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, - against - HOUSEHOLD INTERNATIONAL, INC., ET AL., Defendants.	Lead Case No. 02-C5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

MEMORANDUM OF THE HOUSEHOLD DEFENDANTS IN OPPOSITION TO THE CLASS' STATEMENT REGARDING POST-CLASS PERIOD INFORMATION

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This memorandum is respectfully submitted on behalf of the Household Defendants in response to Plaintiffs' Statement regarding post-Class Period discovery.

I. INTRODUCTION

Plaintiffs seek additional post-Class Period discovery (the "Additional Discovery") as to 25 of the requests in their First, Second and Third Document Demands. (*See* Attachment A to the Class' 3/20/06 Statement.) The Additional Discovery bears no relation to the events and/or issues during the Class Period (July 30, 1999 through October 11, 2002) — and therefore no relation to the claims at issue in the Complaint. And, granting Plaintiffs' current requests would be unduly burdensome and unfair to Defendants at this late stage of discovery, not to mention cause significant further delays in discovery.

Plaintiffs' assertion that Defendants have unilaterally refused to produce post-Class Period documents with the exception of three requests is inaccurate. As a result of the meet and confer process in connection with Plaintiffs' First and Second Requests for the Production of Documents (the "First and Second Demands"), Defendants have agreed to produce documents dated *after* the Class Period for a significant number of requests if they dealt with events that occurred *during* the Class Period. Moreover, Defendants have also produced documents dated *after* the Class Period for a significant number of requests that by definition would call for such documents.[1] *See* Attachment A (setting forth requests for which Defendants have produced documents outside the Class Period). Defendants have already produced tens of thousands of such documents, including documents dated as far back as 1994 for certain requests and to the present for others.[2]

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1 For example, Defendants have produced relevant documents in response to Plaintiffs' requests relating to Household's 2003 merger with HSBC — Request No. 27 of the First Demand and Request No. 15 of the Second Demand.

2 As Plaintiffs' Statement acknowledges, no response is due to Plaintiffs' [Corrected] Third Request for Production of Documents until April 12; it is therefore premature to discuss the Third Document Demand at this time. Nonetheless, Defendants note that post-Class Period documents for those requests similarly are not relevant to the issues in this case. Additionally, the relevant portions of Defendants' previous briefing on the post-Class Period issues relating to Plaintiffs' interrogatory requests are attached at Attachment B.

II. ARGUMENT

A. Plaintiffs Have Failed to Establish The Relevance of the Post-Class Period Documents Requested

As the Seventh Circuit has indicated, the mere fact that documents *might* be relevant to issues alleged does not itself allow discovery of documents beyond the Class Period. *See Pommer* v. *Medtest Corp.*, 961 F.2d 620, 625 (7th Cir. 1992) ("[t]he truth (or falsity) of defendants' statements and their materiality, must be assessed *at the time the statements are made*, and not in the light of hindsight") (emphasis added); *see also Searls* v. *Glasser*, 1994 WL 523712 (N.D. Ill. Sept. 23, 1994) (denying plaintiffs' argument that discovery outside the class period could have helped prove the class' securities fraud claim) (attached hereto as Attachment C); *In re International Business Machines Corporate Securities Litigation*, 163 F.3d 102, 111 (2d Cir. 1998) (district court properly declined to expand time period for discovery given that information sought was only minimally relevant and where compliance would have placed definite burden on defendant).[3]

Plaintiffs have represented that their Additional Discovery seeks documents concerning the impact of changes in policy on the Company's financial statements in 2003. Noticeably absent from Plaintiffs' submission, however, is any discussion of *why* or *how* the Additional Discovery would be relevant to the issues and events *within the Class Period.* Instead, Plaintiffs have simply relegated the substance of the Additional Discovery to footnotes and devote much of their Statement to a claim that the investigation of Household by the SEC "is enough to justify

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[3] The cases cited by Plaintiffs are inapposite. At issue in some of those cases was whether pre-class period information could be employed in pleadings, not whether such information was discoverable. *In re Scholastic Corp. Securities Litigation*, 252 F.2d 63, 72 (2d. Cir. 2001); *In re U.S. Aggregates, Inc. Securities Litigation*, 235 F. Supp. 2d 1063, 1068, n.3 (N.D. Cal. 2002). Other cases that do involve discovery address particularized requests for post-Class Period documents based upon a showing of relevance, and caution against blanket restrictions on discovery within the Class Period — a concern not at issue here given Household's significant production of documents both before and after the Class Period. *See, e.g., In re Seagate Technology II Securities Litigation*, 1993 U.S. Dist. LEXIS 18065, at *4 (N.D. Cal. June 15, 1993). Plaintiffs also make much of Household's attempt to obtain post-Class Period investment-related documents in its (currently quashed) subpoenas to investment advisors of the named Plaintiffs. However, it is well-settled that in exploring issues of reliance, it is relevant to examine a party's investment history and strategies both before and after the Class Period. *See Feldman v. Motorola*, 1992 WL 137163, at *1 (N.D. Ill. June 10, 1992) (attached hereto as Attachment D). Thus, there is nothing inconsistent in Household's prior position on a wholly different discovery issue.

post-Class Period documents." Pl. Br. at 4. As Plaintiffs are well aware, Defendants have produced the *entire* approximately 2.1 million page SEC production, and have agreed — since the beginning of the discovery process — to produce documents *dated to the present* to the extent they relate to the SEC investigation, or other government investigations into Household's lending practices and policies, reage practices and policies and/or the earnings restatement that took place during the Class Period. (Request Nos. 1-3 of the First Demand)[4]

Plaintiffs' current Additional Discovery seeks documents concerning discount points, charge off and re-age policies, internal audits, loss reserves and Credit Risk Committee Meetings through a time period more than a year outside of the Class Period. As Plaintiffs' securities fraud claims turn on the truth or falsity of Defendants' disclosures *at the time they were made*, these requested documents — which do not relate to events at issue during the Class Period and many of which are not even referenced in the Complaint — would be highly unlikely to shed light on any relevant issues. Plaintiffs' bare conclusory statements of relevancy do not change this fact.

