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, vs. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

REPLY IN SUPPORT OF THE CLASS' MOTION TO COMPEL HOUSEHOLD DEFENDANTS TO COMPLY WITH THE COURT'S AUGUST 10 AND 20 ORDERS AND FOR APPROPRIATE SANCTIONS FOR NON-COMPLIANCE

I. INTRODUCTION

The Class respectfully submits this reply to Household Defendants' Opposition to Plaintiffs' Motion to Compel the Household Defendants to Comply with the Court's August 10 and 22 Orders filed on September 26, 2006 ("Opposition").[1] Defendants' Opposition, stripped of its rhetoric, amounts to the assertion that this Court's Orders are mere guidelines that defendants may ignore at their discretion. This remarkable assertion makes sense in the context of the woefully inadequate responses they provided to this Court's August 10, 2006 Order, Docket No. 631 ("August 10 Order"). *See* August 10 Order. The excuses defendants provide for their improper or non-existent responses do not alter the fact that they disobeyed the Court's Orders while arrogating to themselves the roles of judge and jury in resolving discovery disputes. In their Opposition, defendants naturally prefer to focus on anything but those responses. However, as discussed below, these responses demonstrate defendants' failure to comply with this Court's August 10 Order.

II. ARGUMENT

A. Defendants Still Have Not Provided Court-Ordered Responses to the Class' Interrogatories

1. The Individual Defendants' Refusal to Answer the Class' Interrogatories – in Violation of the August 10 Order – Has Precipitated an Urgent Situation, Requiring Urgent Resolution

The August 10 Order required the individual defendants to provide ***individual*** responses to the Class' interrogatories. *See id.* at 9. That order rejected the responses the individual defendants had previously provided to the Class, which were submitted by the Class to the Court with its June 29, 2006 motion to compel responses to the Class' interrogatories. *See* The Class' Memorandum in Support of Its Motion to Compel Defendants' Responses to the Third Set of Interrogatories, Docket

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[1] The Class' Motion to Compel the Household Defendants to Comply with the Court's August 10 and 22 Orders and for Appropriate Sanctions for Non-Compliance, was filed on September 18, 2006 (Docket No. 670), and shall be referred to herein as the "Class' Motion."

No. 552 ("June 29 Motion"); Declaration of Luke O. Brooks in Support of Compliance with Local Rule 37.2 and the Class' Motion to Compel Responses to Third Set of Interrogatories from Household Defendants, Docket No. 553, Exhibit K at 35-46. (Copies of these previously filed "responses" are attached hereto for the Court's convenience as Ex. A.)

The individual defendants' "new" responses again merely restate that the Individual Defendants have retired from the company; have reviewed ***none*** of the documents produced in this action; have ***no documents*** of their own; and have ***no information at all*** beyond Household's responses. *See* Declaration of Landis C. Best in Support of Household Defendants' Opposition to Plaintiffs' Motion to Compel the Household Defendants to Comply with the Court's August 10 and 22 Orders, Ex. D; Class' Motion, Exs. C-D. The Court will note these "new" responses are substantively ***identical*** to the June 13 responses attached hereto as Exhibit A. That the individual defendants would resubmit these same responses after fully briefing the issue and being ordered by the Court on August 10 to provide meaningful responses is beyond astounding.

It is urgent that the Class obtain proper responses to these interrogatories without delay. The Class needs these responses in order to conduct meaningful depositions of these four individuals and to oppose summary judgment. In sum, the time for the individual defendants to respond has passed and the Court should (again) order full responses to these interrogatories within two weeks time, but this time under penalty of ***individual*** sanctions.

2. Defendants' "Oversight" in Not Responding to the Court's August 10 Order Should Be Reviewed in Context, and Dismissed as Another Effort to Stonewall Discovery

In the August 10 Order, the Court directed Household International, Inc. to identify the individuals responsible for determining the accounting treatment of the $484 million Attorneys General settlement and the related ACORN class action settlement. *See* August 10 Order at 10. Defendants claim their failure to respond was an "oversight." *See* Opposition at 8-9. This excuse is

no longer credible. The record before the Court is replete with instances of defendants' "inadvertent" errors: the "inadvertent" production of federal regulatory agency documents; the "inadvertent" production of state agency documents; the "inadvertent" production of privileged documents; the "inadvertent" over-designation of nearly every document they produced; and their "inadvertent" late filing just last week. These claims of perpetual negligence are simply not plausible given that defense counsel is a premium-billing New York law firm, with over two dozen attorneys working on this action. By no coincidence, these "inadvertencies" have sabotaged the Class' efforts to conduct thorough discovery and thus, have worked to the defendants' advantage.[2]

Further, this "oversight" argument is belied by defendants' conduct. Although the Opposition promises defendants "will supplement" to correct this deficiency, *id.* at 9, as of the date of this filing, defendants still have not responded. Defendants' "oversight" was intentional.

3. Defendants Have Provided No Affidavits Setting Forth Efforts to Locate Documents They Claim Do Not Exist

The Court also ordered defendants to provide an affidavit stating their efforts to locate documents they claim do not exist, such as exemplars of documents destroyed in their "blitz-purge" campaign (Request No. 35). *See* August 10 Order at 7. They have failed to provide that affidavit. Further, their Opposition provides no acceptable explanation for this failure, but is silent. As of the date of this filing, they still have produced no documents responsive to these requests. The Court should (again) order defendants to produce responsive documents or execute the required affidavits.

