



The Household Defendants respectfully submit this Status Report to summarize the current status of the action and to raise a few matters that Defendants believe should be discussed at the January 10, 2007 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 greatly assist the parties in concluding fact discovery by the January 31, 2007 cut-off.

**1. Defendants' Compliance with the Court's December 15 Order**

Since the last status conference on December 15, 2006, Defendants have complied with the following deadlines that were established and discussed during that conference and in the Court's December 15, 2006 Order issued thereafter:

a. On December 18, Defendants provided Plaintiffs with a list of purchases and sales by Household of its stock (as an agreed upon initial response to Plaintiffs' Fifth Request for the Production of Documents).

b. On December 21, Defendants produced documents regarding stock repurchases in response to Plaintiffs' Fifth Request for the Production of Documents after having been informed by Plaintiffs that they believed the list was not sufficient. (The Court's December 15 Order required Defendants to do so by December 29.)

c. On December 21, Defendants produced additional documents to complete their response to Plaintiffs' Sixth Request for the Production of Documents. (The Court's December 15 Order required Defendants to do so by December 29.)

d. On December 22, Defendants served two motions pertaining to Plaintiffs' responses and objections to Defendants' interrogatories: (i) a motion for sanctions, including a recommendation of dismissal of the Complaint, with respect to Plaintiffs' repeated evasive and non-substantive answers and objections to Defendants' Court-authorized supplement to their Second Set of Interrogatories (and to compel proper answers to such interrogatories), and (ii) a motion to compel proper responses to Defendants' Fourth Set of Interrogatories. Plaintiffs filed an Opposition to each of these motions on December 29 and Defendants filed their Replies to these motions on January 3, 2007. Both of these motions are now fully briefed.

e. On December 22, Defendants filed their Opposition to Plaintiffs' motion to compel the production of documents in response to their Fourth Request for the Production of Documents. Plaintiffs filed a Reply on December 29 and this motion is now fully briefed.

f. On December 26, Defendants produced copies of the so-called "over-NIM" reports requested by Plaintiffs' Fourth Document Request. (The Court's December 15 Order required Defendants to do so by December 29).

g. On January 3, 2007, Defendants provided comments on the several thousand documents that were identified, by Bates numbers, on Plaintiffs' lists of allegedly withheld and redacted documents that Plaintiffs assert should have been included on Defendants' privilege logs. (The comments explain why the vast majority of the documents need not be included on Defendants' privilege log, *e.g.*, many of the Bates ranges included on Plaintiffs' lists did not correspond to actual documents or corresponded to documents that had already been produced by Defendants in complete, unredacted form.)

## **2. Plaintiffs' Unilateral Scheduling of Morgan Stanley Deposition**

During the December 15, 2006 status conference, Plaintiffs' counsel, Ms. Mehdi, represented that she would inform Defendants by Monday, December 18, as to whether Plaintiffs planned to take the deposition of Morgan Stanley (which would take place in London). When

Plaintiffs failed to do so, Defendants inquired, on at least two subsequent occasions, whether Plaintiffs intended to proceed with this deposition and for several weeks were told only that the matter was still under consideration. Then, on January 2, Defendants were informed that the Morgan Stanley deposition might take place in London on January 22, 2007, which would require a second trip to London during the month of January, in that Plaintiffs are deposing HSBC Holdings plc in London on January 8. And, finally, on January 5, Plaintiffs informed Defendants that they did, in fact, plan to proceed with the deposition of Morgan Stanley. Plaintiffs did not include Defendants in any of the communications regarding this inefficient scheduling decision, in violation of this Court's unequivocal instruction at the November 30 status conference that Plaintiffs must include defense counsel in all scheduling discussions between Plaintiffs and third-party witnesses that they have subpoenaed.

Apart from directly contravening the Court's directive, this particular unilateral scheduling decision seriously prejudices Defendants. In addition to all of the work in which they currently are engaged to comply with the Court's January 31 discovery cut-off, they now will have to staff and travel to London a second time in January for a deposition in this action. Defendants have urged Plaintiffs to schedule the two London depositions so that only a single trip to London would be necessary (thereby saving both time and costs). Had Defendants been properly advised that Plaintiffs intended to proceed with this deposition and included in Plaintiffs' discussions with Morgan Stanley, as the Court contemplated, Defendants might have been able to negotiate a schedule coordinated with the deposition of HSBC Holdings plc in order to minimize unnecessary burden, expense, and distraction from other required tasks. Defendants plan to include this subject in their application for costs occasioned by Plaintiffs' failure to

proceed with certain depositions as scheduled, a motion this Court has authorized immediately after the close of fact discovery.