B. Granting Plaintiffs' requests at this late stage of discovery would be unduly burdensome and unfair to Defendants

Assuming, *arguendo*, that Plaintiffs could show that their Additional Discovery may somehow be relevant to their claims, the burden imposed on Defendants in producing such documents would far outweigh any such minimal or speculative benefits — especially at this late stage in the litigation. As this Court said: "[W]hen a party says this is going to be severely burdensome . . . I do look at relevance in even a different way." (*See* 2/15/06 Tr. at 34.)

In connection with responding to Plaintiffs' First and Second Document Demands, Defendants have interviewed more than 200 individuals, collected and reviewed hard-copy and/or

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[4] Such documents include *inter alia*, internal communications regarding the SEC investigation, correspondence with the SEC, transcripts of all SEC depositions (some of which were held in 2004), and Household's submissions to the SEC in late 2003 and late 2004. On a separate but related note, Plaintiffs continue to misrepresent the substance of the SEC Consent Decree, attached to the Brooks' Declaration ("Brooks Decl.") at Exhibit 12. Specifically, the SEC did not find that "Household's reaging practices violated the federal securities laws," as Plaintiffs' claim. Pl. Br. at 4. Rather, the Consent Decree addresses certain *disclosures* about Household's reage policies, not the practices *vel non*.

electronic documents from approximately 150 individuals and have produced documents from more than 125 individuals and more than 10 departments. In addition, Defendants have collected, reviewed and are in the process of producing native format emails and attachments for nearly 300 custodians. Defendants have spent thousands of hours collecting, reviewing and producing millions of pages of documents to Plaintiffs based on the parties' understanding that documents created outside the Class Period would be produced for only certain of Plaintiffs' requests. And while Plaintiffs reserved their rights to seek additional post-Class Period discovery in the meet and confers, Plaintiffs have waited until the eleventh hour to make their request to the prejudice of Defendants.[5] Contrary to Plaintiffs' position that any burden is Defendants' own doing, Defendants have continuously expressed a willingness to meet and confer with Plaintiffs about any additional requests for which Plaintiffs *reasonably believed* documents outside the Class Period should be produced.[6] Additionally, more than three months ago, Defendants again offered to meet and confer with Plaintiffs on this matter, but never received any response. (*See* Letter of Craig S. Kesch, Esq. to Sylvia Sum, Esq. dated December 7, 2005, attached as Exhibit 6 to Brooks Decl.)

Since many of the Plaintiffs' Additional Discovery requests are so wide-ranging, there is no one individual, or even one department, from which to collect all responsive documents, and thus no way to ensure a complete production without a voluminous and burdensome collection and review process. *See, e.g.*, Request No. 10 of the First Demand (all documents and communications concerning Household's policies and practices relating to loan delinquencies, charge-off and reaging of loans, including all documents provided to or received from Andersen or

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5 The correspondence cited by Plaintiffs in support of their assertion that they "urged" Defendants to produce post-Class Period documents for the requests at issue here establishes that this is not the case. For example, Exhibits 1 and 2 to Brooks Decl. confirm that Request No. 5 of the Second Demand is the only Additional Discovery request for which Plaintiffs previously requested post-Class Period documents. And, although not acknowledged by Plaintiffs, Defendants *agreed* that they would produce such documents in response to Request No. 5 to the extent the documents relate to matters arising during the Class Period. (*See* Attachment A)

6 For example, in response to Plaintiffs' November 1, 2005 letter which identified 52 types of "reports" for which Plaintiffs believed additional documents should be produced (attached as Exhibit 3 to Brooks Decl.), Defendants produced additional post-Class Period documents where they related to issues and/or events during the Class Period.

KPMG regarding loan delinquencies, charge-off and reaging of loans).[7] If the Court were to allow the Additional Discovery, Defendants would essentially have to re-do the entire interview, document collection and review process, which has taken more than 16 months to date.

Despite having received more than four million pages of documents from Defendants, Plaintiffs apparently believe they are still unable to prove their claims. As this Court observed: "[I]f you can't prove your case with four million pieces of paper, you don't have a case is what I think." (*See* 3/9/06 Tr. at 79.) In a last ditch attempt to salvage their case and continue fishing, Plaintiffs are attempting to force Defendants to re-do virtually their entire document production process with less than two months before the close of fact discovery. Even if this Court is contemplating an extension of the current fact discovery deadline, the parties clearly have enough to do already. In view of Plaintiffs' inability to show how such information would be relevant to the claims at issue, imposing such an enormous burden on Defendants at this late stage of discovery is unfair and unwarranted. *See International Business Machines*, 163 F.3d at 111 (discovery time period would not be expanded where information sought was only minimally relevant and compliance would have placed definite burden on defendant).

CONCLUSION

For the foregoing reasons, the Court should not grant Plaintiffs the additional post-Class Period discovery that they currently request.

Dated: March 31, 2006
Chicago, Illinois

Respectfully submitted,

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By: /s/ Adam B. Deutsch

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[7] Plaintiffs appear to have inadvertently copied the text of Request No. 11 under the heading for Request No. 10 in Attachment A to their Statement.

-and-

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CERTIFICATE OF SERVICE

Adam B. Deutsch, an attorney, certifies that on March 31, 2006, he caused to be served copies of the Memorandum of the Household Defendants in Opposition to the Class' Statement Regarding Post-Class Period Information, to the parties listed below via the manner stated.

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