



## I. INTRODUCTION

Lead plaintiffs respectfully move this Court for an order striking Defendants' Motion For a Finding of Contempt and for Appropriate Sanctions ("Motion") and all documents in support thereof.<sup>1</sup> In a motion to strike, pursuant to Rule 12(f), "the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Defendants' motion and supporting documents are fatally flawed both procedurally for failure to comply with the requirements of L.R. 37.1 & 37.2, as well as on the merits.

Significantly, lead plaintiffs' use of Document Bates No. HHS-E 0001208 is fully consistent with this Court's orders and the parties' understanding of those orders. Defendants raise this issue now to divert the Court and lead plaintiffs from the few remaining expert issues. Further to create an issue, defendants grossly misrepresent the facts – so much so that the Court should admonish them about such tactics. Defendants omit the fact that the document at issue is an exhibit in this Court's files and the fact that it has been used by plaintiffs *without objection from defendants* as an exhibit at two separate depositions, the Deposition of Ken Robin and the Deposition of Robin Allcock. Significantly, Ms. Allcock's deposition took place on March 7 and March 8, 2007, after this Court's February 27, 2007 Order. Relying on the Court's orders permitting the use of this document, lead plaintiffs' expert Ms. Ghiglieri cited that document in her August 15, 2007 report. Set forth below is

---

<sup>1</sup> Upon receiving defendants' motion, plaintiffs requested that defendants' agree to a briefing schedule in advance of the March 13, 2008 status hearing before the Court. Counsel for defendants refused to agree to a briefing schedule indicating instead that if the Court did not ask for Plaintiffs' response at the status conference, they would move for an expedited briefing schedule. *See* Exhibit 1 attached hereto. Lead plaintiffs expect that given defendants' failure to observe the stringent procedural safeguards of contempt proceedings, the Court will deal with defendants' motion swiftly and dismiss it. If that is not the course the Court chooses to take, plaintiffs expect, given the seriousness of the accusations made by defense counsel and the request for contempt, the Court will provide plaintiffs an adequate opportunity to respond, including the opportunity to take oral evidence. *See infra* §IV.

the full history of the document for the Court, which will establish that lead plaintiffs have consistently acted in accordance with the Court's orders and with the parties' understanding of those orders.

If the Court is not inclined to grant lead plaintiffs' motion to strike, given the seriousness of the defendants' personal attack on plaintiffs' counsel, it is imperative that due process be observed before this Court makes any rulings in connection with defendants' Motion. Notably, this type of personal attack on plaintiffs' counsel is completely inappropriate, which lacking all merit serves only to provoke animosity between counsel. Accordingly, lead plaintiffs respectfully request that the Court hold an evidentiary hearing to get to the bottom of the conclusory and baseless accusations made by defendants.

## **II. THE HISTORY OF THE ERNST & YOUNG LLP DISPUTE AND THIS DOCUMENT**

In the summer of 2006, after lead plaintiffs had subpoenaed Ernst & Young LLP ("E&Y") for documents relating to its compliance engagement, defendants raised via letter assertions that they had inadvertently produced privileged documents relating to that engagement. Pursuant to the terms of the Protective Order, lead plaintiffs disputed those assertions and requested the production of supporting privilege logs. Months passed without defendants producing any privilege log or moving the Court for an order with respect to their inadvertent production assertions.

Unwilling to wait further given the obvious importance of these documents, lead plaintiffs filed their own motion on October 16, 2006. This was a motion to compel defendants to produce the remaining E&Y documents in their possession. Plaintiffs submitted HHS-E 001208 as Exhibit N in support of this motion.<sup>2</sup> Docket No. 709.<sup>3</sup> Defendants fail to apprise the Court of this fact. Nor do

---

<sup>2</sup> Declaration of D. Cameron Baker in Support of the Class' Motion to Compel Production of Documents Pertaining to Household's Consultations with Ernst & Young LLP.

defendants inform the Court that this document is not an E&Y document but an internal Household March 2003 document that combines internal refund estimates and E&Y estimates. However, in their opposition to plaintiffs' E&Y motion, defendants acknowledged that this document included "work being performed by Household personnel."<sup>4</sup>

On December 6, 2006, this Court granted plaintiffs' motion that the documents were discoverable finding that the *Garner v. Wolfinbarger*, 430 F.2d 1093 (5th Cir. 1970) fiduciary exception applies to communications between E&Y and Household to overcome the attorney-client privilege. Memorandum Opinion and Order at 15 (Dkt. No. 806). Further, the December 6, 2006 Order also found that Household had not met its burden of establishing that the E&Y documents constituted "opinion" work product. *Id.* at 17. The Court also found that because plaintiffs had met their burden of overcoming the work-product privilege based on their substantial need for fact work-product, the documents were discoverable. *Id.* The December 6, 2006 Order did not order the return of inadvertently produced documents, such as HHS-E 001208. Judge Guzman subsequently affirmed this Order on November 22, 2006. Dkt. No. 785.

