

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

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

**THE CLASS' STATEMENT REGARDING POST-CLASS PERIOD INFORMATION
SUBMITTED PURSUANT TO THE COURT'S MARCH 9, 2006 DIRECTION**

Pursuant to the Court's instructions during the March 9, 2006 hearing, the Class submits this statement regarding the relevancy of post-Class Period information related to scienter, materiality and damages. The Class seeks limited post-Class Period discovery in the form of documents¹ and responses to interrogatories.²

I. INTRODUCTION

In its Complaint, the Class alleges that defendants engaged in a fraudulent scheme to artificially inflate Household International, Inc.'s ("Household" or the "Company") financial and operational results and key financial metrics. ¶¶50-153.³ The Class alleges that defendants accomplished their fraudulent scheme in three ways: (1) increasing loan receivables by engaging in predatory and abusive lending practices (¶¶51-106); (2) manipulating the credit quality of the Company's loan portfolio by arbitrarily and improperly reaging or restructuring delinquent loans; (¶¶107-133); and (3) manipulating the accounting relating to the Company's credit card agreements which improperly inflated earnings (¶¶134-153). The post-Class Period information sought by the Class is relevant to the predatory lending and reaging aspects of defendants' fraud.⁴ In particular, this information is necessary to assess the impact of defendants' fraudulent scheme on Household's publicly reported financial and operational statistics during the new Class Period (July 30, 1999 through October 11, 2002) and is therefore directly relevant to the elements of scienter, materiality and damages. The Class should be permitted discovery on these critical points.

¹ The specific document requests are fully set forth in Attachment A. They are: (1) Request No. 10 of Plaintiffs' First Request for Production of Documents (the "first request"); (2) Request Nos. 5-6, 8-9, and 32 of Plaintiffs' Second Request for Production of Documents (the "second request"); and (3) Request Nos. 1-6, 9-13, 21-25, 27, and 30-31 of the Class' [Corrected] Third Request for Production of Documents (the "third request").

The Class propounded the third request on March 13, 2006. Defendants' response is due on April 12, 2006. Because their response is not yet due, defendants refused to discuss the temporal parameters relating to the third request during the parties' March 15, 2006 meet and confer. Because the reasons for post-Class Period production in response to the first and the second requests apply equally to the third request, however, the Class believes they are appropriately addressed together.

² The Class briefed the issue of post-Class Period discovery with respect to its Second Set of Interrogatories, an issue which the Court deferred at the February 15, 2006 hearing. The relevant portions of those arguments are incorporated herein and attached as Attachment B.

³ "Complaint" refers to the Corrected Amended Consolidated Class Action Complaint for Violation of the Federal Securities Laws. All paragraph ("¶") references are to the Complaint unless otherwise noted.

⁴ The Class is not requesting post-Class Period information related to the restatement.

II. SUMMARY OF MEET AND CONFER PROCESS

During the meet and confers related to the first request, defendants refused to produce the relevant post-Class Period documents sought by the Class with the exception of Request Nos. 1-3. During meet and confers on October 20 and October 21, 2004, the Class explained to defendants that post-Class Period information is relevant to several elements of the Class' claims.⁵ Paragraph 2 to the Declaration of Luke O. Brooks in Support of the Class' Statement Regarding Post-Class Period Information Submitted Pursuant to the Court's March 9, 2006 Direction ("Brooks Decl.") filed concurrently herewith. During the parties' meet and confers on May 20, July 18, and August 29, 2005, the Class again urged defendants to produce the relevant post-Class Period documents, explaining that such documents are directly related to the impact of defendants' fraudulent scheme on Household's financial bottom line, a key component of the Class' case. Brooks Decl., Exs. 1-2. Defendants, however, offered nothing more than a request for more time to evaluate the issues. *Id.* By letters of November 1, 2005 and December 2, 2005, the Class again requested post-Class Period discovery. Brooks Decl., Exs. 3-4. Defendants refused and stated their belief to the Class that the relevant time period for the Class' document requests should be limited to the Class Period. Brooks Decl., Exs. 5-6.

