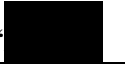
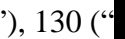


This memorandum is respectfully submitted on behalf of Defendants Household International, Inc. (“Household”), Household Finance Corp., William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar (collectively, “Defendants”) in opposition to Plaintiffs’ motion to compel Andrew Kahr documents allegedly improperly withheld as privileged or destroyed by the Household Defendants.¹

Although Plaintiffs’ practice of elevating innuendo over fact has become standard fare in this litigation, Plaintiffs’ latest motion to pursue additional discovery about non-party Andrew Kahr is a particularly frivolous and wasteful red herring.² Defendants will provide the Court with all relevant known facts, but beyond maintaining their willingness to produce any additional non-privileged Kahr-related documents that they may locate, Defendants are at a loss to know what else they can do to supplement their nearly 5 million pages of produced documents to Plaintiffs’ satisfaction.

Background

Mr. Kahr was an outside consultant who generated marketing ideas — in some cases regarding Household’s consumer lending operations — for consideration by Household subject to legal review and application of Household’s consumer protection standards. Few of his ideas were implemented, and none were implemented in the form suggested by Mr. Kahr. *See* Declaration of Landis C. Best (“Best Decl.”), Ex. A (Transcript of Deposition of Paul Creatura) at 32-33 (“”), 130 (“

¹ Plaintiffs’ companion motion to unseal was entered and continued pursuant to the Court’s Order of January 10, 2006. If necessary, Defendants are prepared to put in a response to that motion at the appropriate time.

² Plaintiffs’ motion demonstrates that the Court was correct in the “concern” it expressed in its Order of December 13, 2006, that allowing Plaintiffs to issue a Walsh Act subpoena to Mr. Kahr “could serve to generate further disputes while producing testimony that is only marginally relevant.” *Lawrence E. Jaffe Pension Plan v. Household International, Inc.*, No. 02-C-5893, slip op. at 4 (N.D. Ill. Dec. 13, 2006) (Nolan, M.J.).

”); Ex. B (Transcript of Deposition of Thomas Detelich) at 195 (“

”); Ex. C (Transcript of Deposition of Gary Gilmer), at 56 (“

”).

Attorney Client Privilege Attaching to Certain Communications with Mr. Kahr

Although the relevance of documents suggesting consumer lending ideas that were rejected or modified is not readily apparent, during the massive document production in this matter, Defendants located and produced hundreds of pages of memoranda and other communications to and from Mr. Kahr. Only one small subset of Kahr-related documents was withheld as privileged and logged on Defendants’ privilege log. These were documents created in the course of one particular assignment in which Mr. Kahr interfaced directly with Household’s in-house counsel to assist them in providing legal advice to the Company regarding whether the Federal Parity Act (which had recently been enacted) did or did not preempt certain state consumer lending regulations or statutes. *See* Declaration of Azra Mehdi, Ex. 3 (Kahr memorandum) (“

”).

The subject matter of the documents is not especially germane to this lawsuit, as it is uncontested that with the exception of a single state, Household continued to operate its consumer lending business under the auspices of state rather than federal regulations. *See* Best Decl. Ex A (Creatura Dep. Tr.) at 150-52 (“


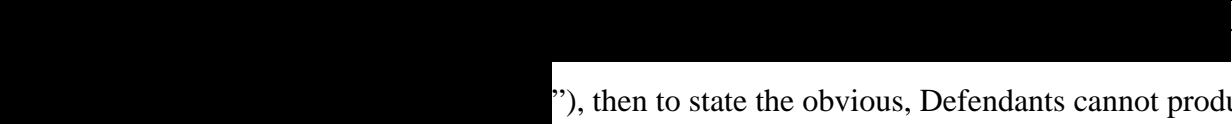
[REDACTED]).
Nevertheless, and although Defendants have provided them with a full explanation of why these documents are privileged, Plaintiffs have elected to burden the Court and Defendants with another wasteful motion.

The logged documents were properly withheld from production because it is well-settled that the attorney-client privilege attaches where agents of a company — whether salaried employees or paid consultants — communicate with the company’s counsel for purposes of seeking or assisting with the provision of legal advice. Numerous courts have confirmed that, where a consultant communicates with counsel in order to obtain legal advice on behalf of the client, those communications are protected by the attorney-client privilege. *See, e.g., Fed. Trade Comm’n v. Glaxsmithkline*, 294 F.3d 141, 148 (D.C. Cir. 2002) (holding that documents shared with consultants were protected by the attorney client privilege where consultants were “integral members of the team assigned to deal with issues [that] . . . were completely intertwined with [GSK’s] litigation and legal strategies” and concluding that “there is no reason to distinguish between a person on the corporation’s payroll and a consultant hired by the corporation if each acts for the corporation and possesses the information needed by attorneys in rendering legal advice.”) (quoting *In re Copper Market Antitrust Litig.*, 200 F.R.D. 213, 219 (S.D.N.Y. 2001)); *In re Bieter*, 16 F.3d 929, 939-40 (8th Cir. 1994) (holding that communications between external consultant and counsel were protected by attorney-client privilege, because “for purposes of the privilege, [the consultant was] the functional equivalent of [the client company’s] employee, and the communications in question fell within the scope of his duties, were made at the behest of his superior, and were made for the purpose of seeking legal advice for [the client company].”); *McCaugherty v. Siffermann*, 132 F.R.D. 234, 239 (N.D. Cal. 1990) (holding that, where consultants were hired to perform services “in an environment dense in regulations . . . [and] it would be necessary for both consultants to provide information to [the client company’s attorneys] in order for that law firm to be in a position to provide its clients . . . with fully in-

formed legal advice”, there was “no principled basis” for refusing to extend the attorney-client privilege to communications between the consultants and the company’s counsel).³

Defendants are providing a full set of the subject documents for the Court’s *in camera* inspection. In light of the foregoing legal standards, the privileged nature of these communications is self-evident, and this aspect of Plaintiffs’ motion should be denied in full.

Unsubstantiated Allegations of Document Destruction

Defendants have no reason to believe that any Kahr-related documents were destroyed after the start of this litigation, and their production of several hundreds of pages of Kahr-related documents confirms that such files were retained. If any Kahr-related documents were discarded or destroyed in the normal course at any time between 1999 and the start of this lawsuit, *but see id.*, Ex. D (Transcript of Deposition of Household’s General Counsel Kenneth H. Robin, Esq.) at 61 (“ ”), then to state the obvious, Defendants cannot produce material that they do not possess. All Defendants can do is comply with their obligation under the Federal Rules to produce any additional Kahr-related documents they may later find, to supplement the hundreds of pages they have already produced.

³ Plaintiffs cite *Barrent Indus. Trucks, Inc. v. Old Republic Ins. Co.*, 129 F.R.D. 515, 517-18 (N.D. Ill. 1990) for the proposition that the attorney-client relationship does not extend to consultants. Pl. Br. at 4. However, that case was applying the Illinois law of privilege, which limits application of the attorney-client privilege in the corporate context to the corporate client’s “control group,” as opposed to the more expansive attorney-client privilege recognized under the federal common law of privilege that is applicable to this case. This Court has previously recognized that the “control group” test has no application here. *Lawrence E. Jaffe Pension Plan v. Household International, Inc.*, No. 02 C 5893, slip op. at 5-6 (N.D. Ill. Dec. 9, 2005) (Nolan, M.J.).

CONCLUSION

For the foregoing reasons, Defendants respectfully request that Plaintiffs' motion be denied in full.

Dated: January 17, 2007
Chicago, Illinois

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