

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

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|---|-------------------------------|
| 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.) | |
| _____) | |

**REPLY BRIEF IN SUPPORT OF THE CLASS' MOTION FOR ADDITIONAL
DEPOSITION TIME PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE**

30(d)(2)

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In this multi-billion dollar securities fraud case, the Class requests the Court's authority to extend the deposition time to two days for three key fact witnesses, Lisa Sodeika, Robin Allcock and Daniel Pantelis, and the four named individual defendants, William Aldinger, Gary Gilmer, Joseph Vozar and David Schoenholz. As demonstrated in the opening brief, given the scope of deposition topics for these witnesses, the relevant time period (39 months) and the number of germane documents, the Class has shown good cause for this extension pursuant to Fed. R. Civ. P. 30(d)(2). In these circumstances, most defendants would have agreed to the requested extensions without the need for this motion. This is reflected in the opposition brief from the Household Defendants, which offers only unsubstantiated rhetoric and general attacks as rebuttal to the Class' good cause showing.

The same point applies to the Class' motion to compel the provision of a resume and similar document from Household International, Inc.'s ("Household") Human Resources ("HR") department for all witnesses going forward. The opposition brief admits that production of these documents is proper, but suggests it is "moot" based on an illusory promise to produce a "current" resume if it already exists in the files rather than an unequivocal commitment to produce both a resume and the HR document. Significantly, both these issues were discussed at the June 15, 2006 status conference and the Class has tailored this motion to conform to the Court's comments. The Court should grant this motion in full.

I. LEGAL ARGUMENT

A. The Class Has Shown Good Cause for Additional Deposition Time as the Household Defendants' Main Arguments Are Irrelevant and Untrue

Under the case law cited in the parties' briefs, this Court must upon a showing of good cause authorize a deposition to proceed greater than seven hours. *Mother & Father v. Cassidy*, 338 F.3d 704, 712 (7th Cir. 2003) (applying good cause standard); *Malec v. Trs. of Boston College*, 208 F.R.D. 23, 24 (D. Mass. 2002). The Class has met this burden as to all witnesses at issue here. First,

with respect to the Sodeika deposition, the parties concur that Ms. Sodeika held a critical position for approximately two years.¹ Moreover, there is no dispute that 62,000 documents came from her files nor that additional important topics remain to be covered at her deposition. The Class' Memorandum in Support of Motion for Additional Deposition Time Pursuant to Federal Rule of Civil Procedure 30(d)(2) ("Opening Mem.") at 8. These points establish good cause for an additional deposition day with Ms. Sodeika. The Class has made a similar showing for an additional day for the individual defendants and other two facts witnesses at issue, who held equally important roles and who, like Ms. Sodeika, are key witnesses. The Household Defendants do not rebut this showing of good cause. The Class addresses each of these points in greater detail below.

B. The Class Has Shown Good Cause for an Additional Day to Depose Ms. Sodeika

The Class has already deposed Ms. Sodeika for slightly less than seven hours. In the opening brief, the Class laid out the topics discussed at that deposition and the remaining topics. *Id.* In opposition, the Household Defendants do not dispute that each of the topics referenced are important areas and need to be covered in Ms. Sodeika's deposition. Instead, they raised factually and legally flawed arguments, including the erroneous contention that the Class was inefficient as to the previous deposition and that the Class could obtain information respecting a part of one topic (the internal investigations into predatory lending complaints) from a prior deposition. These arguments do not rebut the Class' showing of good cause.

¹ The Household Defendants concur that Ms. Sodeika's position of assistant to Gary Gilmer, an individual defendant, was a critical role. However, they assert without support that she held this position only from August 2001 to December 2002. *See* The Household Defendants' Memorandum of Law in Opposition to Lead Plaintiffs' Motion for Additional Deposition Time Pursuant to F.R.C.P. 30(d)(2) ("Defs' Opp.") at 8. This assertion is inaccurate as Ms. Sodeika testified that she held the position from approximately the end of 2000. *See* Exhibit 1 at 24:16-24 to the Declaration of D. Cameron Baker in Support of the Class' Motion for Additional Deposition Time Pursuant to Federal Rule of Civil Procedure 30(d)(2), filed under seal on June 29, 2006 ("Baker Decl.").

