

**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' MOTION FOR AUTHORIZATION PURSUANT TO THE WALSH ACT  
FOR ISSUANCE OF SUBPOENA FOR ANDREW KAHR**

**REDACTED VERSION**

## I. INTRODUCTION

By this motion, the Class respectfully seeks an order pursuant to the Walsh Act authorizing the issuance of a subpoena for (1) the deposition of Andrew Kahr, a United States resident who is outside the country and (2) production of documents under Mr. Kahr's possession or control. The requested subpoena is necessary in the interests of justice.

Mr. Kahr was retained as a consultant by Household International, Inc. ("Household") senior management in January 1999, [REDACTED]

[REDACTED] Brooks Decl., Ex. 1 at HHS 02861365.<sup>1</sup> In this role, Mr. Kahr gained first-hand knowledge of Household's lending operations developed numerous initiatives to grow revenue. Household implemented many of these initiatives apparently without regard to their legality or impact on the Company's customers. The documents produced by Household indicate that Mr. Kahr had substantial input in many of the programs underlying the Class' predatory lending allegations, such as hiding prepayment penalties and using bi-weekly payment to mislead borrowers about their true interest rates.

In 2002, moreover, when Household was facing increasing scrutiny from community groups and regulators, Mr. Kahr also was facing questions regarding his conduct at Providian Financial Corp., the company he founded and consulted for in the years just prior to his work for Household. The month after the San Francisco Chronicle published a scathing expose, revealing the contents of memos written by Kahr for Providian, Household undertook to dispose of its emails relating to Mr. Kahr.

---

<sup>1</sup> "Brooks Decl." refers to the Declaration of Luke O. Brooks in Support of the Class' Motion for Authorization Pursuant to the Walsh Act for Issuance of Subpoena for Andrew Kahr.

Given these facts, and because Mr. Kahr's testimony and documents are highly relevant to the Class' claims, the Court should authorize issuance of a subpoena for Mr. Kahr pursuant to the Walsh Act.

## **II. PROCEDURAL BACKGROUND**

Pursuant to the Court's instruction, the Class provides the following history regarding its efforts to subpoena Mr. Kahr. In February 2006, as part of its review of defendants' document production, the Class discovered that Mr. Kahr had served as a consultant to Household during the Class Period. Brooks Decl., ¶2. At that time the Class did not fully understand Mr. Kahr's role at Household. *Id.* Over the course of the next several weeks, the Class began to gain a better understanding of Mr. Kahr's role in the development of predatory lending practices at Household. Brooks Decl., ¶2. The Class also conducted an investigation of Mr. Kahr independent of the documents produced by defendants and discovered in late March or early April that not only had Mr. Kahr been a consultant to Household but also was the founder, and later, a consultant with Providian, another sub-prime lender which paid more than \$400 million to settle charges of unfair business practices. Brooks Decl., ¶2. Based on its investigation, the Class determined that it would depose Mr. Kahr and drafted a subpoena. Brooks Decl., ¶2.

In early May 2006, the Class located Mr. Kahr's primary residence in Watsonville, CA. Schneider Decl, ¶3.<sup>2</sup> On May 25 and 26, 2006, the Class made two unsuccessful attempts to serve Mr. Kahr at that residence. Schneider Decl., ¶¶4-5. On May 26, 2006 the Class also attempted service at 633 Post Street, #30 in San Francisco, an address which according to the Accurint

---

<sup>2</sup> "Schneider Decl." refers to the Declaration of Diana Y. Schneider in Support of the of the Class' Motion for Authorization Pursuant to the Walsh Act for Issuance of Subpoena for Andrew Kahr.

database had been used by Andrew Kahr as recently as January 2006. Schneider Decl., ¶5. The address turned out to be a mailbox rental service. *Id.*

Following these unsuccessful service attempts, the Class hired a private investigator to locate and serve Mr. Kahr in Watsonville, or at any additional addresses the private investigator could locate. Schneider Decl., ¶6. The Class made multiple additional attempts to serve Kahr between June 1, 2006 and July 18, 2006. *Id.*<sup>3</sup>

On July 18, 2006, the Class was able to locate Mr. Kahr in Paris. A local agent in Paris working for the Class' private investigator spoke with Mr. Kahr who confirmed for the agent that his address was Et 1 67 Rue Grenelle 75007 Paris, France. Schneider Decl., at ¶7.

