert* motion, including the relevant case law and evidentiary rules; (2) Plaintiffs' deposition and trial designations, defendants' objections thereto and defendants' completeness designations; (3) Plaintiffs' proposed trial exhibits, defendants' objections thereto and Plaintiffs' responses; (4) defendants' proposed trial exhibits, Plaintiffs' objections and defendants' responses; (5) Plaintiffs' proposed jury instructions and defendants' objections; (6) defendants' proposed jury instructions and Plaintiffs' objections; and (7) other exhibits attached to the [Proposed] Pretrial Order. During the four-day Pretrial Conference, Lead Counsel, among other things:

- discussed with the Court certain administrative issues concerning trial, including, but not limited to, the number of jurors, the number of peremptory strikes, the process for jury selection and the use of a juror questionnaire;
- argued Plaintiffs' omnibus *Daubert* motion;
- argued Plaintiffs' motions *in limine* and opposed defendants' motions *in limine*;
- advocated Plaintiffs' proposed jury instructions, responded to defendants' objections to Plaintiffs' proposed jury instructions, and asserted objections to defendants' proposed jury instructions;
- argued Plaintiffs' trial testimony designation and opposed defendants' completeness designations;
- discussed with the Court the parties' stipulation regarding evidentiary issues and scope of trial; and
- argued defendants' motion for reconsideration.

XVI. ROBBINS GELLER RUDMAN & DOWD LLP

313. The quality of legal services provided by Robbins Geller is unparalleled. Robbins Geller is a nationally recognized leader in complex securities litigation class actions. *See* Report of Professor Charles Silver on Attorneys' Fees at 47-48 (Dkt. No. 1966). Robbins Geller has been entrusted to represent more institutional investors in securities litigation than any other law firm in the United States and is responsible for achieving some of the largest recoveries in class action history. For example, it represented the Regents of the University of California in *In re Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.), securing a $7.3 billion recovery for the investor class. In *In re UnitedHealth Group Inc. PSLRA Litig.*, No. 06-CV-1691 (D. Minn.), Robbins Geller secured over $925 million for the class in the largest stock option backdating recovery ever – a recovery that is more than four times larger than the next largest options backdating recovery. Robbins Geller also recovered $600 million for investors in *In re Cardinal Health, Inc. Sec. Litig.*, No. C2-04-575 (S.D. Ohio). If approved, the Settlement here will be the largest ever following a securities fraud class action trial, the largest securities fraud settlement in the Seventh Circuit, and the seventh largest settlement ever in a post-PSLRA securities fraud case.

314. Importantly, this case demonstrates that Robbins Geller is not afraid to see a case through trial, or retrial, if necessary. Indeed, Robbins Geller has a track record of trying numerous cases, or settling cases on the eve of trial after moving teams of lawyers, forensic accountants, and support personnel across the country.

315. Cases tried by Robbins Geller include the following:

- ***In re AT&T Corp. Sec. Litig.***, MDL No. 1399 (D.N.J.) (Robbins Geller attorneys served as lead counsel for a class of investors that purchased AT&T common stock. The case charged defendants AT&T and its former Chairman and CEO, C. Michael Armstrong, with violations of the federal securities laws in connection with AT&T's April 2000 initial public offering of its wireless tracking stock, the largest IPO in American history. After two weeks of trial, and on the eve of scheduled testimony by Armstrong and infamous telecom analyst Jack Grubman, defendants agreed to settle the case for $100 million.);

- ***Joe R. Long, et al. v. Wells Fargo & Company, et al.***, Civil Action No. A:98CA751-SS (W.D. Tex.) (Private Rule 10b-5 action against Wells Fargo. The parties settled after the start of trial.);

- ***In re Apple Computer Securities Litigation***, Master File No. C-84-20148(A)-JW (N.D. Cal.) (Jury trial resulted in a verdict for the plaintiff class, with damages awarded on a per share basis. Both sides estimated damages, based on volume, to exceed $120 million. The jury's verdict was subsequently overturned after the court granted defendants' motion for judgment notwithstanding the verdict. The case was set for a retrial, but later settled.);

- ***In re Dole Food Co.***, No. C.A. No. 8703-VCL (Del. Ch.) (Robbins Geller attorneys prosecuted stockholder claims challenging the management-buyout of Dole Food Co. through a nine-day trial in February and March 2015. On August 27, 2015, the Delaware Court of Chancery issued a post-trial opinion finding certain insiders liable for over $148 million, the largest ever post-trial damages award in a class action challenging a merger transaction.);