In the opening brief, the Class identified five topics remaining to be addressed with Ms. Sodeika: 1) her involvement in internal investigations, such as the Effective Rate Complaint investigation and the Bellingham, Washington branch office investigation; 2) the settlement discussions with the Attorneys General (AGs) and the resulting \$484 million settlement agreement; 3) communications with the consumer group, ACORN, the AGs and the various state regulators regarding predatory lending complaints; 4) the development of Household's "best practices" and 5) Household's internal discussions on the foregoing topics. *Id.* The Household Defendants do not challenge the importance of these topics nor, with the exception of part of topic 1, do the Household Defendants contest that these topics need to be addressed with Ms. Sodeika at her deposition. These points establish good cause for authorizing an additional day of deposition for Ms. Sodeika. Indeed, in most cases, including *In re Sulfuric Acid Antitrust Litig.*, 230 F.R.D. 527 (N.D. Ill. 2005), cited by the Household Defendants, the parties normally stipulate to such an extension. *See id.* at 532 (prior to the motion, the deposition had run 17 hours).

The Household Defendants cannot rebut this showing of good cause by merely pointing to Ms. Sodeika's prior deposition in the *Drury* case. Significantly, they themselves only assert that the *Drury* deposition covered a part of the first topic, the internal investigations into predatory lending. Defs' Opp at 8. In truth, the *Drury* deposition focused principally on the Bellingham, Washington branch investigation, where Melissa Drury worked, and does not cover the Effective Rate Complaint investigation undertaken by Household, which was nationwide in scope. Additionally, as the Household Defendants acknowledge, the *Drury* case was a wrongful termination case. *Id.* As a result, the questioning in the deposition approached the predatory lending issues at the Bellingham office from that angle and did not yield responses useful in this case. As the Class has a different litigation interest than Ms. Drury, the Class is entitled to question Ms. Sodeika on this subtopic. *See Moore v. CVS Corp.*, Civil Action No. 7:04cv054, 2005 U.S. Dist. LEXIS 3798 (W.D. Va. Mar. 11,

2005)(authorizing additional time for co-defendant); *see also* Fed. R. Civ. P. 30 Advisory Committee Notes to 2000 Amendment (“[i]n multi-party cases, the need for each party to examine the witness may warrant additional time”).

In sum, the *Drury* deposition is not an adequate substitute for deposing Ms. Sodeika on the identified topics. Further, the Class had already incorporated in its estimate of additional time going forward an assessment of the marginal utility of the *Drury* deposition. (As a final point, we note that, to date, the Household Defendants have not offered and do not offer to stipulate to the admissibility of Ms. Sodeika’s *Drury* deposition.)

As a secondary argument, the Household Defendants assert that the Class was inefficient in the prior deposition session and thus, should not be granted more time. As a legal proposition, no court has held any party to the exacting standard posited by the Household Defendants. *See Moore*, 2005 U.S. Dist. LEXIS 3798, at **6, 10 (rejecting argument that “the seven-hour limit imposed by Rule 30(d)(2) is near absolute absent an extremely rigorous showing of good cause requiring the court to review transcripts of the actual deposition”).

Indeed, the cases cited by the Household Defendants do not support this proposition. *See Benson v. St. Joseph Reg’l Health Ctr.*, Civil Action No. H-04-04323, 2006 U.S. Dist. LEXIS 28795, at *15 (S.D. Tex. May 1, 2006)(rejecting further deposition time where the deposition covered “most, if not all, areas” at issue); *Security Ins. Co. v. Trustmark Ins. Co.*, 218 F.R.D. 29, 32 (D. Conn. 2003) (rejecting additional time where the one topic at issue was discussed “extensively over the course of his seven hour deposition”); *Beneville v. Pileggi*, Civil Action No. 03-474 JJF, 2004 U.S. Dist. LEXIS 13586, at *3 (D. Del. July 19, 2004)(rejecting request for additional time where party presented no evidence by which the Court might determine if additional time is necessary). Further, this Court earlier rejected as “abusive” the notion that it would have to parse through the entire deposition transcript on a question by question basis. *See Ex. B* at 23:21-24 to the

Declaration of D. Cameron Baker in Support of the Class' Motion for Additional Time Pursuant to Federal Rule of Civil Procedure 30(d)(2), public version filed on June 29, 2006 ("I'm not going to start reading eight-hour depositions That is abusive to me. Okay?"). Nonetheless, by citing to individual questions and short out-of-context snippets of transcript, this is precisely the review that the Household Defendants demand. Defs' Opp. at 9 ("Only a full reading of the transcript can convey"); *see also id.* at 10-11.

