

The Household Defendants respectfully submit this Status Report to summarize matters that Defendants believe should be discussed at the November 30, 2006 status conference and to provide the Court with the context in which these matters arise. Defendants believe that the Court's consideration and, where appropriate, resolution of these matters, will substantially assist the parties in concluding fact discovery by the January 31, 2007 cut-off.

1. Plaintiffs' Depositions

The Court's October 30 Order resolved the few open issues as to the scheduling and location of the depositions of current and former Household employees. All of these depositions now have been scheduled and are proceeding.

Regrettably, however, Defendants require the Court's assistance with two issues relating to the ten non-party depositions that Plaintiffs have noticed. First, Plaintiffs have inexplicably rejected defense counsel's requests to be included in the scheduling of the non-party depositions and have even failed to advise Defendants when a unilaterally-scheduled date was confirmed. Second, although Plaintiffs' current roster of noticed depositions would exceed their permitted limit of 55 depositions, Plaintiffs have declined to identify their final list, even though we are quickly approaching the fact discovery cut-off date.

A. Plaintiffs Have Refused To Include Defendants in the Scheduling of Non-Party Depositions

With only a few weeks to go before the end of fact discovery, and a great many Household depositions scheduled to proceed, it is essential that Defendants be included in communications between Plaintiffs and the non-party deponents, or their counsel, pertaining to deposition scheduling, in order to insure the availability of defense counsel for these depositions

and allow Defendants time to make suitable staffing and travel arrangements and efficient planning for cross examination.¹ This Court has already recognized the need for close cooperation in scheduling especially “with the holidays, with the travel, with the bad weather coming.” (Transcript of October 4, 2006 Status Conference, p. 47) *See also* the Court’s October 4 Order: “Upon receiving Plaintiffs’ witness list, Defendants’ deposition coordinator shall begin working with Plaintiffs’ deposition coordinator to arrange the requested depositions.” The need for Plaintiffs’ good faith compliance with this directive is heightened by the fact that overseas travel (to London) will be required for the depositions of two of the non-parties, HSBC Holdings plc and Morgan Stanley & Company.

Although even without the Court’s October 4 Order, one would expect Plaintiffs to cooperate in scheduling non-party depositions in this tight time-frame as a matter of professional courtesy, Plaintiffs have literally refused to alert Defendants to proposed deposition dates for third parties, and have breached even their promise to disclose scheduled dates as soon as they are confirmed. Craig Kesch, Defendants’ deposition coordinator, wrote the following in a November 8 letter to Plaintiffs: “With so much to be accomplished in the next few weeks, the only way to meet the fact discovery deadline is for you to keep us in the loop when scheduling these [non-party] depositions to make sure all parties are available on the suggested dates.” Plaintiffs’ deposition coordinator, Jason Davis, responded to Mr. Kesch’s November 8 request, by saying only: “Please be advised that we will notify you of confirmed dates as soon as practicable.”

¹ Plaintiffs have subpoenaed the depositions of ten non-parties: three individuals, Andrew Kahr, Christopher Biannucci, John Keller, and seven entities (to be deposed pursuant to Rule 30 (b)(6)), HSBC Holdings plc, Morgan Stanley & Company, Promontory Financial Group, Wells Fargo, Goldman Sachs, Ernst & Young and Wilmer Cutler & Pickering (now WilmerHale).

However, Plaintiffs have even failed to comply with their own unsatisfactory commitment to inform Defendants of “confirmed dates as soon as practicable.” Consider, for example, Plaintiffs’ secrecy about the scheduling of the deposition of non-party Promontory Financial Group. Defendants learned on November 21, by receipt from Promontory’s counsel of a copy of its letter to Plaintiffs (annexed at Tab A), that Plaintiffs and Promontory had “previously agreed” to proceed with Promontory’s Rule 30(b)(6) deposition on December 6. We now know that this arrangement was offered by Promontory on November 9, and accepted by Plaintiffs on November 10. On the former day, an attorney for Promontory sent an email to the Lerach firm stating: “Bing: Please let me know if December 6 works for your side. Additionally, it would be most convenient for Mr. Ludwig [of Promontory] if you would take the deposition at Covington, which is located in the same building as Promontory.” Without consulting with Defendants about the proposed date (either before or after the fact), Lerach responded in writing on November 10: “We accept the deposition date and the location as you offered. (These emails which Defendants did not see until this week, are annexed at Tab B.) Despite Mr. Davis’ unequivocal promise just two day earlier to notify us at least of confirmed dates, Plaintiffs have still failed to notify us of the planned December 6 deposition such that Defendants would have remained completely in the dark about Plaintiffs’ plans if Promontory’s counsel had not sent us a copy of its correspondence with Plaintiffs two weeks after the date had been set.