As the Class was informed that Mr. Kahr spent only part of his time in France, the Class continued its attempts to serve Mr. Kahr at his residences in California with the hope that resort to motion practice and/or the Hague Convention could be avoided. Eleven attempts to serve Mr. Kahr were made by the private investigator between September 23, 2006 and October 4, 2006. Schneider Decl., at ¶8.

During a meet and confer on October 26, 2006, the Class informed defendants that Mr. Kahr had been located abroad and that the Class intended to seek permission to serve Mr. Kahr with a subpoena pursuant to the Walsh Act. The Class sought defendants' cooperation in the motion. Around this time, Mr. Kahr took steps to remove his name and phone number from public directories.

As discussed below, the Class has taken these significant steps to obtain Mr. Kahr's documents and testimony. Despite these steps, the Class has been unable to serve Mr. Kahr with a

---

<sup>3</sup> Mr. Kahr has taken great pains to keep his whereabouts shrouded in mystery. For example, in early 2006, Mr. Kahr agreed to an interview by the television news show Frontline only on the condition that the show "did not identify his clients or where he [was] currently living." Brooks Decl., Ex. 3 at 7.

subpoena. Accordingly, this Court should authorize the issuance of a subpoena pursuant to the Walsh Act.

### **III. ARGUMENT**

#### **A. The Court Should Permit Issuance of the Requested Subpoena Pursuant to the Walsh Act**

The Walsh Act provides that a United States national or resident who is in a foreign country may, in the interest of justice, be subpoenaed to testify and produce documents in the United States:

[a] court of the United States may order the issuance of a subpoena requiring the appearance of a witness before it, or before a person or body designated by it, of a national or resident of the United States who is in a foreign country . . . if the court finds that particular testimony . . . is necessary in the interest of justice, and . . . if the court finds, in addition, that it is not possible to obtain his testimony in admissible form without his personal appearance . . .

28 U.S.C. §1783.

The Walsh Act's stated purpose is to "provide equitable and efficacious procedures for the benefit of tribunals and litigants involved in litigation with international aspects." *CSI Inv. Partners II, L.P. v. Cendant Corp.*, 00 Civ. 1422 (DAB), 2006 U.S. Dist. LEXIS 11014, at \*12 (S.D.N.Y. Mar. 15, 2006) (citing Sen. Rep. 88-1580 at 1964 U.S.C.C.A.N. 3782, 3783 (Sep. 15, 1964)). The decision to issue a subpoena under the Walsh Act is left to the sound discretion of the court. *Klesch & Co. v. Liberty Media Corp.*, 217 F.R.D. 517, 523 (D. Colo. 2003).

This motion should be granted because, as discussed below, Mr. Kahr is a United States resident located abroad whose documents and testimony are necessary in the interests of justice.

Where "the requested subpoena is consistent with the liberal discovery contemplated by Rule 26 [it] is, therefore, necessary in the interest of justice." *Klesch*, 217 F.R.D. at 524 (ordering issuance of subpoena pursuant to Walsh Act where deposition sought "may present relevant information or, at the very least, may lead to the discovery of admissible evidence."). As discussed below, under this standard, issuance of the requested subpoena is necessary in the interests of justice

as Mr. Kahr's knowledge is highly probative of the Class' predatory lending allegations as well as defendants' scienter and cannot be obtained elsewhere. Additionally, Mr. Kahr likely has in his possession relevant documents no longer available from defendants. The Class discusses these points in turn below.<sup>4</sup>

**1. Mr. Kahr's Testimony is Highly Probative and Cannot Be Obtained from Another Source**

Andrew Kahr is a key witness in this case. Throughout the Class Period Mr. Kahr provided consulting advice to Household senior management. He was hired in 1999 to concoct and implement [REDACTED] to boost revenue and [REDACTED] [REDACTED] following Household's [REDACTED] consumer lending results in 1998. Brooks Decl., Exs. 1, 4. In time, Mr. Kahr's consulting role expanded to all of Household's U.S. business units. During the Class Period Household implemented a number of Mr. Kahr's suggestions. Brooks Decl., Ex. 5.