Even if the Court were to accept this invitation, the Household Defendants could not make a factual showing that the Class was inefficient at the Sodeika deposition. Indeed, defendants' blunderbuss attacks are made frequently without any citation to the deposition transcript and prove to be false upon reading the transcript. A prime example is the accusation that a large focus of the prior Sodeika deposition was on individual borrower complaints. When first made on page 6, the Household defendants provided no supporting citation. Later, on page 11, they return to this accusation and cite as support three separate passages that total five pages from the 273-page transcript. *See id.* at 11. These three passages, even if accurately described,² do not show that "great amount of time" was spent on individual complaints. (In making this argument, the Household defendants ignore the fact that Ms. Sodeika herself investigated individual complaints: "[If Mr.

² They are not. There are other examples of the Household defendants' mischaracterization of the testimony and questioning. These include the discussion pertaining to Exhibit 10 on page 11, which suggests that the Class devoted five pages to the text of the exhibit. However, a review of the cited passage reveals that the questioning went to Ms. Sodeika's independent substantive knowledge, not whether she recollected the document. *See generally* Baker Decl., Ex. A at 65:11-69:2. Similarly, in the argument relating to the ACORN meeting testimony on page 10, the Household Defendants mix questioning regarding Household's first meeting with ACORN with questioning regarding Ms. Sodeika's first meeting with ACORN, a point as to which the witness herself was likewise confused. *Compare* Defs' Opp. at 10 *with* Baker Decl., Ex. A at 152, 157-58 and 179. As to these and other passages, the Household Defendants apparently hope that the Court will not accept their invitation to look at the text of the cited passage, but solely rely upon their re-characterization of it.

Gilmer's] office would take a customer complaint . . . I would investigate that complaint”
Baker Decl., Ex. A at 31:21-23.)

Nor should the Court fault the Class for not commencing the deposition on the topic of the AG discussions, which started in mid-2002. The Court should not micro-manage depositions down to the level of requiring a particular order of questioning. Also, the Class' decision to proceed chronologically, *i.e.* start with the prior ACORN discussions and the numerous earlier investigations by the various state regulators, was logical. It put the subsequent AG settlement discussions in their proper context. Further, Ms. Sodeika's knowledge of the ACORN and state regulator complaints has independent evidentiary importance, establishing when Household and the individual defendants were on notice regarding the predatory lending allegations and the need to disclose the investing public of the risks associated with Household's predatory lending practices.³ Thus, there was no inefficiency in commencing with the prior ACORN discussions and state regulator investigations.

Nor was the Class inefficient for taking breaks. This allegation, which appears on page 8, omits the fact that Household counsel requested the first break, which lasted 12 minutes, after only an hour of deposition. *See* Baker Decl., Ex. A at 52:11-53:1 (statement of Mr. Kavalier requesting break after “one hour” and showing elapsed time). The remainder of the breaks, exclusive of lunch, followed this same general schedule. Additionally, breaks are for the convenience of the witness and the court reporter. Taking breaks does not show any inefficiency on the part of the Class.

Furthermore, if conduct at the deposition is to be considered, the Court must also consider the Household Defendants' conduct at the Sodeika deposition that impeded the deposition so as to

³ These points hold true with respect to establishing Ms. Sodeika's knowledge on other points, such as her awareness of Lew Walter, a corporate trainer involved in the spreading of the Effective Rate predatory lending practice, the misrepresenting of the loan interest rate when the EZ Pay Plan was involved. *See* Defs' Opp. at 11.