**3. Plaintiffs' Knowing and Continued Attempts to Use Privileged Documents at Depositions**

At the December 7, 2006 deposition of Kenneth Robin, Household's General Counsel, Defendants objected to Plaintiffs' using audit letters produced by KPMG on the grounds that they were precluded by this Court's July 6, 2006 ruling as to the Arthur Andersen audit letters (as to which Plaintiffs have filed an Objection with Judge Guzman). KPMG was the successor to Arthur Andersen as Household's auditor. KPMG's counsel directed Plaintiffs to return these inadvertently-produced privileged documents. The letters at issue are the same as or similar to the documents that were the subject of this Court's July 6, 2006 ruling that the Arthur Andersen audit letters were privileged documents that should not be produced to Plaintiffs or should be returned by Plaintiffs if inadvertently produced. The KPMG documents are protected under the reasoning of that ruling. Plaintiffs nevertheless refused to return the documents to KPMG and insist that Household should make a formal motion as to these audit letters. They also threaten to seek to reopen Mr. Robin's deposition to question him about these documents.

Defendants believe that a motion focusing on these audit letters would be an unnecessary burden on Defendants and the Court, especially in view of the many other matters that must be completed in order to comply with the January 31, 2007 fact discovery cut-off. Moreover, as Rule 26(b)(5)(B) provides, Plaintiffs, as the party contesting the assertion of privilege, should have the burden of seeking judicial relief if this Court's July 6, 2006 ruling did not provide a definitive answer on this subject.

Plaintiffs have sought to use several of the KPMG documents in support of their Objections to this Court's July 6, 2006 ruling. On December 13, 2006, Judge Guzman granted Plaintiffs permission to file a Supplemental Declaration of counsel attaching testimony by Mr. Robin and several documents marked as exhibits at his deposition. Plaintiffs argued that the testimony and documents "further support the Class' position that audit letters created by a public company do not fall under the protection of the work product doctrine because they contain business and financial information of the Company" (a position expressly rejected by this Court in its July 6 ruling). In a response to this declaration, Defendants submitted a brief memorandum to Judge Guzman noting that the KPMG documents should have been returned by Plaintiffs because they were fully aware of the privileged nature of the documents. In fact, one of the KPMG documents is an exact duplicate, down to handwritten notes on the side, that Plaintiffs submitted to this Court on the motion with respect to the Arthur Andersen documents (which resulted in the Court's July 6, 2006 ruling). As this Court has ruled that audit letters are protected work product and that work product protection is not waived by virtue of sharing such letters with a company's own auditor, that rationale should control whether the letters were inadvertently produced by Arthur Andersen, KPMG or Household. Unless and until Judge Guzman reverses this Court's July 6, 2006 ruling, all parties should be required to adhere to that ruling. No new motion need be filed with respect to the KPMG audit letters. Defendants respectfully request that the Court so rule at the January 10 Status Conference.

**4. Plaintiffs' Deadline for Responding to Defendants' Fifth Set of Interrogatories**

Plaintiffs' answers to Defendants' fifth set of interrogatories which seek, in part, the identification of facts and documents that purport to show that each of the individual

defendants acted with scienter as to any fraud alleged in the Complaint, are due on January 24, 2007. Although Plaintiffs' track record for providing good faith substantive responses is not good (*see, e.g.*, Defendants' motions to compel compliance and for sanctions filed on December 22), there is very little time left for Defendants to seek redress if, as before, Plaintiffs do no more than assert frivolous, previously rejected objections, or provide useless generalities in lieu of substantive answers. Defendants therefore respectfully ask the Court to set aside time for a conference call with the parties on January 25 or as soon thereafter as the Court can spare a few minutes, if needed, to resolve any problems associated with Plaintiffs' January 24 response.

Dated: January 8, 2007  
Chicago, Illinois

Respectfully submitted,

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