

**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' MEMORANDUM IN SUPPORT OF THE CLASS' MOTION TO
COMPEL HOUSEHOLD DEFENDANTS TO PRODUCE DOCUMENTS RESPONSIVE
TO THE CLASS' FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS**

REDACTED VERSION

I. INTRODUCTION

The Class propounded the Fourth Request for Production of Documents on October 3, 2006 (“Fourth Request”). The Fourth Request was designed principally to capture any documents missing from prior productions through the use of narrow requests seeking specific documents or categories of documents. Defendants served their Objections on November 6, 2006. *See* Ex. A.¹ Documents encompassed within the Fourth Request should have been turned over as part of the First, Second and/or Third Requests for Production of Documents. Last week, defendants certified that production of documents responsive to those requests has been completed, but numerous gaps remain and are the focus of the Fourth Request including the following:

- Documents establishing the compensation paid to Andrew Kahr to advise Household International, Inc. (“Household” or the “Company”) on how to engage in certain predatory lending practices (Request No. 1);
- “Over-NIM reports” tracking excessive interest rates and false “discount points” (Request No. 2);
- Documents constituting the HSBC Holdings plc (“HSBC”) merger negotiations, valuation documents and specific due diligence materials as part of the merger (Request Nos. 3, 5 and 8);
- Promontory Financial Group (“Promontory”) reports and billing statements (Request Nos. 9 and 10);
- Calendars of 15 important Household deponents (Request No. 19); and
- Exhibits to the HSBC merger agreement (Request No. 20).

Defendants could easily produce these discrete categories of documents. As noted above, these requests fall within prior, broader requests. However, despite a telephonic meet and confer

¹ Defendants’ Objections include verbatim quotes from the Class’ Fourth Request. Citations to the “Fourth Request” refer to this single document, which contains both requests and objections thereto. All exhibits referenced herein are attached hereto unless otherwise indicated.

followed by an explanatory letter, defendants have refused to produce these narrow categories. The Class respectfully requests the Court compel defendants to produce these documents.

II. THE SPECIFIC DOCUMENT REQUESTS AT ISSUE ARE NARROW AND RELEVANT

REQUEST NO. 1

Request No. 1 is very specific and seeks documents that show the compensation paid to Mr. Andrew Kahr, who advised Household on certain predatory lending practices. The level of compensation is probative of the value Household ascribed to his advice. This request falls within the broader ambit of prior predatory lending requests. *See, e.g.*, Ex. B at 8 (First Request No. 7 seeking lending policy and practice documents); Ex. C at 8 (Second Request Nos. 7 and 8 seeking EZ Pay Plan and discount point documents). Defendants should be ordered to produce documents responsive to this request by December 18, 2006.

REQUEST NO. 2

Request No. 2 specifically identifies and seeks “Over-NIM” reports. The Over-NIM reports were used internally to track any improper use of discount points and excessive interest rates. *See, e.g.*, Ex. D at HHS 02675654 [REDACTED]; Ex. E at HHS-E 0002134.0005 [REDACTED]. These reports fall within prior broader requests. *See, e.g.*, Ex. C at 8 (Second Request No. 8 seeking all documents concerning discount points); Ex. F at 10 (Third Request No. 29 seeking origination/discount point documents). During a November 10, 2006 meet and confer, defendants asserted ignorance as to these specific reports and requested the Class’ assistance in identifying the reports at issue. The Class did so via letter dated November 13, 2006. *See* Ex. G. Subsequently, this Court directed defendants to respond to this request by December 4, 2006. *See* November 30, 2006 Minute Order (Docket No. 804). To date, defendants have produced nothing and provided no

timetable for production. *See* Ex. H. Defendants should be ordered to produce documents responsive to this request by December 18, 2006.

REQUEST NOS. 3, 5 AND 8

Request Nos. 3, 5 and 8 seek specific (i) merger-related communications; (ii) valuation materials; and (iii) due diligence materials generated in connection with Household/HSBC merger negotiations. Such negotiations commenced at least as early as April 2002 and culminated in the November 14, 2002 merger announcement. These documents corroborate the Class' allegations that the "decision to sell Household quickly and at a bargain-basement price was a direct result of [predatory lending, reaging, accounting problems]". *See* Complaint at ¶6.² As with the other requests that are the subject of this motion, these narrow categories of documents are a subset of prior requests. *See, e.g.*, Ex. B at 12 (First Request No. 29 seeking merger-related documents); Ex. F at 7 (Third Request Nos. 7 and 8, seeking due diligence and communications).