entitle the Class to additional time. Fed. R. Civ. P. 30 Advisory Committee Notes to 2000 Amendment (party entitled to more time if the conduct of the deposition impeded by opposing counsel or the witness). For example, the time spent on Ms. Sodeika's background could have been shortened if Household had produced her resume or HR record. Further, at the Sodeika deposition, Household's counsel wasted time by explicitly coaching the witness and making speeches as to the import of exhibits and testimony. *See id.* at 23:5-14, 89:9-90:6, 110:2-6, 121:13-22, 132:15-18, 133:134:5, 163:9-18, 243:16-18. The Class notes that similar coaching and speeches have taken place at nearly every deposition,⁴ including a pronouncement by Household counsel that they will not limit their objections to the form as prescribed by the Federal Rules of Civil Procedure. Ex. 1 at 86 to the Reply Declaration of D. Cameron Baker in Support of the Class' Motion for Additional Deposition Time Pursuant to Federal Rule of Civil Procedure 30(d)(2) ("Baker Reply Decl."). These interruptions not only took time but required additional questioning of the witness to obtain substantive answers to the questions.

As a fall back, the Household Defendants rely upon general attacks on the Class' approach to discovery in general, to the Class' conduct in other depositions, and to the claim that the Class has served over 85 interrogatories when the real number is 56. *See, e.g.,* Defs' Opp. at 1-2, 7. These

⁴ A favorite tactic is Household counsel stating that he or she does not understand the question, but the witness can answer if he or she does. In most cases, not coincidentally, the witness then responds that he or she likewise does not understand the question. *See, e.g.,* Baker Reply Decl., Ex. 2 at 10, 12, 35-36, 40, 47-48; Baker Reply Decl., Ex. 4 at 67, 71-72, 78-79, 89, 129. In more egregious cases, Household counsel actually testifies for the witness or starts asking questions of the witness during the middle of the Class' examination. *See* Baker Reply Decl., Ex. 4 at 80, 87, 97, 159-61; Baker Reply Decl., Ex. 3 at 50-51 (Household counsel questioning the witness). Some examples can be quite humorous. At the O'Han deposition, Household counsel raised the following objection: "I want to object to that on grounds that it assumes facts, it's vague, and probably some other reasons I can't think of right now." Baker Decl., Ex. 4 at 72; *see also* Baker Reply Decl., Ex. 3 at 42-43 (objecting based on lack of foundation and then objecting to the question, "Have you seen this report before?"). Another objection raised with frequency is made as to any document that is not dated within the Class Period, despite the fact that the Household Defendants produced the documents. These constant interruptions impede the fair examination of witnesses at deposition.

attacks are irrelevant to this motion – they are also false and framed in inappropriate hyperbole. However, because these attacks have appeared repeatedly in this litigation, the Class will respond to them now.

In a familiar theme, the Household Defendants claim that the Class has engaged in “asymmetrical warfare.” While discovery is asymmetrical in this case, it does not follow that the Household Defendants are at a disadvantage nor that the Class has been the aggressor in waging discovery battles. To the contrary, the Household Defendants are at a distinct advantage because they need take no real discovery of the Class in order to defend their case while the Class needs discovery from defendants as well as third parties in order to fully develop evidentiary support for its allegations at trial. As a result, the Household Defendants are free to engage in such conduct as failing to stipulate to extended depositions, explicit coaching of witnesses, refusing to provide resumes and miscounting interrogatories, all because they are “without fear of anything remotely approaching reciprocal treatment.” Defs’ Opp. at 1. And, as a tactic to insulate them from the consequences of this conduct, the Household Defendants “poison the well”: they accuse the Class of precisely the conduct that they themselves have pursued in the hopes that this Court will take a “pox on both your houses” approach when the Class raises the issue with the Court.

The Household Defendants use this same tactic with respect to alleging the Class is unwilling to streamline depositions. Again, the irony involved in the Household Defendants making this allegation is striking. The truth of the matter is that the Class has tried to streamline depositions, particularly in light of the Household Defendants’ adamant refusal to extend depositions beyond seven hours, or for that matter identify individuals with knowledge. *See* Reply In Support of the Class’ Motion to Compel Responses to Third Set of Interrogatories at 3, 4. To this end, the Class has proposed a single consolidated deposition for certain individuals appearing both as individual deponents and as deponents for the Company under Rule 30(b)(6). This request was rejected by the

Household Defendants, who at the same time complain that even a single day of deposition is overly burdensome to the witnesses. *See id.* at 2. The Class also requested that the Household Defendants admit the authenticity of documents authored or received by the witness or in their electronic files. To date, the Household Defendants have not done so.