Amazingly, in response to our November 21 complaint to Plaintiffs about this lapse, Mr. Davis informed Defendants in a November 22 letter that “no third party deposition has been confirmed.” As the attached correspondence shows, that representation was categorically false. It now appears that Plaintiffs are seeking to postpone the December 6 deposition based on

their assertion that Promontory's timely document production was somehow "deficient". However, whether genuine or manufactured, the subsequent emergence of this alleged dispute does not excuse Plaintiffs failure to coordinate the scheduling of the Promontory deposition with Defendants or to inform Defendants on November 10 that they had a confirmed date. That the confirmed date was supposedly subject to Plaintiffs' satisfaction with Promontory's document production only compounds the problem of Plaintiffs' secrecy, as this excuse would allow Plaintiffs to decide unilaterally whether a previously undisclosed date will hold, while keeping Defendants and the Court in the dark about unilateral extensions, and springing the actual time and place of depositions on Defendants only at the last minute (if at all).²

This is not an acceptable state of affairs for many obvious reasons, and Defendants urge the Court to require Plaintiffs to comply with its October 4 Order to coordinate depositions in good faith with Defendants. In particular, Defendants ask that the Court direct Plaintiffs to (a) inform Defendants immediately of the status of all non-party depositions, and document production arrangements, (b) include defense counsel in all future deposition scheduling communications with non-parties or their counsel, and (c) inform Defendants on the same day that a deposition date for a non-party is confirmed by the non-party or its counsel (should defense counsel for any reason not be aware of such confirmation).

² As reflected in the letter of November 27, 2006 from Promontory's counsel to Plaintiffs' counsel (which is annexed at Tab C), Plaintiffs seem to have no valid basis to question the adequacy of Promontory's production, and no reason not to proceed with the deposition on December 6, if Plaintiffs still wish to include Promontory as one of their 55 deponents.

B. Plaintiffs' Deposition Notices Exceed the Court-Authorized Limit of 55 Depositions

The other deposition-related issue Defendants are compelled to raise is Plaintiffs' noticing of more than 55 depositions, ignoring the Court's repeated, unambiguous directive that each party is allowed only 55 depositions.

As of the October 19, 2006 Status Conference, Plaintiffs had taken or identified only 48 depositions. During the conference, the Court directed Plaintiffs to identify their final seven names by the following week: "The parties are ordered to schedule all of the Class' remaining depositions by 10/27/06" (Order of October 19, 2006, emphasis in Order). On October 25, 2006, Plaintiffs identified their final seven deponents, including two Household employees and five non-parties. These seven deponents brought the total number of Plaintiffs' noticed depositions to the Court-ordered limit of 55. However, on October 24, 2006, one day before issuing their "final" list of seven deponents, Plaintiffs served Defendants with notice of a deposition and document subpoena for Promontory Financial Group, another non-party. Although Promontory was not included on Plaintiffs' list of their "final" seven depositions, as noted above, Plaintiffs proceeded to schedule and confirm a date for taking its deposition — with the result that pursuit of all the other listed depositions would bring Plaintiffs' total to 56.³

During a meet and confer conference call held by the parties on October 26, 2006, Defendants asked Plaintiffs which deposition notice they intended to withdraw in order to comply with their 55-deposition limit. Plaintiffs declined to answer. They indicated that one or more noticed depositions might not proceed if certain currently-pending motions were decided

³ As noted above, Defendants subsequently learned that Plaintiffs were scheduling the Rule 30(b)(6) deposition of Promontory without any participation by defense counsel (and, in fact, had scheduled such a deposition).

adversely to them.⁴ Although the timing of that contingency is not within Plaintiffs' control, at this late date Plaintiffs ought to be able (and should be required) to confirm now whether or not they plan to proceed with the noticed depositions that are not dependent on the outcome of pending motions, such as Morgan Stanley, Wells Fargo, HSBC Holdings plc and Goldman Sachs. Having waited this late in an extensive discovery period to pursue a serious deposition program, Plaintiffs cannot reasonably be allowed to keep Defendants and the Court guessing about their plans for the final few weeks.

As for the depositions that may be affected by the Court's rulings on privilege issues, Defendants respectfully suggest that some mechanism is needed to insure that Plaintiffs will advise the Court and Defendants within a reasonable time — say one week after the Court issues its rulings — which of those depositions they intend to pursue within the 55 deposition limit. Finally, Plaintiffs have indicated an intention to move under the Walsh Act for an order requiring another non-party witness, Andrew Kahr, to travel to the United States for a deposition in this matter. Because Plaintiffs have ignored our repeated questions about the planned timing of such a motion, Defendants respectfully ask the Court to set a near-term briefing schedule for such a motion, if Plaintiffs in fact intend to pursue it, so that this loose end will not become an impediment to completing fact discovery by January 31.