Regarding Request No. 3, the Class has no documents reflecting the actual offers exchanged between Household and HSBC nor the other documents (such as term sheets or letter agreements) reflecting the business negotiations between the parties. Similarly, although Household executives made presentations to, and engaged in intensive discussions with, HSBC as part of the due diligence process in October of 2002, defendants have not produced those presentations. *See, e.g.*, Exs. I-J (schedules illustrating extensive due diligence discussions and information exchange, commencing on October 9, 2006). Regarding Request No. 5, Household has produced no valuation materials prepared by HSBC. The Class further narrowed and clarified Request No. 5 by letter of November 13, 2006. *See* Ex. G. But defendants still refused to produce any documents, choosing instead to

² "Complaint" refers to the [Corrected] Amended Complaint for Violation of the Federal Securities Law.

“stand by their objections.” *See* Ex. H. As to Request No. 8, Household has produced no due diligence reports, which are standard in a transaction of this type, including business reports by HSBC, accounting reports by accountants engaged to evaluate Household, or any third-party consultant reports (such as those one would expect from Promontory discussed below). Given the magnitude of this transaction, and its importance to Household, the Company should be able to easily locate these materials. Defendants should be ordered to produce documents responsive to these requests by December 18, 2006.

REQUEST NOS. 9 AND 10

Requests Nos. 9 and 10 seek specific documents, reports and other consulting documents Household received from Eugene Ludwig of Promontory Financial Group regarding state and/or federal regulatory action and (ii) the billing statements or retainer agreements between Mr. Ludwig and Household describing the services he provided. Based on documents received from Promontory, Mr. Ludwig was paid millions of dollars to advise Household on its regulatory problems with federal and state agencies. However, to date, neither Promontory nor Household has produced any documents constituting any reports/memoranda generated by Mr. Ludwig or describing the scope of Mr. Ludwig’s duties. These documents are a narrow subset of prior requests. *See, e.g.*, Ex. B (First Request Nos. 1, 2, and 3, seeking documents relating to regulatory investigations). Defendants should be ordered to produce documents responsive to these requests by December 18, 2006.

REQUEST NO. 19

Request No. 19 is very specific and seeks calendars for “any Household officer or employee” showing meetings with community activists; meetings with investors; rating agencies; and the press. *See* Ex. A at 19-20. On November 13, Lead Plaintiffs agreed to further narrow this request by providing the names of 15 former or current Household employees. *See* Ex. G. Importantly, that list included only high level officers who are being or have been deposed. *Id.* These calendars are

important for discovery and trial because many Household witnesses are having difficulty recalling the timing of events and their participation in them. These calendar entries should have been produced previously in response to prior requests, but were not. *See, e.g.*, Ex. B at 7, 10 (First Request No. 1 seeking documents and communications, relating to investigations, including state/federal, regulatory agency or other body, of Household's lending policies and practices; First Request No. 20 seeking documents and communications regarding meetings with analysts or investors). Defendants refuse to produce such calendars. *See* Ex. H.³ Defendants should be ordered to produce calendars for the 15 individuals specified in the Class' November 13 letter by the end of the day on December 18, 2006.

REQUEST NO. 20

Request No. 20 seeks a complete "Disclosure Schedule," to the November 14, 2002 Merger Agreement between Household and HSBC. This schedule is an exhibit to the Merger Agreement and includes specific disclosures being made by Household as part of the Merger Agreement, including disclosures regarding compliance with laws, regulatory compliance and litigation. *See* Ex. K at HHS-E 0025485.0037-.0039 (Merger Agreement excerpts showing the compliance, regulatory and litigation-related promises by Household). On November 13, 2006, the Class directed defendants to an *incomplete* copy of this document by bates number and pointed out two particular attachments that were clearly missing, and went so far as to instruct defendants where they would likely find such documents. *See* Ex. L (Disclosure Schedule referencing exhibits at HHS 02071120 (Section 5.11(b)(1)) and HHS 02071122 (Section 5.12(2)) that were not produced); Ex. M. The missing documents essentially list any compliance matters and ongoing litigation. None of

³ Both Exhibits G and H contain typographical errors in that they discuss Fourth Request No. 19 but refer to it as No. 18.

the documents constituting the Disclosure Schedule is privileged, as evidenced by the fact that defendants produced the entire Merger Agreement to the Securities and Exchange Commission. *See* Ex. N. Defendants should be ordered to produce documents responsive to this request by December 18, 2006.

III. CONCLUSION

For the reasons set forth above, the Class respectfully requests the Court order defendants to produce documents responsive to the Fourth Requests discussed herein.

DATED: December 12, 2006

Respectfully submitted,

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