In sum, the Class has shown good cause for an additional day of deposition with Ms. Sodeika, particularly in light of the volume of Ms. Sodeika's documents, her key role and the number of topics remaining to be discussed. *See Jensen v. Astazeneca LP*, Civil No. 02-4844 (JRT/FLN), 2004 U.S. LEXIS 19089, at *8 (D. Minn. Aug. 30, 2004) ("Examples of grounds for granting an extension include whether . . . the examination covers events occurring over a long period of time or extensive documents . . .").

C. There Is Good Cause to Depose the Other Witnesses Over Two Days

With respect to the remaining witnesses, the Class has made a similar showing of good cause. These witnesses are either key factual witnesses or individual named defendants. Further, as indicated in the opening brief, a ruling by this Court on this issue now should properly frame the parties' discussions on this issue going forward. Given the history of the Sodeika deposition, this issue is ripe for decision now. Accordingly, the Court should grant the Class a further day of deposition with respect to each witness.

In the opening brief, the Class demonstrated the factual breadth of this case in terms of years and number of documents. Further, the Class demonstrated good cause for two day depositions for each of the witnesses at issue by setting forth the specific topics to be covered and the number of documents at issue. *See* Opening Mem. at 7-10. The Class pointed out that the individual defendants' refusal to date to respond to the Class' interrogatories highlighted the need for additional time with these witnesses. *Id.* at 7. Finally, the Class demonstrated that in light of the Sodeika deposition and the parties' meet and confers, the issue was ripe for Court adjudication.

The Household Defendants do not contest these substantive points. Instead, they seek delay of the Court's ruling until each deposition has been taken for seven hours and they have made a "good faith" determination of whether to extend the deposition at that time. Defs' Opp. at 13. This would be an inefficient manner to proceed and would foster unnecessary delays and motions.

First, the Household Defendants now have all the information that they need. The depositions at issue are not ones where an hour or two of additional time is needed, but a full day of extra time. The parties know this now. In cases of this magnitude and scope, it is routine to agree in advance to extended depositions for key witnesses. *See, e.g., Sulfuric Acid*, 530 F.R.D. at 532 (17-hour deposition). As stated in the Advisory Committee Notes to 2000 Amendment, "[it] is expected that in most instances the parties and the witness will make reasonable accommodations to avoid the need to resort to the court" and "[p]reoccupation with timing is to be avoided." Fed. R. Civ. P. 30 Advisory Committee Notes to 2000 Amendment.

Further, as evidenced by the Sodeika deposition, awaiting a "good faith" determination at the end of seven hours means nothing but future motions and further delays. At the conclusion of the Sodeika deposition, Household's counsel abruptly concluded the deposition without any discussion of what subjects remained and how much time was needed. Baker Decl., Ex. A at 270. Instead, the Household Defendants made their "good faith" determination based on their belief that the Class acted inefficiently. *Id.* at 271-73. Delaying the ruling on additional time for the two other fact witnesses and the individual defendants will only lead to further motion practice respecting the Class' alleged inefficiency.

Significantly, although the Household Defendants assert that there is an "exhaustion" requirement, only some cases look at this issue. Others go precisely the opposite way, requiring the party to file the motion before the deposition. Indeed, in *Nicholas v. Wyndham Int'l, Inc.*, Civ. No. 2001/147MR, 2002 U.S. Dist. LEXIS 27111 (D.V.I. Nov. 18, 2002), which is cited by the

Household Defendants, the court denied the request for additional time because the party seeking additional time “should have filed a motion in such regard prior to [the] deposition.” *Id.* at *4. Similarly, in *Elmorsy v. Ramanand*, Civil Action No. 04-2659 (DMC), 2005 U.S. Dist. LEXIS 30191, at *6 (D.N.J. Nov. 9, 2005), *aff’d*, Civil Action No. 04-2659 (DMC), 2005 U.S. Dist. LEXIS 30172 (D.N.J. Nov. 29, 2005), the court granted the motion for additional time (14 hours in total) before the deposition commenced. Further, unlike the cases cited by the Household Defendants, here the Class has met the exhaustion requirement via its experience with the Sodeika deposition. *See General Elec. Co. v. Indemnity Ins. Co.*, Civ. No. 3:06-CV-232 (CFD), 2006 WL 1525970 (D. Conn. May 25, 2006)(request prior to any discovery made as part of initial discovery conference was premature). That experience shows that the Household Defendants’ offer to make a “good faith” determination after seven hours is illusory. Further, that experience shows that the Class will incur unnecessary expenses and delays in terms of motion practice and in completing a deposition that should already be done. A ruling from the Court now will not only avoid further motions on these witnesses but will also provide critical guidance on other witnesses. This issue is thus ripe.