- ***In re Rural/Metro Corp. S'holders Litig.***, No. 6350-VCL (Del. Ch.) (Robbins Geller attorneys prevailed at trial in the Delaware Court of Chancery and again on appeal in the Delaware Supreme Court. On October 10, 2014, the trial court issued a post-trial judgment ordering RBC Capital Markets, LLC to pay former Rural/Metro stockholders nearly $100 million, which the Delaware Supreme Court affirmed on November 30, 2015. The affirmed judgment constitutes the largest damages award ever obtained against an investment bank for its role as a merger adviser.);

- ***In re Chapparal Resources, Inc. S'holders Litig.***, No. 2001-N (Del. Ch.) (In a case involving the takeover of a publicly traded company operating an oil field in Kazakhstan, Robbins Geller attorneys conducted a full trial in the Delaware Court of Chancery in 2001. Following a post-trial mediation with the Delaware Chancellor, Robbins Geller obtained a common fund settlement of $41 million for the stockholder class and appraisal petitioners.); and

- ***Joseph v. Heisley***, No. 20188-NC (Del. Ch.) (Robbins Geller attorneys tried a stockholder derivative case in the Delaware Court of Chancery, which challenged a Preferred Stock Repurchase by WorldPort Communications, Inc. Following a five-day trial in August 2004, Robbins Geller attorneys obtained a settlement representing a 97% increase in consideration paid to stockholders on the initial transaction.).

316. Robbins Geller has also settled a number of cases on the eve of trial, including the following:

- ***Jones v. Pfizer Inc.***, No. 1:10-cv-03864 (S.D.N.Y.) (Lead plaintiff Stichting Philips Pensioenfonds obtained a $400 million settlement just two weeks before trial was set to begin in 2015. The settlement against Pfizer resolved accusations that it misled investors about an alleged off-label drug marketing scheme. As sole lead counsel, Robbins Geller moved a team of 17 attorneys and support staff to New York for trial, before obtaining this exceptional result after five years of hard-fought litigation.);

- ***Abu Dhabi Commercial Bank v. Morgan Stanley & Co. Inc.***, No. 08-cv-07508 (S.D.N.Y.) (On April 26, 2013, plaintiffs entered into a confidential, "landmark" settlement with the credit rating agencies, Standard & Poor's and Moody's, and Morgan Stanley stemming from fraudulent ratings assigned to bonds issued by the Cheyne Structured Investment Vehicles. Robbins Geller, on behalf of 14 individual plaintiffs, including Abu Dhabi Commercial Bank, Gulf Investment Bank, Commerzbank AG, King County, Washington and several other institutional investor clients, vigorously prosecuted the litigation for nearly 5 years before reaching the

settlement two weeks before trial.). Again, Robbins Geller moved a team of 19 attorneys and support staff to New York before the case was settled;

- ***Schuh v. HCA Holdings, Inc.***, No. 3:11-cv-01033 (M.D. Tenn.) (As sole lead counsel, Robbins Geller obtained a groundbreaking $215 million settlement for former HCA Holdings, Inc. shareholders – the largest securities class action recovery ever in Tennessee. The settlement was reached shortly before trial was scheduled to commence and resolved claims that the Registration Statement and Prospectus HCA filed in connection with the company's massive $4.3 billion 2011 IPO contained material misstatements and omissions.);

- ***Garden City Emps.' Ret. Sys. v. Psychiatric Solutions, Inc***., No. 3:09-cv-00882 (M.D. Tenn.) (In the Psychiatric Solutions case, Robbins Geller represented lead plaintiff and class representative Central States, Southeast and Southwest Areas Pension Fund in litigation spanning more than four years. Psychiatric Solutions and its top executives were accused of insufficiently staffing their in-patient hospitals, downplaying the significance of regulatory investigations and manipulating their malpractice reserves. Just days before trial was set to commence, and after Robbins Geller's 19-person trial team moved to Tennessee, attorneys from Robbins Geller achieved a $65 million settlement, which was the third-largest securities recovery ever in the district and the largest in a decade.);

- ***In re St. Jude Med., Inc. Sec. Litig***., No. 0:10-cv-00851 (D. Minn.) (After four and one-half years of litigation and mere weeks before jury selection, Robbins Geller obtained a $50 million settlement on behalf of investors in medical device company St. Jude Medical. The settlement resolved accusations that St. Jude Medical misled investors by utilizing heavily discounted end-of-quarter bulk sales to meet quarterly expectations, which created a false picture of demand by increasing customer inventory due of St. Jude Medical devices. The complaint alleged that the risk of St. Jude Medical's reliance on such bulk sales manifested when it failed to meet its forecast guidance for the third quarter of 2009, which the company had reaffirmed only weeks earlier.); and