Among the initiatives proposed by Mr. Kahr and adopted by Household was his plan to [REDACTED] [REDACTED] Brooks Decl., Ex. 1 at HHS 02861369. This initiative was specifically selected by Household senior management, including the individual defendants in this case, from a list of sixty "opportunistic methods" suggested by Mr. Kahr to boost Household's bottom line. *Id.* at HHS 02861365.

Shortly after Mr. Kahr suggested to senior management that Household change its loan payment structure to reduce [REDACTED] Household corporate trainers began teaching sales

---

<sup>4</sup> There can be no dispute that Mr. Kahr is a United States resident. Mr. Kahr owns at least two properties in California and his homeowner's tax exemption specifies that his Watsonville, CA home is his primary residence. Schneider Decl., ¶3.

employees how to misrepresent the true interest rate of loans by comparing the “effective rate” of loans paid bi-weekly to customers’ existing loans. ¶¶55-60.<sup>5</sup> This training was in effect from 1999 to 2001, during which period Household trainers held sales workshops designed to show account executives how to use this misleading worksheet to sell loans using the “effective rate.” *Id.* As alleged in the complaint, employees were trained to use the EZ Pay bi-weekly payment plan and the “effective rate” technique to deceive customers into believing that they were cutting their interest rate to 7% by participating in the EZ Pay Plan when, in reality, the interest rate was substantially higher. *Id.*

While defendants argue that these “effective rate” scams were the product of “rogue” offices, Mr. Kahr’s [REDACTED] initiative suggests that the “effective rate” sales scheme came from top management, as opposed to rogue sales agents. The Class should be permitted an opportunity to depose Mr. Kahr on this subject.

Another of the initiatives designed by Kahr and adopted by Household senior management – including individual defendants Aldinger, Gilmer, Schoenholz and Vozar – was to [REDACTED]

[REDACTED] Brooks Decl., Ex. 1 at HHS 02861370. Management’s description of this initiative reads: [REDACTED]

[REDACTED] *Id.* This initiative is directly related to the Class’ allegation that “Household *hid prepayment penalties* in its loan documents and had Household employees conceal this from borrowers.” ¶17. This initiative also is consistent with the Washington Department of Corporations finding that Household “structured its sales process so as

---

<sup>5</sup> All “¶\_” references to the [Corrected] Amended Complaint for Violation of the Federal Securities Law.

‘to sneak the prepayment penalty past the point of rescission.’” ¶69 (citing Washington Report at 43).

Similarly, on March 20, 1999, Mr. Kahr sent a memorandum to defendants Vozar, Gilmer and Schoenholz, among others, detailing his plan for Household to circumvent state laws in order to [REDACTED] Brooks Decl., Ex. 6 at HHS 02923887. In this memorandum, entitled: “Redoing HFC Mortgage Forms to Impose High Prepayment Penalties,” Mr. Kahr proposed that Household make changes to its ‘mortgage forms’ in order to qualify Alternative Mortgage Transaction Parity Act and [REDACTED] [REDACTED] *Id.* The memo indicates that defendant Gilmer [REDACTED] for Mr. Kahr’s scheme. *Id.*

Issuance of the requested subpoena is warranted so that the class can depose Mr. Kahr on these issues, as well as others related to its claims.

