

**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' REPLY IN SUPPORT OF ITS PROPOSAL REGARDING STATE
AGENCY DOCUMENTS**

REDACTED VERSION

During the telephonic hearing on October 30, the Court addressed in part the Class' Proposal Regarding State Agency Documents ("Proposal") (Docket No. 745). Specifically, the Court adopted the following portions of the Class' Proposal: (1) ordering Household International, Inc. ("Household") immediately to produce the documents relating to the Minnesota, Iowa, West Virginia and Arizona state agencies; (2) adopting the Class' Proposal with respect to review of the Wisconsin and New Mexico state agency documents; and (3) reserving the issue of the New York state agency until it responded. The Court deferred ruling on the two portions of the Class' Proposal: (1) ordering production of all internal Household documents relating to the state agencies; and (2) ordering production of the reports of examination and correspondence with the Kansas, Hawaii and Ohio state agencies as well as three documents relating to the North Carolina state agency, in order to hear defendants' views on these aspects. These views, as set forth in their opposition, provide no basis for the Court not to adopt the Class' Proposal in full. Absent adoption of the Class' Proposal, the Court should order the production of all remaining state agency documents and all related internal Household documents.

Defendants' opposition contains a fundamental contradiction. On the one hand, defendants object to production of the remaining state agency documents and internal documents as "cumulative." However, at the same time, they argue that individual reports by themselves are not probative in a securities fraud case. Further, in their Court filings, defendants have denied that their predatory lending practices were widespread and asserted that such practices were limited to a few isolated branches. Answer at ¶21 (Docket No. 156); *see also* Motion to Dismiss at 14 (Docket No. 88). Given defendants' arguments and prior positions, the Class should have full access to all state agency documents and related Household documents to establish the widespread nature of defendants' predatory lending practices and to rebut any possible arguments by defendants at summary judgment and trial as to the materiality of these practices.

Further to the point, defendants' "cumulative" argument is factually incorrect. Not only does each state agency examine a different set of branch offices, but each state agency made different factual findings such that all are essentially unique. The Class demonstrated this substantive range of factual findings in the chart submitted to the Court *in camera* on November 8, 2006. *See* Ex. A (all exhibits are attached hereto).¹ Indeed, defendants in oral argument before this Court acknowledge that the states varied in their approach and in their focus. *See* Ex. B (October 19, 2006 Hearing Transcript at 9-10). This diversity amongst the state agency documents precludes the Court from relying upon any mathematical assertion in concluding the remaining state agency documents are cumulative.

Equally meritless are defendants' arguments respecting documents relating to the Attorneys General ("AG") settlement talks and their own alleged internal investigations. Significantly, defendants do not affirmatively state that the factual findings made in the state agency documents are duplicated in these other documents. And indeed, they couldn't. To the contrary, some of these state agency reports found predatory lending violations not encompassed within the AG discussions and settlement. Where a state agency found violations within its exam, it would order Household to conduct a self-audit and provide refunds to all consumers identified by the audit. As a result, Household was required to refund millions of dollars to its customers. The disputed documents evidence such refunds. For example, Household refunded ██████████ to Ohio customers in connection with ██████████ violations;² was required to calculate three years' worth of

¹ The North Carolina regulators conducted several exams into a number of Household's branch offices. Many of the reports are the same. For this reason, the Class has sought only a few examples of documents specific to North Carolina. This approach hardly amounts to "cherry picking." However, if the Court chooses not to accept the Class' Proposal, the Class is amenable – consistent with defendants' apparent position – to the Court's authorizing production of all documents from all states.