The Household Defendants also make several erroneous factual arguments. First, they suggest that Mr. Pantelis has no involvement in other business units. Defs’ Opp. at 6. To the contrary, as an officer of the Corporate Credit Management department, Mr. Pantelis interacted with the credit risk officers of the underlying business units and gathered information as to all of the business units’ reage/charge-off policies as well as other credit risk matters at the corporate level. The 94,620 Pantelis documents produced by Household demonstrate Mr. Pantelis’ involvement in every business unit. Thus, his deposition will cover multiple business units as well as corporate management.

Additionally, as to the Pantelis deposition from the Securities and Exchange Commission (“SEC”) proceeding, as the result of the Class’ document discovery, the Class has numerous

documents relating to Mr. Pantelis that the SEC did not have. These additional documents will need to be covered in the Pantelis deposition.

The Household Defendants also suggest that the Class has previously overestimated the need for additional time as to other depositions, citing as an example the Lew Walter deposition. However, contrary to the Household Defendants' assertion, the Class never stated that it needed Mr. Walter for the full seven hours but requested that he be made available for two half-days in the belief that his deposition would be longer than a half-day, which it was. More importantly, as to the Sodeika deposition, it was the Class that correctly estimated the need for additional time and the Household Defendants that did not.

As a final argument, the Household Defendants note that the Class has not identified the likely exhibits prior to the deposition. Significantly, this has not impeded the prior depositions except the Sodeika deposition as all have been completed in a timely manner. Thus, it appears there is no need for this identification. More importantly, the Household Defendants seek to obtain a tactical advantage on the Class in the "assymetrical warfare." As discussed above, it is unlikely that the Household Defendants will have to reciprocate in kind to any real degree. Thus, only they get the benefit of prior identification, which would assist their ability to coach the witness. Further, only the Class would be saddled with the additional burden of prior identification, a burden magnified by the fact that frequently the documents at issue are not provided in a timely manner. Finally, if the Household Defendants seek a Court order as to this issue, they should file a motion and demonstrate good cause, not simply raise the issue in an opposition brief.

For the foregoing reasons, there is good cause to rule now that the Class may have an extra day of deposition for Ms. Sodeika, Ms. Allcock, Mr. Pantelis and the four named individual defendants.

D. Household Should Produce a Resume or Internal HR Document Relating to the Household Positions Held by the Witnesses

As noted above, the Class previously requested a resume and an HR document for all deponents. The Household Defendants acknowledge that they should produce these documents, but contend this portion of the motion is “moot” based on an illusory offer to produce “current” resumes if they currently “exist” in the files. Defs’ Opp. at 15. The Court should not rely upon this illusory offer but compel the production of a resume and the HR document for each deponent. Production of these documents imposes no burden and would increase the efficiency of depositions. Provision of these documents will prevent the “meandering” into the witness’ background that the Household Defendants decry and will allow the Class to target those prior positions where the witness was likely to obtain relevant information or experience.

II. CONCLUSION

For the reasons stated above, the Class’ motion should be granted. The Class has shown good cause for extending the depositions of Ms. Sodeika, Ms. Allcock, Mr. Pantelis and the four named individual defendants. Further, the Class has shown good cause for the Court to compel Household to the produce a resume and the Household HR document for each deponent.

DATED: July 21, 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 July 21, 2006, declarant served by electronic mail and by U.S. Mail the **REPLY BRIEF IN SUPPORT OF THE CLASS' MOTION FOR ADDITIONAL DEPOSITION TIME PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 30(d)(2)**

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of July, 2006, at San Francisco, California.

s/ Marcy Medeiros

MARCY MEDEIROS