On December 7, 2006, after the Court's ruling on plaintiffs' motion, plaintiffs used this document without any objection by defendants at the deposition of Ken Robin. Robin Depo Tr., Exhibit 59.

Subsequently, a dispute arose between the parties with respect to whether defendants would need to produce any *additional* post-Class Period E&Y documents in their possession. This dispute

---

<sup>3</sup> After plaintiffs had already filed their motion and submitted the document to the Court as support that the documents were discoverable, defendants included this document in their privilege log on October 25, 2006. *See* Memorandum of Law in Support of Defendants' Motion for a Finding of Contempt and for Appropriate Sanctions (Defs' Mem.) at 2.

<sup>4</sup> *See* Dkt. No. 764, The Household Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion to Compel the Production of Documents Pertaining to Household's Consultants with Ernst & Young LLP at 7 n.7.

led to lead plaintiffs' motion on February 22, 2007 requesting the production of approximately 187 documents. HHS-E 0001208 was inadvertently included by plaintiffs as one of the documents not produced, even though not only had it been produced, the Court had already found that it was discoverable. On February 27, 2007, the Court upheld defendants' position, holding that they need not produce any additional documents. The issue of whether HHS-E 001208 should have been returned or was inadvertently produced was not before the Court.

Neither party understood the February 27, 2007 Order to apply to previously produced documents, whether post-Class Period or not.<sup>5</sup> Significantly, after the February 27, Order, defendants did not request the return of this document or any other post-Class Period documents arising from the E&Y engagement. To the contrary, approximately one week later, on March 8, 2007, lead plaintiffs used this document as Exhibit 141 to the deposition of Robin Allcock without objection.<sup>6</sup> Ms. Allcock was represented at the deposition by Ms. Best, who was fully conversant with the Court's rulings on this issue and indeed, the principal attorney involved on behalf of defendants.

Accordingly, at this juncture, plaintiffs had used this document several times, once in a court filing and twice in depositions. Moreover, defendants had at no time requested the return of this document after any of the Court's E&Y rulings.

In the course of preparing her opinion, plaintiffs' expert, Catherine Ghiglieri, reviewed and relied upon numerous depositions in this case, including the Robin and Allcock depositions and the exhibits to those depositions. Expert Witness Report of Catherine Ghiglieri ("Ghiglieri Report"),

---

<sup>5</sup> Indeed, even in its orders denying plaintiffs' prior motion for production of post-Class Period documents, the Court did not order a return of previously produced post-Class Period documents, and did not preclude plaintiffs' use of such documents. Dkt. No. 534.

<sup>6</sup> Allcock Depo Tr., at 309-402 attached hereto as Ex. 2.

Appendix C; Ghiglieri Rebuttal Report, Appendix A. Ms. Ghiglieri specifically cited to this document in the text of her report, which was provided to defendants on August 15, 2007. Although defendants have raised many issues with the Court respecting plaintiffs' expert reports since then, they did not raise this issue.

On December 10, 2007, defendants submitted their expert reports, including the Report of Robert E. Litan ("Litan Report"). The Litan Report relies upon the March 8, 2007 deposition of Ms. Allcock and presumably the exhibits to that deposition although that reference is not explicitly stated. *See* Litan Report, Appendix 4, attached hereto as Ex. 3. Defendants cannot show documents to Mr. Litan, have him rely upon them and then shield them from discovery.

Ms. Ghiglieri's deposition was taken on February 13, 2008. At that deposition, Thomas Kavalier, the examining attorney for defendants, attempted to question Ms. Ghiglieri about an OCC report of examination. Ghiglieri Depo Tr. at 313-14. Counsel for plaintiffs objected to the use of this document as the OCC had not authorized the use of this report in this litigation. Ghiglieri Depo Tr. at 314-15. Immediately thereafter, Mr. Kavalier commenced questioning Ms. Ghiglieri about HHS-E 0001208. *Id.* at 315-16. Clearly, Mr. Kavalier knew in advance that the OCC report was embargoed and should not be used and wanted to have some possible counter available. Following Ms. Ghiglieri's deposition, the parties engaged in correspondence on this issue. In this correspondence, defendants conceded that the OCC report was embargoed and the issue has been resolved. However, the parties continued to discuss HHS-E 0001208.