² *See* Tab A-6 at 1 to the Class' November 8, 2006 *in camera* submission to the Court.

overcharges in Kansas;³ and was required to refund nearly ████████ to Hawaii customers for certain (redacted) reasons.⁴ These are only a few examples. On an aggregate basis violations like these amount to millions of dollars in refunds to consumers. These refunds are in addition to the \$484 million AG settlement and the \$30 million settlement with the “now discredited ACORN.” This evidence further impeaches deposition testimony that no state provided any factual basis why Household should agree to a monetary settlement worth hundreds of millions of dollars. *See, e.g.*, Ex. C (deposition testimony of Lisa Sodeika at 69:19-24; 70:1-21).⁵

Defendants’ arguments respecting the deliberative process privilege are likewise in error. As a starting point, the Kansas, Hawaii and Ohio state agencies did not object to production based on this privilege. Indeed, the first two relied solely on state law. The Ohio state agency submitted no written objection. Only the North Carolina state agency asserted this objection. In any event, the burden is on the state agencies to demonstrate application of the privilege, including demonstrating via evidence that the documents at issue are not factual and are deliberative. The state agencies have not made this factual showing. Even if they had, the Class has shown good cause to overcome this qualified privilege, given the relevance of these documents, the importance of this litigation, the lack of alternative sources of information and the Court’s adoption of a modification to the Protective Order specifically applicable to these documents. *See* Proposal at 5. The relevance of the specific documents at issue here is confirmed in the chart provided to the Court *in camera* on November 8, 2006. *See* Ex. A.

³ *See id.* at Tab B-2 at 2.

⁴ *See* HHS 03427574 in document HHS 03427571-81. Defendants state they provided all disputed redacted documents to the Court *in camera* as requested. If the Court does not have this document, the Class will be happy to provide it.

⁵ Uncertified draft ASCII, pagination may change upon completion of final transcript.

The Class' chart illustrates that defendants' claim of having applied a "fair" reading of state laws and also withholding only "exact quotes" or "paraphrases" from their internal documents is false. *See* Defs' Resp.⁶ at 5. Defendants admit they withheld or redacted internal documents, even where *no* state regulator told Household it was required to do so. *See id.* Further, as demonstrated by the numerous documents Household has *withheld* completely (not merely redacted), many are internal Household documents and contain information that in no way quotes or paraphrases from reports of examinations. *See, e.g.,* Ex. A at A-1 (Internal Household email quoting an Ohio regulator [REDACTED]).

The remaining arguments advanced by defendants are all about fostering further delay in resolving this issue. First, defendants state that "there is no need for further proceedings at this time." Defs' Resp. at 1. This assertion is false as on December 5, the Class will depose Stephen Hicks, the Household officer responsible for overseeing and responding to the state agency examinations. This issue needs to be resolved prior to Mr. Hick's deposition. Second, defendants suggest that the Class has failed to exhaust its administrative remedies with the state agencies. However, as defendants well know, the states at issue do not have administrative regulations regarding release of these documents. Indeed, they cite to none. The Class need not subpoena the state agencies (and litigate this issue in another federal district court) for documents they can acquire from defendants under this Court's order. *See e.g., In Re Bankers Trust Co.*, 61 F.3d 465, 469-71 (6th Cir. 1995). In this regard, the Court is guided by Fed. R. Civ. P. 34, which applies to the situation where a party seeks an agency document from a party opponent rather than procedures (if any) set forth in the agency's regulations regarding request for disclosure of confidential records. *Id.*

⁶ "Defs' Resp." refers to Defendants' Response to Plaintiffs' October 27, 2006 Proposals for Resolving State Agency Documents Issues (Docket No. 753).

Third, defendants' proposed stay to notify the relevant states is nothing more than a flimsy excuse to thwart timely completion of discovery. Further, it is based on the incorrect assertion that the state agencies will criminally prosecute defendants for complying with this Court's orders. As a factual matter, the state agencies, including the Hawaii state agency, have threatened defendants for their *past* "inadvertent" production of state agency documents and not future production. As a legal matter, any criminal prosecution relating to future production pursuant to this Court's order would be doomed for a host of reasons, including but not limited to the Supremacy Clause and collateral estoppel.

In sum, the Class' Proposal is reasonable and should be adopted in full. Alternatively, the Court should order production of all state agency documents and the related internal Household documents.

DATED: November 13, 2006

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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 November 13, 2006, declarant served by electronic mail and by U.S. Mail to the parties the: **THE CLASS' REPLY IN SUPPORT OF ITS PROPOSAL REGARDING STATE AGENCY DOCUMENTS**. 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 13th day of November, 2006, at San Francisco, California.

s/ Marcy Medeiros

MARCY MEDEIROS