

**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' AMENDED MEMORANDUM IN SUPPORT OF MOTION REGARDING
STATE AGENCY DOCUMENTS**

I. INTRODUCTION

At the August 10, 2006 status conference hearing, the Class raised with the Court an issue concerning Household International, Inc.'s ("Household") alleged inadvertent production of documents relating to state regulatory agencies and the possibility that these documents may be subject to recall. Since that hearing, the Class has become more alarmed by this situation, which has already led to the postponement of one key deposition and threatens the newly set discovery cut-off of January 31, 2007. Accordingly, the Class brings this motion to require Household 1) to identify a) all the documents at issue as required by the Protective Order, b) contact information for the relevant state officials, and c) a list of the potential deponents at issue and 2) to cooperate with the Class in obtaining release of the documents at issue. The Class further requests that the Court set a briefing schedule so as to ensure timely resolution of this issue.

II. ARGUMENT

The state regulatory agencies, which number 27 in total, conducted bank examinations similar to those conducted by the federal regulatory agencies. However, the state regulatory agencies were more focused on Household's compliance with the predatory lending laws and regulations and thus, their reports document Household's engagement in predatory lending practices. A good example of these reports is the Washington State Department of Financial Institutions Expanded Report of Examination for Household Finance Corporation III dated April 30, 2002, which is attached as Exhibit 2 to the [Corrected] Amended Consolidated Class Action Complaint for Violation of the Federal Securities Laws. This report describes the widespread nature of Household's predatory lending practices. As the Court will appreciate, all state agency-related documents discussing Household's predatory lending practices are highly relevant to the Class' predatory lending allegations, including the elements of scienter and falsity.

Not surprisingly, Household would prefer to see these documents “recalled” by the state regulatory agencies and has *sub silentio* been engaged in seeking this very result. Household has apparently been aware of the inadvertent production since it commenced reviewing the 21 boxes of Robin Allcock’s documents in early June. Indeed, on July 28, 2006, during the deposition of Paul Creatura, instructions by defense counsel clearly demonstrate their knowledge of the state agency issue. Ex. O at 185 to the Declaration of D. Cameron Baker in Support of the Class’ Amended Motion Regarding State Agency Documents (“Baker Decl.”).¹ Nonetheless, on July 31, 2006, when Household made the Allock documents available for this production, it merely noted that some documents were being withheld from production due to state regulatory agency issues.² Upon a request for clarification from the Class, via letter dated August 8, 2006, Household again indicated that this issue pertained to only Allock documents and that they were in contact with the relevant agencies to address this limited issue. *See* Baker Decl., Ex. D. However, attached to the August 8, 2006 letter was a sample letter from Household’s counsel to one of the agencies that stated ***previously inadvertently produced*** documents were also at issue. When confronted with this issue at the August 10 status conference, counsel for Household indicated that Household had requested that the state agencies “waive” any claims of confidentiality. Exhibit 1 at 15, attached hereto. This is

¹ Q: Were you aware that Texas regulators considered the EZPay fee a – EZPay fee charge a violation?

MR. OWEN: I’m going to object to the form of the question and instruct the witness not to respond to it on account that it relates to the agency issue, and ask for him to indicate what the position was of that state agency.

Id. at 185-86.

² Copies of the relevant communications between the parties are attached as Exhibits A to N of the accompanying Baker Decl.

untrue – Household merely requested “guidance” from the agencies.³ Further, in seeking this “guidance,” Household neglected to inform the state agencies of highly relevant details, such as this case involves predatory lending issues and that the state agency documents are highly relevant to this issue, that the federal regulatory agencies have already released their predatory lending documents based on those agencies’ conclusion that the documents are highly relevant. Instead, Household noted merely that the state agency documents “may be responsive” to some discovery requests in some unidentified litigation. *See* sample letter attached to Baker Decl., Ex. D.

Since August 8, 2006, the Class has requested that Household provide information regarding this issue so as to enable the Class to assess the situation and to take pro-active steps. As required by ¶28 of the Protective Order, Household must identify the inadvertently produced documents within ten days of the discovery of the inadvertent production. Here, Household acknowledges that it made this discovery during the course of reviewing the Allcock documents, which were made available on July 31, 2006. However, to date, Household has not provided any comprehensive list of the documents at issue.

Instead, Household has provided only a list of those documents relating to the five state agencies that have requested the documents be recalled.⁴ However, Household withheld from the Allcock production all documents relating to any state agency that has not previously provided authorization to release. To be consistent with its approach on the Allcock documents, Household

³ As counsel for Household informed the Class, “The letters were not formal requests for release of documents . . . and they did not advocate any position. They were simple letters saying please let us know how to proceed.” Baker Decl., Ex. G at 1 (August 10, 2006 email from Patricia Farren); *see also id.* (“[W]e took the logical step of asking . . . the relevant agencies for guidance.”)