On February 22, 2008, the parties held a telephonic meet and confer to discuss issues relating to the plaintiffs' subpoenas on defendants' experts. Defendants requested that this discussion include HHS-E 0001208 and sent a letter to plaintiffs' counsel late after hours on February 21, 2008. However, due to a fax issue, plaintiffs' counsel had not received the letter by the time of the meet

and confer the next day. Baker Decl., ¶1.<sup>7</sup> The transcript reflects this as well as counsel's desire to see that letter. Baker Decl., Ex. D at 25, 28-29. As it turned out, Mr. Hall's letter provided new arguments in support for defendants' position that required a continuation of the meet and confer process. Baker Decl., ¶1. Via separate e-mail after the meet and confer, lead plaintiffs notified defendants that they would respond to Mr. Hall's letter by midweek the following week. Baker Decl., ¶1; Ex. B. That e-mail is not attached to defendants' motion.

On February 25, 2008, the parties held a telephonic conference with Ms. Engel, the Court's Law Clerk, to discuss scheduling of plaintiffs' motion regarding the expert subpoenas. On that conference call, Ms. Best sought to raise this issue substantively with Ms. Engel. Fanning Decl., ¶3.<sup>8</sup> Plaintiffs' counsel objected to this and indicated that meet and confer was not finished and that plaintiffs would respond to defendants' letter. Baker Decl., ¶¶1, 3; Fanning Decl., ¶4. Ms. Engel indicated the parties should continue to meet and confer on this issue. Fanning Decl., ¶5. On February 28, 2008, plaintiffs responded to Mr. Hall's letter and recounted the historical background of this dispute, including the repeated use by plaintiffs of this document during the course of this litigation. Baker Decl., ¶3; Ex. D. The letter invited further discussion if this recitation was in error. *Id.* Defendants made no response and without warning, filed this motion on March 10, 2008.

---

<sup>7</sup> "Baker Decl." refers to Declaration of D. Cameron Baker in Support of Lead Plaintiffs' Motion to Strike Defendants' Motion for Contempt for Failure to Comply with Local Rules 37.1 & 37.2, or in the Alternative, a Request for an Evidentiary Hearing Pursuant to Local Rule 37.1.

<sup>8</sup> "Fanning Decl." refers to Declaration of Lori A. Fanning in Support of Lead Plaintiffs' Motion to Strike Defendants' Motion for Contempt for Failure to Comply with Local Rules 37.1 & 37.2, or in the Alternative, a Request for an Evidentiary Hearing Pursuant to Local Rule 37.1

**III. DEFENDANTS' MOTION IS PROCEDURALLY FLAWED AND SHOULD BE STRICKEN**

**A. Defendants Have Failed to Comply With the Requirements of Local Rule 37.1 Applicable to Contempt Proceedings.**

Local Rule 37.1 provides that in a proceeding to adjudicate a person in civil contempt of court (including a case provided for in Fed. R. Civ. P. 37(b)(2)(D)), the “affidavit upon which such notice of motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the moving party.” L.R. 37.1. The rationale for requiring such an affidavit is grounded in the gravity of making a contempt motion and demonstrates that courts do not take such motions lightly. Defendants have not submitted such an affidavit setting out the alleged misconduct with particularity. Defendants’ failure to comply with these stringent requirements prior to making a serious allegation of misconduct against plaintiffs and their counsel calls into question their motives with respect to both the substance as well as the timing of this motion. For example, defendants did not raise the use of HHS-E 0001208 when plaintiffs attached the document as an exhibit to their October 16, 2006 motion, or when they used it at the depositions of Ken Robin and Robin Allcock. Additionally, defendants do not seek sanctions for use of the document as an exhibit to a Court filing, for use at Robin deposition, for use at Allcock deposition, but only for use in plaintiffs’ expert’s report. Defendants’ conduct, at a minimum, begs the question – why now? The only plausible explanation is that they maintain some hope that the Court will delay the summary judgment and trial setting hearing scheduled for March 27, 2008.

Before either the compensatory or coercive aspects of a court’s civil contempt power can be brought into play first, there must have been disobedience of “an operative command capable of ‘enforcement.’” *H. K. Porter Co. v. National Friction Products Corp.*, 568 F.2d 24, 26 (7th Cir. 1977) (citing *International Longshoremen’s As’n, Local 1291 v. Philadelphia Marine Trade Assoc.*,

389 U.S. 64, 74, 19 L. Ed. 2d 236, 88 S. Ct. 201 (1967)). “[T]o furnish support for a contempt order the judgment must set forth in specific detail an unequivocal command.” *Id.* Defendants furnish no such support and do not cite to any language in the December 6, 2006, or the February 27, 2007 orders that they claim lead plaintiffs’ violated. Instead, they generically point to “violations” of the Protective Order and the February 27, 2007 Order. However, as outlined in detail above, the Court’s December 6, 2006 Order clearly permitted plaintiffs’ use of the document, as they did at several depositions, without any objection from defendants. “To win a motion for civil contempt, a party must prove by clear and convincing evidence that the opposing party violated a court order.” *Goluba v. Sch. Dist. of Ripon*, 45 F.3d 1035, 1037 (7th Cir. 1995) (quotation omitted); *see also United States v. Huebner*, 752 F.2d 1235, 1241 (7th Cir. 1985), *cert. denied*, 474 U.S. 817, 106 S. Ct. 62, 88 L. Ed. 2d 50 (1985). If anything, the only clear and convincing evidence here has been proffered by lead plaintiffs and it demonstrates that plaintiffs did nothing in contravention of the Court’s orders or the parties’ understanding of those orders. Moreover, if defendants now are claiming that they neglected to assert privilege after the Court’s December 6, 2006 ruling that plaintiffs were entitled to this document, among others, the opportunity to make this assertion when they objected to the Court’s December 6, 2006 ruling to Judge Guzman, has passed.<sup>9</sup>

