

**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.)	
_____)	

**SUPPLEMENT TO THE CLASS' OBJECTION TO THE MAGISTRATE JUDGE'S
JUNE 15, 2006 ORDER ON POST-CLASS PERIOD DISCOVERY**

Pursuant to Magistrate Judge Nan R. Nolan's (the "Magistrate") oral instructions, the Class respectfully submits this supplement to its Objection to the Magistrate Judge's June 15, 2006 Order on Post-Class Period Discovery, filed June 29, 2006 (the "Objection") (Docket No. 548).

I. INTRODUCTION

On August 10, 2006, the Magistrate issued an Order directing defendant Household International, Inc. ("Household") to respond to the Class' Interrogatory Nos. 40-42. August 10, 2006 Order ("August 10 Order") (Docket No. 631). These interrogatories seek financial statistics related to Household's lending practices. *Id.* at 12. The Magistrate found that these statistics are "relevant to whether Household was engaging in the unlawful predatory practices." *Id.* at 13. In so ruling, the Magistrate rejected Household's argument that the statistics were not relevant because management did not track them "at the time." *Id.* at 12.

Subsequent to issuance of the August 10 Order, Household stated that it would not respond further to Interrogatory No. 42, subparts (c) and (d) because the information was "post-class period" and, thus, allegedly covered by the Magistrate's prior June 15, 2006 Order ("June 15 Order"). This issue was discussed at an August 22, 2006 hearing before the Magistrate. At the hearing, after argument of counsel, the Magistrate directed the Class to raise the issue with this Court: "Then I think you [the Class] ought to ask Judge Guzman what he thinks. He is deciding all past post-class so take that to him either as I didn't rule on it." August 22, 2006 hearing transcript at 10, attached hereto as Exhibit A.

The Class therefore presents this supplement to its prior objection to the June 15 Order respecting "post-class period" information and documents. As discussed below, the information requested by Interrogatory No. 42(c) and (d) is not "post-class period." Moreover, the Magistrate's August 22 ruling provides additional support for the Class' objection to the June 15 ruling. In sum,

that objection should be sustained and Household should be directed to respond to all of the discovery at issue.

II. ARGUMENT

Interrogatory No. 42, subparts (c) and (d) seek financial information concerning Household's improper use of "prepayment penalties" in loans originated during the Class Period (July 30, 1999 to October 22, 2002). As the Court may recall, Household entered into a \$484 million settlement with a multi-state group of Attorneys General with respect to this and other predatory lending practices. In that settlement, Household agreed to issue refunds based on improper prepayment penalties collected during the Class Period. In the settlement, Household also agreed to amend the prepayment penalty provisions of existing loans. Subpart (c) of Interrogatory No. 42 requests the number of Household loans originated *during the Class Period* whose prepayment terms were changed as a result of the Attorneys General settlement. Subpart (d) seeks the dollar amount of prepayment penalty refunds issued as a result of that settlement. The information sought by the Class, therefore, goes directly to the scope and financial impact of the prepayment penalty predatory lending practice during the Class Period. As the Magistrate correctly found, this information is "relevant to whether Household was engaging in the unlawful predatory practices." August 10 Order at 13.

Household nonetheless objects to providing this information as it is allegedly "post-class period" and, thus, addressed by the June 15 Order. As a procedural matter, this objection has been waived by Household's failure to object to the August 10 Order within the time specified by Fed. R. Civ. P. 72. In its briefing on subparts (c) and (d), Household argued that it should not be required to respond because those subparts seek post-Class Period information. The Magistrate's Order requiring responses to all of Interrogatory No. 42 impliedly rejected this argument. Thus, Household should have filed a formal objection with this Court but did not. Accordingly, the August 22 Order's

finding of relevance and rejection of Household's post-Class Period argument are settled issues in this case.