⁴ This preliminary list indicates that there are approximately 7000 pages at issue for those five agencies. However, the Class has already found that Household’s list is over-inclusive. This over-inclusive approach also occurred in the federal agency document issue.

should identify within a day all previously produced documents where it did not or does not have state agency authorization as required by ¶28 of the Protective Order.

Additionally, as indicated above, since at least August 2, 2006, Household has been engaged in *ex parte* communications with the relevant state agencies. In these communications, Household has not provided the state agencies with a full and accurate description of this litigation and the relevance of their documents. Perhaps not coincidentally based on Household's misleading information, five states have already indicated that they would like the documents recalled. Further, Household has indicated that the Class must be the one to request release of these documents. At the same time, Household refuses to provide the contact information for the state officials who have responded to Household except where the state has already decided not to authorize release. The contact information for all state officials is necessary for the Class to make an effective and timely request for the release of the documents. Each day that passes without the Class' contacting these officials will likely result in further decisions to request recall of additional documents and thus, more prejudice to the Class, a point that no doubt underlies Household's unwillingness to provide the contact information. Thus, the Court should order Household to provide within a day the full contact information for all state officials that responded to Household.

The Class also requests that the Court order Household to identify all depositions that may be impacted by this issue. As noted earlier, this issue impeded the deposition of Mr. Creatura. *See Baker Decl., Ex. O.* Further, the Class has already postponed one deposition, the Dennis Hueman deposition,⁵ because of this issue and believes that the depositions of Lisa Sodeika, Gary Gilmer and Ms. Allcock are likewise affected. However, just today the Class learned that a fourth deposition,

⁵ Mr. Hueman was the head of the consumer lending branch sales department in a number of states, including Arizona and California.

that of George Wilson, is also implicated. *See Baker Decl., Ex. N.* So as to enable the Class to better prioritize depositions, the Court should order Household to identify within a week all depositions that may be affected by this issue.

Further, as this problem, like the federal regulatory agency problem, is one of Household's making, Household should be directed to cooperate with the Class in terms of ensuring use of the previously produced documents. Some of the documents at issue were part of Household's initial production on June 24, 2004 and numerous others were produced after the federal regulatory documents issue arose in February of this year. Despite the parties' prior experience with the federal regulatory documents, Household delayed informing the Class and the Court of this situation – indeed, Household concealed this situation as long as possible despite the fact that the passage of time has only made matters worse. Additionally, Household represented to this Court that it had “asked [the state agencies] to waive” any claims of confidentiality. Ex. 1 at 15 attached hereto. Having made this representation to the Court, Household should now be directed to act in accordance with its representation. The Court should direct Household to affirmatively urge the state agencies to release the documents.

As an additional measure, the Class requests a briefing schedule on this issue in order to provide prompt resolution. Given the late juncture of this alleged discovery by Household, the newly established January 31, 2006 fact discovery cut-off, and the importance of these documents to upcoming depositions, the Class does not believe there is sufficient time to await the outcome of each state's decision making process. Instead, the Class proposes that it move to compel production of all relevant documents from Household with notification to each state agency of its opportunity to submit a brief in opposition to the motion or a statement of non-opposition as it so desires. The Class proposes the following schedule:

- | | |
|-----------------------------|--------------------|
| 1. The Class' Opening Brief | August 25, 2006 |
| 2. State Agency Responses | September 8, 2006 |
| 3. The Class Reply | September 15, 2006 |

The Class will provide notice to the state agencies of this briefing schedule within 24 hours of the Court's setting the Protective Order. Household as a mere holder of the documents has no privilege to assert and therefore, no basis on which to oppose this motion. *See In Re Bank One Sec. Litig.*, 209 F.R.D. 418, 426-27 (N.D. Ill. 2002)(government agency bears the burden of proof in establishing any privilege).

III. CONCLUSION

For the reasons set forth herein, the Class requests entry of an Order:

- (i) Pursuant to ¶28 of the Protective Order, compelling Household to provide within a day a complete list of all documents that were previously produced by Household without authorization from the relevant state regulatory agency except where the state agency has subsequently authorized release by Household or indicated no opposition to release by Household;
- (ii) Compelling Household to provide within a day a complete set of contact information for each state official that responded to Household' initial communication, including name, address, telephone and facsimile number and email address;
- (iii) Requiring Household to identify within a week those deponents previously noticed by the Class whose deposition may be implicated by the state agency document issue;
- (iv) Requiring Household to cooperate with the Class in obtaining the state agencies' consent for release of the relevant documents; and

(v) Setting the briefing schedule set forth above to promptly resolve this

issue.

DATED: August 16, 2006

Respectfully submitted,

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