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[2] Defendants' base accusation that the Class filed this motion to "inflate" its lodestar rings hollow. Defendants' own legion of attorneys billing at New York rates amply demonstrates which side of the "v" benefits from intense motion practice. Moreover, in making this argument, defendants seek to distract the Court from the more fundamental point, which is that it is and continues to be in defendants' interests to thwart discovery in this multi-billion dollar case.

4. Defendants Have Not Produced Documents from the Consumer Segment in Response to Request Nos. 1-2 and 6

Next, the Court ordered defendants to "produce all documents relating to the entire Consumer Segment in responding to request nos. 1, 2, and 6." *See id.* at 8. The Opposition is silent on this obligation because defendants have simply ignored the Court's Order. As of the date of this filing, they still have provided nothing.

5. Defendants Have Not Complied with the Court's Order to Identify Documents Responsive to Request Nos. 1-2, 6, 9, 11 and 12

Finally, the Court ordered defendants to identify documents ***"they believe are responsive"*** to Request Nos. 1-2, 6, 9, 11 and 12. *See id*. (emphasis added). As the Class' Motion points out, defendants' response is wholly inadequate. Instead of identifying responsive documents, defendants identified documents that "may be" responsive. *See, e.g.*, Class' Motion, Exs. F-K. Defendants cannot and do not state that "they believe" the documents are responsive because, as the Class' Motion points out, they are not. *See id*., ¶¶4, 8-16. In other words, their "response" consists of a useless 1,273-page single-spaced ***listing of Bates ranges*** that references documents defendants themselves do not believe (or do not know) are responsive.

Defendants' Opposition concedes the foregoing points. They admit they conducted no review of these documents whatsoever because it was "too hard." *See* Opposition at 10 (*and* n.2). Defendants cannot unilaterally decide to ignore this Court's Orders because of any purported burden. This conduct should be sanctioned.

Defendants' remaining arguments are likewise without merit as they all lead to the same proposition, namely that they may choose to follow the Court's Orders or not. For instance, they complain the ***Class*** should respond to Court orders directed to ***defendants*** because the Class has a database. *See id.* at 12. Similarly, they claim the Class does not really need the responses after all. *See id.* Likewise, defendants attempt to evade the Court's Orders under the hue and cry that the

Class's Requests are "extremely broad." *See id.* at 10. This argument falls flat because the Court has already ordered defendants to respond. All of these arguments, which are equally applicable to all of this Court's discovery orders, are but poor attempts to conceal the fact that defendants have done nothing to provide proper responses consistent with the Court's Orders.

B. Defendants' "Meet and Confer" Argument Confuses the Court's August 10 Order, Is Factually Inaccurate, and Ignores the Substance of the Class' Motion

Defendants admit they did not meet the September 5 deadline. *See id.* at 4. Instead, they point to the "carve out" language in the August 10 Order. However, prior to September 5, defendants never asked for an extension, never proposed exceptions (*i.e.*, "carve outs") and did not notify Class counsel of any inability to respond by that date. Ironically, defendants advance this argument knowing full well that ***they*** wrote to the Class on August 31 and September 1 reminding the ***Class*** of ***its*** obligations under the August 10 Order.

Moreover, the Class simply does not need to meet and confer with defendants regarding violations of the Court's Orders. Thus, once September 5 passed without an extension, defendants were in violation of the Court's Orders.

In any event, the Class ***did allow defendants two more weeks*** after September 5 to provide full responses, a point not acknowledged by defendants. However, even with the benefit of that additional time, defendants failed to produce full responses. Nor did they ever request additional time. In this context, the "meet and confer" argument is a false one, merely asserted to delay once again the time when defendants will provide substantive responses. Significantly, the discovery requests at issue have been outstanding for ***over seven months***, which is why the Class was forced to file a motion to compel responses in the first place.

C. Defendant's Proposal that the Court Adopt Additional Procedures that Would Require Additional Filings, Yielding Additional Papers, in an Effort to Reduce Papers Should Be Dismissed Out of Hand

Defendants propose that the Court require additional mandatory filings before every other filing in this case to "streamline" the process and reduce filings. *See id.* at 6. Defendants proclaim they would participate in this mechanism to avoid "even the appearance of unfairness." *Id.* In reality, their proposal illustrates defendants' efforts to create more impediments to a quick resolution of discovery disputes, prolonging the road to a decision on the merits, while hiding as much evidence along the way. Further to the point, this approach is also procedurally improper and would not provide either this Court or Judge Guzman with the factual and legal record necessary to address these discovery issues, especially in the context of an objection to this Court's rulings.

Defendants' proposal is particularly improper given the history of this case. The Class' motions have uniformly addressed substantive issues pertinent to preparing this case for trial. By contrast, defendants have filed a number of motions that have been tabled or dropped without so much as a response by the Class. Thus, if this pre-filing approach is to be adopted, it should apply only to defendants' motions for sanctions or costs.

At bottom, defendants invite the Court to jeopardize the completion of fact discovery by January 31, 2007. This deadline must not be jeopardized. The Class therefore urges the Court not to follow defendants down this rabbit hole.

III. CONCLUSION

For the reasons set forth above, the Court should grant the Class' Motion and prevent further stonewalling in response to the Class' discovery.

DATED: October 3, 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 October 3, 2006, declarant served by electronic mail and by U.S. Mail to the parties:

REPLY IN SUPPORT OF THE CLASS' MOTION TO COMPEL HOUSEHOLD DEFENDANTS TO COMPLY WITH THE COURT'S AUGUST 10 AND 20 ORDERS AND FOR APPROPRIATE SANCTIONS FOR NON-COMPLIANCE

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of October, 2006, at San Francisco, California.

s/ Marcy Medeiros
MARCY MEDEIROS