2. Plaintiffs' Responses to Defendants' Document Demands

Early this year, Defendants became aware that Plaintiffs had served requests to various state agencies under state FOIA laws and regulations seeking documents that the agencies had obtained about or from Household with respect to Household's lending practices.

⁴ Two of their subpoenaed non-party deponents are Ernst & Young and Wilmer Cutler & Pickering and two others are former Arthur Andersen employees whom Plaintiffs wish to question about their subsequent duties at Ernst & Young. Documents exchanged between each of these non-party entities and Household, which Household has declined to produce on grounds of privilege, are the subject of pending motions to compel filed by Plaintiffs.

As a result, in March 2006, Defendants served their Second Request for Production of Documents on Plaintiffs seeking production of any requests to, correspondence with or documents produced by any state agency. In early summer of this year, Plaintiffs produced their initial requests to and documents received from the agencies, but refused to produce any of their follow-up correspondence with the agencies.

Recently, Defendants learned of a request that Plaintiffs had made to a Florida state agency seeking similar material about Household's lending policies. In a November 17, 2006 letter, Defendants reminded Plaintiffs of their continuing obligation to supplement their prior responses to Defendants' Document Demand by producing any request to and documents received from the Florida agency, or any other state agencies. Defendants noted that this obligation is based both on Rule 26(e)(1) of the Federal Rules of Civil Procedure and a specific instruction to that effect in Defendants' Second Document Demand. In particular, Defendants asked Plaintiffs to confirm that they will supplement their prior responses to Defendants' Document Demand, and would do so promptly after they transmit any request to a state agency or received any documents or correspondence in response. Defendants also requested that Plaintiffs reconsider their refusal to produce all correspondence with the state agencies relating to their requests, as production of these documents is consistent with notions of fair and efficient discovery. To date, ten days later, we have not received any response from Plaintiffs to our November 17 letter.

This Court should direct Plaintiffs to supplement their responses to Defendants' Second Document Demand as noted above. In addition, this Court should direct Plaintiffs to produce all related correspondence that they had with any state agency pertaining to Household, and not just Plaintiffs' initial requests.

3. Next Status Conference

At the November 30 conference, Defendants will ask the Court to schedule the next status conference for the week of December 11, 2006, or as close to that time as is convenient to the Court. Defendants believe that a status conference during that week will enable them to obtain guidance from the Court in the event that Plaintiffs provide deficient responses to several sets of interrogatories that Plaintiffs are due to answer in the first four days of December.

Plaintiffs currently are scheduled to respond on December 1 and December 4 to four sets of interrogatories served by Defendants. Pursuant to an Order of this Court, Plaintiffs must respond to the contention interrogatories contained in Defendants' Second and Third Sets of Interrogatories two months prior to the close of fact discovery. Defendants have indicated that these responses will be served on December 1. Pursuant to another Court Order, Plaintiffs purported to answer Defendants' Court-Authorized Supplement to several interrogatories in Defendants' Second Set of Interrogatories on October 24, 2006. At a meet and confer conference call on November 10, Defendants noted that Plaintiffs' responses were wholly deficient as they consisted almost entirely of objections and urged Plaintiffs to provide good faith answers to these few interrogatories. Although they initially refused to do so, in a November 14 letter, Plaintiffs wrote that they "would supplement" their responses to Defendants' Court-Authorized Supplement on December 1 "at the same time as providing responses to the contention interrogatories." Finally, Plaintiffs' response to Defendants' Fourth Set of Interrogatories, served on October 31, are due on December 4. These Interrogatories, in part, seek the facts that Plaintiffs claim should have been disclosed by Household to inform the market about Household's alleged improprieties.

Defendants are justifiably concerned that some or all of Plaintiffs' responses will be similar to the insufficient responses that Plaintiffs previously provided in response to Defendants' Second and Third Sets of Interrogatories which necessitated two separate motions to compel by Defendants. Defendants believe that having a status conference shortly after all four sets of interrogatory responses are received by Defendants will enable the Court to provide guidance, if necessary, with respect to any interrogatory responses deemed to be insufficient by Defendants and incapable of resolution through the meet and confer process. This suggestion is in accord with the Court's directive at the October 4 status conference that the Court does not want any more written motions but will have frequent status conferences to avoid motions. (Transcript of October 4, 2006 Status Conference, p. 71.) If all of Plaintiffs' interrogatory responses are substantive and complete, Defendants will so inform the Court so that, if there are no other issues requiring immediate attention, the Court can, if it wishes, adjourn the proposed mid-December conference.⁵