- ***AOL Time Warner Cases I & II***, JCCP Nos. 4322 & 4325 (Cal. Super. Ct., Los Angeles Cty.) (Robbins Geller represented The Regents of the University of California and numerous domestic and international pension funds in state and federal court opt-out litigation stemming from Time Warner's disastrous 2001 merger with Internet high flier America Online. After almost four years of litigation involving extensive discovery, the Firm secured combined settlements for its opt-out clients totaling over $629 million shortly before The Regents' case pending in California state court was scheduled to go to trial.).

317. As this case and the foregoing cases demonstrate, clients retain Robbins Geller to utilize its experience and resources to obtain the largest recovery possible for the Class.

XVII. IN-HOUSE FORENSIC ACCOUNTING EXPERTS

318. Instrumental to Plaintiffs' litigation efforts and successful resolution of this case was the involvement of Robbins Geller's specialized in-house forensic accounting professionals, primarily Chris Yurcek, CPA and Terry Koelbl, CPA (collectively, the "Forensic Accountants").

Mr. Yurcek is the Assistant Director of the firm's forensic accounting department. He is a Certified Public Accountant and has been designated by the American Institute of Certified Public Accountants ("AICPA") as Certified in Financial Forensics ("CFF"). Mr. Yurcek has over 27 years of public accounting and consulting experience, including extensive experience in forensic accounting and fraud investigations, auditing at both national and local CPA firms, complex business litigation and bankruptcy fraud consulting. Mr. Yurcek is an active member of the AICPA, the California Society of Certified Public Accountants ("CalCPA") and the Association of Certified Fraud Examiners.

319. Mr. Koelbl is a Certified Public Accountant licensed to practice in the state of California with over 14 years of public accounting, auditing and forensic accounting experience – including over 10 years of experience directly related to the investigation of securities fraud. He is a Certified Fraud Examiner ("CFE") and has been designated by the AICPA as CFF. He is an active member of AICPA, the CalCPA and the Association of Certified Fraud Examiners. Prior to joining the Firm, he was an auditor for the public accounting firm of Ernst & Young LLP in Chicago, Illinois and San Diego, California, where he performed financial statement audits of public and private companies. Mr. Koelbl received a Bachelor of Business Administration degree in Accounting and a Master's degree in Accounting from the University of Wisconsin-Madison.

320. The Forensic Accountants provided critical investigative accounting, auditing and financial expertise to Lead Counsel during discovery, preparation for the 2009 trial, the 2009 trial, post-trial, remand proceedings and preparation for the 2016 trial. They worked side-by-side with Lead Counsel in *inter alia*, reviewing Household's SEC filings, analyzing the Company's disclosures, analyzing the Company's restatement, reviewing documents and deposition testimony, performing research concerning the relevant GAAP, GAAS and SEC Rules, and assisting Lead

Counsel in identifying and selecting key documents to be used at trial to prove Plaintiffs' accounting-related allegations.

321. A significant portion of the Forensic Accountants' time was spent assisting and preparing Lead Counsel and Plaintiffs' testifying expert witness on key accounting issues for motions *in limine*, *Daubert* motions and trial. Specifically, the Forensic Accountants worked extensively with Plaintiffs' accounting expert, Harris Devor, in order to assist with preparing Mr. Devor to testify at the 2009 and 2016 trials. The Forensic Accountants also analyzed defendants' accounting expert's reports and deposition testimony, evaluating the assertions and theories advanced and identifying the portions of his opinions that should be challenged by *Daubert* motion in preparation for the 2009 trial. They reviewed defendants' motion to exclude Mr. Devor and assisted Lead Counsel in opposing defendants' motion prior to the 2009 trial. The Forensic Accountants also prepared extensive outlines for Mr. Devor's trial testimony and helped Lead Counsel prepare for direct and cross-examination of all accounting, financial and defendant witnesses prior to both trials. The Forensic Accountants were also extensively involved in the design and development of Plaintiffs' demonstrative and summary exhibits to be used at both trials to assist the jury, as well as assisting Lead Counsel in successfully opposing many of defendants' proposed trial demonstratives prior to the 2009 trial.