## **2. The Subpoena Seeks a Comprehensive Set of Documents Household Appears to Have “Disposed of”**

The subpoena also is necessary for the Class to obtain documents not available from any other source. Pursuant to [REDACTED] Mr. Kahr was to be provided [REDACTED] [REDACTED] his initiatives. *Id.* Thus, it is entirely likely that Mr. Kahr has in his files these documents. However, as discussed below, these same documents are no longer available from Household due to defendants’ intentional destruction of documents relating to the retention of Mr. Kahr.

Mr. Kahr is not your ordinary consultant, but a highly controversial figure within the subprime lending market. There are numerous press accounts, including an expose in the *San Francisco Chronicle* and an episode of *Frontline*, detailing Mr. Kahr’s links with the predatory practices employed by Providian Financial Corp., a company founded by Mr. Kahr. Indeed, after Mr. Kahr was publicly linked with predatory lending practices at Providian in May 2002, Household



determined to destroy its internal documents relating to its use of Mr. Kahr to develop its own predatory practices.

In June of 2002, Household Chief Information Officer Ken Harvey sent an email to defendants Aldinger and Schoenholz as well as Household general counsel Ken Robin with the subject “Kahr Memos,” which reads:

[REDACTED]

[REDACTED]

[REDACTED] Brooks Decl., Ex. 7.

Four days later, Mr. Schoenholz forwarded this e-mail to Mr. Robin with instructions: [REDACTED]

[REDACTED] *Id.* This email string confirms Household’s intention to delete more than 600 emails describing Mr. Kahr’s initiatives for growth at any cost, and to actively block Mr. Kahr from sending any further emails to Household employees. Indeed, Household’s CFO, defendant Schoenholz, instructed its general counsel to ensure that *all* Kahr memos were [REDACTED]

Thus, issuance of the deposition subpoena is necessary in order for the Class to obtain from Mr. Kahr copies of the relevant documents destroyed by Household, as well as any notes or other documents Mr. Kahr retained with respect to his consulting services. Several critical sets of documents are missing from Household’s production.

Defendants’ production did not include the list of 60 potential initiatives to accelerate growth presented to Household senior management upon Mr. Kahr’s engagement with Household in January 1999. Brooks Decl., Ex. 1. More importantly, defendants have not produced a single memo or email authored by Mr. Kahr regarding implementation of his initiative to [REDACTED]

[REDACTED] *Id.* at HHS 02861369. As discussed above, this initiative relates

directly to the Class' allegation that Household misled its borrowers about their interest rates. Indeed, defendants did not produce anywhere near the 630 Kahr-related documents referenced in Mr. Harvey's email. Because Mr. Kahr is the only available source for these documents, issuance of the subpoena is necessary in the interest of justice.

#### **IV. CONCLUSION**

For the foregoing reasons, the Court should authorize the issuance of the requested subpoena.

DATED: December 4, 2006

Respectfully submitted,

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
PATRICK J. COUGHLIN (90785466)  
AZRA Z. MEHDI (90785467)  
D. CAMERON BAKER (154452)  
MONIQUE C. WINKLER (90786006)  
LUKE O. BROOKS (90785469)  
JASON C. DAVIS (4165197)  
BING Z. RYAN (228641)

s/ Luke O. Brooks  
\_\_\_\_\_  
LUKE O. BROOKS

100 Pine Street, Suite 2600  
San Francisco, CA 94111  
Telephone: 415/288-4545  
415/288-4534 (fax)

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
WILLIAM S. LERACH  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)

Lead Counsel for Plaintiffs

MILLER FAUCHER AND CAFFERTY LLP  
MARVIN A. MILLER  
30 North LaSalle Street, Suite 3200  
Chicago, IL 60602  
Telephone: 312/782-4880  
312/782-4485 (fax)

Liaison Counsel

LAW OFFICES OF LAWRENCE G.  
SOICHER  
LAWRENCE G. SOICHER  
110 East 59th Street, 25th Floor  
New York, NY 10022  
Telephone: 212/883-8000  
212/355-6900 (fax)

Attorneys for Plaintiff

T:\CasesSF\Household Intl\BRF00037251\_redacted.doc