4. Plaintiffs' Continued Extensive Discovery

To place all of the above fact discovery matters in their proper context, the Court should be aware of Plaintiffs' current flood of discovery directed at Household and numerous non-parties. After years of near dormancy with respect to discovery, Plaintiffs are now serving multiple discovery requests — some of which are duplicative of prior areas, but others of which explore entire new subject areas (which are, at best, tangential to any conceivable issues in this securities fraud action). Plaintiffs have served three additional document requests in the past two months, consisting of requests more suitable for the beginning rather than the end of the discovery phase of a litigation. On October 3, 2006, Plaintiffs served their Fourth Request for

⁵ Another issue the Court may wish to discuss at a mid-December conference is the schedule after the January 31 conclusion of fact discovery.

Production of Documents seeking, in part, documents pertaining to the negotiations between Household and HSBC, compliance with reaging policies and spoliation.⁶ Defendants objected to these requests primarily because they were duplicative of many of the requests in Plaintiffs' initial Requests for Production of Documents, in response to which Defendants engaged in massive company-wide searches and produced millions of pages of documents. During a November 10 meet and confer requested by Plaintiffs to discuss Defendants' responses to their Fourth Document Demand, Plaintiffs acknowledged that most of the requests in their Fourth Set were, indeed, duplicative of requests in their first three Document Demands.

On October 12, 2006, Plaintiffs served their Fifth Set of document requests, to which Defendants responded on November 16. This Set sought documents pertaining to the peripheral issue (at best) of Household's repurchase of its securities over an extended period of time. And, on October 25, Plaintiffs served their Sixth Request for Production of Documents (to which Defendants responded on November 27), focusing again on peripheral issues, such as a potential merger transaction that was discussed between Household and another entity and the alleged dismantling of Household's quality assurance function. Defendants have informed Plaintiffs that they anticipated being able to produce documents, if any, responsive to Plaintiffs' Fifth Document Demand by December 15. Defendants anticipate that documents, if any, responsive to Plaintiffs' Sixth Document Demand will be available later in December.

And, in response to the Court's direction that Household generate data not normally maintained by Household in order to respond to specific interrogatories propounded by Plaintiffs, Defendants did so by our estimated deadline. We have informed Plaintiffs that this information is ready and will be produced to them as soon as Defendants receive Plaintiffs'

⁶ On this same day, Plaintiffs also served a Fifth Set of Requests for Admission containing 31 separate Requests.

payment for half the cost of compiling this data (which turned out to be slightly lower than Household's original estimated cost). In addition, as noted above, Plaintiffs also recently issued subpoenas seeking documents (and deposition testimony) from additional non-party entities, including Promontory Financial Group, Wilmer Cutler & Pickering, Goldman Sachs and Wells Fargo. (These are in addition to the letters of request issued at Plaintiffs' request to HSBC Holdings plc and Morgan Stanley, Plaintiffs' recently reactivated subpoena to Ernst & Young, and a proposed, but still unfiled, motion to compel the deposition in the U.S. of non-party Andrew Kahr).

Where Plaintiffs new demands to Defendants were duplicative of earlier ones, (which, as noted above, Plaintiffs admitted to be the case for most of Plaintiffs' Fourth Demand), Defendants have served valid objections to that effect. And, where Defendants are pursuing new subjects, given the imminence of the January 31 discovery cut-off and Plaintiffs' dereliction in not pursuing these matters previously in a timely manner, Defendants have agreed to produce responsive documents, if any, that can be located through a reasonable search in the most likely locations, but have declined to do a full-bore, company-wide review as Defendants did in response to Plaintiffs' prior document demands. Defendants believe that this reasonable, focused approach is the only way that Defendants will be able to respond to Plaintiffs' recently-served discovery requests (and any additional ones that may be forthcoming) within the confines of the January 31 cut-off.

As the Court observed at the October 19 Conference in the context of Plaintiffs' belated attention to a deposition program, Plaintiffs should have thought of certain matters "in 2003, 2004, 2005, and we're now into 2006. So you don't get to do depositions like you would normally like to do them." (Transcript of October 19, 2006 Status Conference, p. 54) Similarly,

Plaintiffs cannot expect responses to last minute document demands on previously ignored topics to be as broad and all encompassing as Plaintiffs “would normally like to [have] them.”

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The above items are those that Defendants believe should be discussed at the November 30 status conference. Defendants, however, will be prepared to discuss any other items that may be raised in any Status Report filed by Plaintiffs, and any items the Court may wish to discuss.

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Chicago, Illinois

Respectfully submitted,

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