XVIII. MEDIATION EFFORTS

322. The parties engaged in mediation sessions in May 2005, May 2008, June 2011 and June 2014; before this Court on August 22, 2005; and in the Seventh Circuit's mediation program in December 2013 and January 2014. In advance of several of these mediation sessions, Plaintiffs submitted comprehensive mediation statements addressing, *inter alia*, the relative strengths and weaknesses of the parties' respective claims and defenses, including issues of timeliness, loss causation and the parties' damages analyses and estimates. Lead Plaintiffs expended significant time

and effort drafting the mediation statements and preparing for the in-person mediation session. At various times during the course of the litigation, the parties engaged the services of Judge Layn R. Phillips (Ret.), a nationally recognized mediator. The parties engaged in numerous telephonic sessions with Judge Phillips during 2016 regarding a potential settlement of the case.

XIX. THE RISKS PLAINTIFFS FACED IN THE LITIGATION

323. The 2009 jury verdict in favor of Plaintiffs demonstrates the meritorious nature of this case. Nonetheless, at each stage of this case, Plaintiffs faced significant risks and hurdles that could have resulted in the complete dismissal of Plaintiffs' claims or a serious diminution of any recovery to the Class. For instance, defendants filed multiple motions to dismiss the Consolidated Complaint, and in fact, were successful in shortening the Class Period in this case by two years based on their assertion of the statute of limitations. Had defendants prevailed on their motions to dismiss in their entirety, the Class would have recovered nothing.

324. Lead Plaintiffs faced another significant hurdle at summary judgment. Defendants' motion for summary judgment made arguments that Plaintiffs had failed to demonstrate loss causation – a critical element of Plaintiffs' §10(b) and Rule 10b-5 claims. For example, defendants argued that summary judgment was appropriate because Plaintiffs failed to demonstrate both that their alleged misrepresentations artificially inflated the price of Household stock and that the value of Household's stock declined once the market learned of defendants' fraud. Defendants raised additional arguments regarding the statute of repose and the pre-Class Period inflation in the price of Household stock. Defendants also attacked the "specific disclosure" and "leakage" models utilized by Professor Fischel to quantify the amount of artificial inflation in the price of Household stock. A ruling in defendants' favor on the element of loss causation could have disposed of all remaining claims of the Class, and the Class would have recovered nothing.

325. Without question, however, Plaintiffs faced the biggest risks at trial. Indeed, this case is one of only a handful of post-PSLRA securities fraud class action cases to go to trial, one of 15 to reach a verdict, and only the third to obtain a mixed verdict in favor of the plaintiff class.[9] Lead Plaintiffs faced significant hurdles at the 2009 pretrial conference, during the 2009 trial and after the jury rendered its verdict. Before trial, for example, defendants filed seven motions *in limine*, including an "omnibus" motion to exclude 14 separate categories of evidence. Defendants also moved to exclude all three of Plaintiffs' expert witnesses from testifying at trial. Had the Court sided with defendants and prohibited Plaintiffs from relying on certain evidence at trial, or excluded the opinions of Plaintiffs' expert witnesses, it would have adversely impacted Plaintiffs' ability to prove defendants' fraud and the elements necessary to prevail on their §10(b) and Rule 10b-5 claims, including loss causation and scienter.

326. Even with the Court's favorable evidentiary rulings, which largely denied defendants' motions to exclude, there was still no guarantee that the jury would find in favor of Plaintiffs. Indeed, the jury was given the difficult task of determining whether Plaintiffs proved, by a preponderance of the evidence, that defendants violated §10(b) and Rule 10b-5 with respect to ***40*** separate material misstatements regarding Household's predatory lending practices, reaging, and accounting manipulations. Each aspect of defendants' fraud involved extremely complex facts and was based on complex documentary, testimonial, and expert witness evidence. For instance, many of Plaintiffs' allegations involved complicated transactions and accounting principles requiring Plaintiffs to carefully present their evidence so the jury could understand it. Additionally, for each compelling piece of testimony or evidence Plaintiffs introduced at trial demonstrating defendants' fraud, defendants introduced their own evidence telling their side of the story. Thus, the jury was

[9] According to the January 25, 2016 NERA Report entitled "Recent Trends In Securities Class Action Litigation: 2015 Full-Year Review," of the more than 4,300 class actions filed since the PSLRA, only 21 have gone to trial and only 15 have reached a verdict.

tasked with weighing the evidence introduced by both parties, as well as evaluating the credibility of each witness. Given the unpredictable nature of a jury trial, there was no way of foreseeing which interpretations, inferences or testimony the jury might accept. Indeed, the jury in this case found that Plaintiffs failed to prevail on their §10(b) and Rule 10b-5 claims with respect to statements made before March 23, 2001. If the jury had made the same finding with respect to all of the remaining statements, or had it determined that Plaintiffs failed to prove loss causation, the Class would have recovered nothing.