On March 15, 2006, pursuant to this Court's direction, the parties met and conferred again regarding the Class' request for certain post-Class Period discovery. At the meet and confer, the Class narrowed its post-Class Period document requests to the specific requests identified in Attachment A. In exchange for the Class' efforts, defendants merely sought an "all or nothing deal," but failed to explain what was entailed in their compromise. *See* Brooks Decl., ¶5; Brooks Decl., Ex. 7. Following the meet and confer, defendants informed the Class in writing that they will not produce the relevant post-Class Period information sought by the Class. *See* Brooks Decl., Ex. 8. Accordingly, the Class seeks the Court's assistance.

III. ARGUMENT

It is well established that post-class period information is relevant and discoverable in securities fraud cases such as this one. *See, e.g., In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 72-73 (2d Cir. 2001) ("Any information that sheds light on whether class period statements were false

⁵ Given that the Class has sought post-Class Period discovery from the beginning, defendants' assertion that it would be unduly burdensome to produce such information because of the late stage of discovery is without merit. Any burden is self-imposed.

or materially misleading is relevant.”); *Rothman v. Gregor*, 220 F.3d 81, 92 (2d Cir. 1999). As the court in *Scholastic* observed, “post-class period data may be relevant to determining what a defendant knew or should have known during the class period.” 252 F.3d at 72-73; *see also In re TCW/DWN. Am. Gov’t Income Trust Sec. Litig.*, 941 F. Supp. 326, 331 n.7 (S.D.N.Y. 1996) (post-class period prospectuses may be used by the court “as a tool to help explain the consequences of . . . risk in the context of this lawsuit”); *In re United States Aggregates, Inc. Sec. Litig.*, 235 F. Supp. 2d 1063, 1068 (N.D. Cal. 2002) (post-class period conduct may provide support for motive of defendants’ fraud during the class period); *In re Control Data Corp. Sec. Litig.*, Master Docket 3-85-1341, 1987 U.S. Dist. LEXIS 16829 (D. Minn. Dec. 10, 1987), *aff’d*, 3-85 CIV 1341, 1988 U.S. Dist. LEXIS 18603 (D. Minn. Feb. 22, 1988).

Control Data is squarely on point. In that case, the court held that post-class period information was discoverable. After noting the “numerous instances in securities fraud litigation where post-offering statement[s], documents, or conduct have been treated as admissible evidence on the issue of scienter, intent, and knowledge” and without even cursorily discussing the nature of any of the pending discovery requests, the court held “there cannot be a time-frame limit on discoverable facts” and overruled “all of [the opposing party’s] objections . . . on the grounds that they seek materials . . . after [the Class Period.]” *Control Data*, 1987 U.S. Dist. LEXIS 16829, at **7-8; *see also In re Seagate Tech. II Sec. Litig.*, No. C-89-2493(A)-VRW, 1993 U.S. Dist. LEXIS 18065, at *2 (N.D. Cal. June 15, 1993) (defendant’s attempt to confine discovery to a narrow period beginning three months before and ending three weeks after the Class Period is “artificial, arbitrary and designed to avoid the production of relevant documents”). Under *Control Data*, defendants must provide relevant post-Class Period information.⁶

A. The Post-Class Period Information Sought by the Class Is Relevant to Demonstrate the Impact of Household’s Predatory Lending Scheme

The requested information, while created outside the Class Period, is pertinent to the Class’ claims as it addresses predatory lending practices committed during the Class Period and their impact on Household’s financial performance. During the Class Period, defendants repeatedly

⁶ Indeed, defendants themselves relied on *Control Data* in arguing that the Class should produce post-Class Period documents in their opposition to lead plaintiffs’ motion for a protective order. *See Household Defendants’ Opposition to Lead Plaintiffs’ Motion for Protective Order* (Docket No. 201) at 11. In light of their prior argument that post-Class Period documents are freely discoverable in securities fraud cases, defendants’ current position strains credulity.