Household's "post-class period" objection also is invalid substantively for a reason that directly supports the Class' pending objection to the Magistrate's prior June 15 Order. In invoking a "post-class period" objection, Household invokes via shorthand an objection based on undue burden. As the Court is aware, a party asserting an undue burden objection must show that the burden of responding outweighs the relevance of the discovery sought. *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 351, 361(N.D. Ill. 2005). Further, the party must affirmatively show the associated burden by competent evidence and cannot rely upon the conclusory statements of counsel in briefs. *Id.* Just as with the discovery requests at issue in the June 15 Order, Household does not and cannot establish any undue burden as to Interrogatory No. 42, subparts (c) and (d).

The Magistrate has concluded that these subparts seek relevant information. August 10 Order at 13. As noted above, these subparts, like the interrogatories at issue in the June 15 Order, concern the Attorneys General settlement. *See Reply in Support of the Class' Objections to Magistrate Judge's June 15, 2006 Order on Post-Class Period Discovery (Docket No. 627) at 7* (discussing Attorney General settlement-related interrogatories). The Magistrate's finding that Interrogatory No. 42, including subparts (c) and (d), requests relevant information thus supports the Class' prior arguments of relevance respecting the discovery at issue in the June 15 Order. *See the Class' Objection at 7-8, 10* (citing, for the well established proposition that post-Class Period information is relevant to prove the elements of a Rule 10b-5 claim, the following cases: *In re Control Data Corp. Sec. Litig.*, Master Docket 3-85-1341, 1987 U.S. Dist. LEXIS 16829, at **7-8 (D. Minn. Dec. 10, 1987) *aff'd*, 3-85 Civ 1341, 1988 U.S. Dist. LEXIS 18603 (D. Minn. Feb. 22, 1988); *Michaels v. Michaels*, 767 F.2d 1185, 1195 (7th Cir. 1985); *SEC v. Holschuh*, 694 F.2d 130, 143-44 (7th Cir. 1982); *In re Dura Pharms, Inc. Sec. Litig.*, Civil No. 99cv0151-L (NLS), 2006 U.S.

Dist. LEXIS 41193, at **34-38 (S.D. Cal. June 2, 2006)). Significantly, in the June 15 Order, the Magistrate did acknowledge that post-Class Period information is generally relevant. June 15 Order at 5. Accordingly, to the extent that the June 15 Order can be read as finding only marginal relevance as to the discovery at issue in the Class' motion, the Magistrate's August 10 Order undercuts the June 15 Order because it finds similar information to be relevant.

Second, just as with the discovery requests at issue in the June 15 Order, Household presented no declaration or affidavit setting forth a burden associated with responding to subparts (c) and (d) of Interrogatory No. 42. The absence of such a declaration or affidavit is all the more telling because Household did submit an affidavit detailing the costs of compiling the statistics sought by certain interrogatories, including Interrogatory No. 42, but only for subparts (a) and (b) of that Interrogatory. *See* Affidavit of Diane E. Giannis in Support of Defendant's Memorandum of Law in Opposition to Lead Plaintiffs' Motion to Compel Certain Responses to the Third Set of Interrogatories, ¶5 (Docket No. 591). Defendants did not submit any competent evidence related to the burden, if any, of responding to Interrogatory No. 42, subparts (c) and (d). As noted by the Class in the papers supporting its objection to the June 15 Order, the absence of any such competent evidence means that Household's undue burden argument fails as a matter of law.

III. CONCLUSION

For the foregoing reasons, and for the reasons identified in the prior briefing in support of the Class' Objection, the Class respectfully requests that the Court sustain the Class' Objection to the June 15, 2006 Order and order defendants to respond to all of the discovery at issue, including Interrogatory No. 42, subparts (c) and (d).

DATED: September 29, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2006, I electronically filed 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 denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/Luke O. Brooks

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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 September 29, 2006, declarant served by electronic mail and by U.S. Mail to the parties:

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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 29th day of September, 2006, at San Francisco, California.

s/ Marcy Medeiros

MARCY MEDEIROS