327. The Phase II proceedings also presented a host of potential risks and hurdles. For example, Plaintiffs faced the risk of a ruling in favor of defendants on the presumption of reliance, which could have diminished the Class's recovery or resulted in the dismissal of certain class members' claims (which it in fact did). Defendants also filed post-trial motions seeking judgment as a matter of law or, in the alternative, requesting a new trial. Defendants' motions continued to challenge Plaintiffs' damages theory and raised arguments regarding the issue of loss causation. Defendants' motions also pointed to a number of alleged erroneous evidentiary rulings that they claimed entitled them to a new trial. Had the Court granted defendants' post-trial motions, the entire verdict could have been thrown out, and the Class may not have recovered anything.

328. Plaintiffs continued to face risks in connection with defendants' appeal to the Seventh Circuit and, in fact, such risks did materialize when the Seventh Circuit reversed and remanded for a new trial on the issues of loss causation and what it means to "make" a statement under the Supreme Court's decision in *Janus*. Although the Seventh Circuit reversed and remanded on these two narrow issues, there was a significant risk that the Seventh Circuit could have entered judgment in defendants' favor or reversed and remanded the case in its entirety, forcing Plaintiffs to re-prove all elements of their §10(b) and Rule 10b-5 claims and requiring the district court to conduct a do-over

of Phase II proceedings. The Seventh Circuit also could have accepted defendants' challenges to the validity of the leakage model, the result defendants sought on appeal.

329. Plaintiffs continued to face substantial risks during the remand and pretrial proceedings. As an example, defendants moved to preclude Plaintiffs' loss causation expert, Professor Fischel, from testifying at trial. Had the Court granted defendants' motion or otherwise limited Professor Fischel's testimony, Plaintiffs would have been severely hamstrung in presenting their case at trial. During the pre-trial proceedings, Plaintiffs also faced the risk that the Court could have excluded evidence critical to proving their allegations and, indeed, the Court did exclude certain categories of highly relevant evidence. Had the Court prohibited Plaintiffs from relying on certain evidence or witnesses at trial, or narrowly construed the evidence necessary to prove loss causation, it would have adversely impacted Plaintiffs' ability to prove loss causation and damages.

330. Without question, the retrial in this case presented an enormous risk. At the retrial, the jury would have been tasked with determining whether Plaintiffs proved loss causation with respect to each of the 17 misstatements at issue. The jury would have been required to render a verdict based largely on competing expert testimony and without the benefit of the full evidentiary record that the first jury heard. Again, given the unpredictable nature of a jury trial, there was no way of predicting which interpretations, inferences or testimony the jury might accept. As an example, the jury could have concluded that Plaintiffs failed to prove loss causation or it could have credited defendants' expert's quantification of inflation, which ranged from $0 to $4.19 per share. Defendants' expert at the first trial, Mukesh Bajaj, opined that there were no damages. Defendants' new expert at the second trial, Alan Ferrell, also opined that there were no damages but alternatively estimated maximum damages of up to $4.19 in daily inflation – or $291 million in total damages based on the claims that would share in the proposed settlement. *See* Declaration of Mishka Ferguson Regarding Settlement Notice Dissemination, Publication, Objections Received to Date,

and Analysis of Calculated Claim Damages ("Ferguson Decl."), ¶20. Plaintiffs' expert, Daniel Fischel, opined that there was a maximum daily inflation of $7.97 under the Specific Disclosure Model (Exhibit 25 to Fischel's Second Supplemental Report), which would result in damages of approximately $624 million based on the valid claims. Ferguson Decl., ¶19. Under the Leakage Model, Fischel opined that there was a maximum daily inflation of $23.94 (Second Supplemental Report, Ex. 25) – which would result in damages of approximately $2.093 billion based on the valid claims. Ferguson Decl., ¶18. Under either scenario presented by defendants or even the Specific Disclosure Model presented by Professor Fischel, the Class would have recovered nothing or substantially less than what it will recover as a result of the record-breaking settlement in this case. In short, the risks to Lead Plaintiffs in litigating this case over the last 14 years, including bringing it to trial, defeating defendants' efforts to avoid liability following the trial, engaging in four years of post-trial proceedings, opposing defendants' appeal to the Seventh Circuit and preparing to try the case again, cannot be overstated.