assured investors that Household did not engage in predatory lending practices or generate revenue from predatory lending practices. See ¶¶83-96, 314, 329-330. In October 2002, however, Household agreed to a settlement with a multi-state group of Attorneys General to eliminate or modify certain of the very lending practices that the Class alleges defendants used to improperly and artificially inflate their revenue during the Class Period. See ¶99. Commentators expected these changes to dramatically impact Household's bottom line: "The real concern is that Household's business model has radically changed after recent settlements with regulators." Brooks Decl., Ex. 11. Analysts downgraded their expectations accordingly, noting that "*the settlement reflects past control weaknesses, managerial missteps, and carries a high degree of execution risk for the future*" Accordingly we're lowering our EPS estimates for 2002 and 2003 . . . and reducing our long term growth outlook." Brooks Decl., Ex. 10 (emphasis added); see also Brooks Decl., Ex. 9 ("We are also reducing our 5 year earnings growth rate from 15% to 12% to reflect the changes required in operations by the settlement."). Thus, following the settlement, investors had one question on their minds: "*Can Household make as much money without predatory lending practices?*" Brooks Decl., Ex. 11 (emphasis added). The Class alleges that Household could not, and the Class is entitled to prove this by comparing pre-settlement revenue generated by predatory lending with the Company's post-settlement revenue after these practices were halted. Because the impact of Household's cessation of predatory lending is relevant to prove the elements of scienter, materiality and damages, the post-Class Period discovery sought by the Class should be allowed.

B. The Post-Class Period Information Sought by the Class Is Relevant to Demonstrate the Impact of Household's Improper Reaging

The post-Class Period information sought by the Class also is critically relevant to the Class' allegation that Household's arbitrary reaging and restructuring practices during the Class Period defrauded investors. See ¶¶107-133. The Class alleges that defendants arbitrarily reaged or restructured delinquent accounts to conceal Household's true level of delinquency which allowed Household to delay charge-offs and maintain inadequate reserves. See *id.* Household's improper reaging practices were the subject of a Securities and Exchange Commission ("SEC") investigation. *The SEC investigation continued after the Class Period ended.* This fact alone is enough to justify post-Class Period discovery related to the Class' reaging allegations.

The SEC, moreover, concluded that Household's reaging practices violated the federal securities laws. Specifically, the SEC found that Household's disclosures regarding its restructure policies were "false and misleading" because they "fail[ed] to present an accurate description of the

minimum payment requirements applicable under the various policies” and Household’s “policy of automatically restructuring numerous loans.” Brooks Decl., Ex. 12.

On March 18, 2003, Household entered into a Consent Order with the SEC and agreed to cease and desist from engaging in improper reaging of delinquent accounts to prevent or delay charge-offs. *Id.* The Class is entitled to compare post-Class Period delinquency, charge-off and reserve data to the information defendants provided to investors during the Class Period in order to assess the impact of Household’s improper reaging. The Class is entitled to demonstrate that Household’s improper reaging was material to investors by, among other things, showing that Household’s delinquency rate, charge-off rate and required reserves increased after the Company stopped its improper reaging practices. Accordingly, the post-Class Period information sought by the Class is relevant and discoverable.

IV. CONCLUSION

For the reasons stated above, this Court should order the production of the relevant post-Class Period information sought by the Class in this submission.

DATED: March 20, 2006

Respectfully submitted,

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DECLARATION OF SERVICE BY EMAIL AND BY U.S. MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on March 20, 2006, declarant served by electronic mail and by U.S. Mail the **THE CLASS' STATEMENT REGARDING POST-CLASS PERIOD INFORMATION SUBMITTED PURSUANT TO THE COURT'S MARCH 9, 2006 DIRECTION** to the parties listed on the attached Service List. The parties' email addresses are as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th day of March, 2006, at San Francisco, California.

/s/ Marcy Medeiros

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