331. In connection with Lead Counsel's Motion and Memorandum of Law in Support of Motion for an Award of Attorneys' Fees and Expenses and Reasonable Costs and Expenses for Lead Plaintiffs (the "Memorandum"), we created four charts which are attached to the Memorandum as Exhibits A-D. I worked with other Robbins Geller partners and associates to gather and vet the information contained in these four charts. The first chart, Ex. A, is simply a list of a selected group of reported decisions involving securities cases lost at summary judgment, trial, post-trial or on appeal. The remaining exhibits (B-D) required our team to gather information from a wide variety of sources. In lieu of attaching all the supporting materials, we believed it would be far more helpful to simply explain the process undertaken to create each of these exhibits in this declaration. Exhibit B (Number of Firms Seeking Lead Counsel Role in Cases with Top Settlements) contains information regarding the number of Plaintiffs' firms that sought to be appointed lead counsel or co-

lead counsel for the ten largest securities settlements other than Household. We gathered this information primarily from the case dockets for these cases, case law and a securities class action database. A Robbins Geller associate compiled this data, which was thereafter reviewed by one of my partners who often works on lead plaintiff applications. My partner, in reviewing these statistics, made judgment calls in counting the number of applicants in a handful of these cases. Exhibit C (Settlements of $500 Million or More – Percentage of Recovery) was also created by Robbins Geller attorneys. We began with a list of the top 100 securities settlements developed by Institutional Shareholder Services ("ISS"), a leading provider of information for asset owners and managers, and selected each settlement of $500 million or more for inclusion in the chart. We added the *Merck* settlement to the list, which was approved in 2016. Including Household, there were 27 securities settlements of this size. The settlement amounts were also imported from the top 100 data reported by ISS. The Recovery as a % of Maximum Estimated Damages required us to research court records and, on occasion, expert reports. Unfortunately, there were a number of cases for which the percentage of recovery simply could not be calculated, despite counsel's best efforts. If a case settled before expert reports were filed, it appeared that in many instances, neither the court nor class counsel in those cases reported the percentage of recovery. As to those cases, we reported that this information was "not available" in Exhibit C. We believe that if the recovery had been an outstanding percentage of the damages, it would have been trumpeted by class counsel in those cases. Therefore, I personally have no doubt that the recovery percentage in those cases was well short of the recovery here. As to other cases listed on Exhibit C to the Memorandum, we typically gathered information from court dockets, including reports by Plaintiffs' damages experts, briefs filed in support of settlements or fee applications, plan of allocation documents, or in one case (*Merck*), the report of a special master in the case. We believe that our percentage of recovery information is accurate, or at least as accurate as possible, given the paucity of information in the

record in certain cases. Finally, we created Exhibit D (Lodestar Comparison) from court records as well, typically from memoranda and declarations submitted by lead counsel in those cases that detailed their lodestar and work in those cases. We computed the column Lodestar on an Annualized Basis, by simply dividing the lodestar by the number of years that the litigation lasted.

XX. CONCLUSION

332. In view of the unprecedented settlement Plaintiffs obtained following 14 years of hard-fought litigation, the very substantial risks of this case, the novel issues faced, the quality of work performed, the contingent nature of the fee, the complexity of the case and the standing and experience of Lead Counsel, as described above and in the accompanying Memorandum and the accompanying Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement, Lead Counsel respectfully submit that the Court should award a fee in the amount of 24.68% of the Judgment amount plus $34,308,180.28 in expenses.

I declare under penalty of perjury under the laws of the United States of American that the foregoing is true and correct. Executed this 29th day of August 2016, at San Diego, California.

s/ Spencer A. Burkholz
SPENCER A. BURKHOLZ

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 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 August 29, 2016.

s/ Spencer A. Burkholz

SPENCER A. BURKHOLZ

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: SpenceB@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	

Counsel	E-mail address
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 Paul D. Clement D. Zachary Hudson BANCROFT PLLC 1919 M Street NW, Ste. 470 Washington, DC 20036 (202)234-0090 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)	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 lmahaffey@wc.com amacdonald@wc.com twolfe@degrandwolfe.com ldegrand@degrandwolfe.com
Counsel for Defendant Household International Inc.	
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	miked@rgrdlaw.com spenceb@rgrdlaw.com dand@rgrdlaw.com lukeb@rgrdlaw.com hstakem@rgrdlaw.com jdavis@rgrdlaw.com mmueller@rgrdlaw.com

Counsel	E-mail address
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)	
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	