**B. Defendants Have Failed to Comply with the Requirements of Local Rule 37.2 by Prematurely Filing a Motion That was Still Subject of Ongoing Meet and Confers**

Defendants have also failed to comply with L.R. 37.2 because the meet and confer process was not complete with respect to this matter before defendants’ prematurely and improperly filed their Motion. L.R. 37.2 provides that courts in Illinois “shall [] refuse to hear any and all motions for discovery and production of documents under Rules 26 through 37 of the Federal Rules of Civil

---

<sup>9</sup> Additionally, any assertion of privilege, has been waived.

Procedure, unless the motion includes a statement (1) that after consultation in person or by telephone and good faith attempts to resolve differences they are unable to reach an accord, or (2) counsel's attempts to engage in such consultation were unsuccessful due to no fault of counsel's."

L.R. 37.2. Defendants' Motion is also flawed in this respect.

Defendants relegate to a footnote the entire meet and confer process on this issue, which they deem to have ended on February 22, 2008. Defs' Mem. at 6 n.13. However, as outlined in the supporting declarations of D. Cameron Baker and Lori Fanning, at least as of February 25, 2008, when the parties were on a conference call with the Court's Law Clerk, Ms. Engel, the meet and confer process was still ongoing. *See* Baker Decl. at ¶¶2-3; Fanning Decl. at ¶¶4-6. Indeed, consistent with his good faith belief that the meet and confer process was ongoing, plaintiffs' counsel wrote a responsive letter to defendants on February 28, 2008. Baker Decl., ¶3; Ex. D. Plaintiffs' counsel invited defendants to discuss the matter further. Baker Decl., Ex. D. at 2.

In their haste to launch yet another personal attack on plaintiffs' counsel, defendants think nothing of flouting the Court's repeated admonishments in this litigation to engage in good faith meet and confers prior to raising issues with the Court in direct violation of L.R. 37.2.

For these reasons also, defendants' Motion should be stricken for their failure to comply with L.R. 37.2.

#### **IV. Alternatively, Lead Plaintiffs Request an Evidentiary Hearing in Order to Address the Issues raised in Defendants' Improper Motion for Contempt**

If the Court deems that a motion to strike defendants' unsupported and improper motion is not the appropriate vehicle, lead plaintiffs request an evidentiary hearing as contemplated by the Local Rules and the relevant case law in this Circuit. "[I]t is beyond question that in a civil contempt proceeding, a party against whom contempt is sought is entitled to have the district court resolve relevant factual disputes. *Advent Elecs. v. Buckman*, No. 95 C 0305, 1997 U.S. Dist. LEXIS

765, at \*9 (N. D. Ill. Jan. 24, 1997); *In re Grand Jury Proceedings*, 894 F.2d 881, 882-83 (7th Cir. 1989).

As outlined in detail in §II above, lead plaintiffs have put into issue the factual validity of defendants' conclusory allegations of contempt. Where this is the case, the court must afford both petitioner and respondent a hearing adequate to properly resolve the same. *Buckman*, 1997 U.S. Dist. LEXIS 765; *McPherson's, Ltd. v. Wilkinson Sword, Inc.*, 652 F. Supp. 487, 488 (N.D. Ill. 1987) (court held multiple evidentiary hearings prior to imposing sanctions on defendants).

Specifically, lead plaintiffs would like to obtain testimony from the following individuals in connection with this issue: Thomas Kavalier, Landis Best, Janet Beer and Jason Hall. Lead plaintiffs reserve the right to seek testimony from other witnesses as necessary.

## **V. CONCLUSION**

For all the foregoing reasons as well as additional arguments made in papers or in oral argument, lead plaintiffs' motion to strike should be granted. Alternatively, lead plaintiffs demand an evidentiary hearing in order to address the issues raised in defendants' improper Motion for contempt.

DATED: March 13, 2008

COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
AZRA Z. MEHDI (90785467)  
D. CAMERON BAKER (154452)  
LUKE O. BROOKS (90785469)  
JASON C. DAVIS (253370)

---

/s/ Azra Z. Mehdi  
AZRA Z. MEHDI

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

COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
PATRICK J. COUGHLIN  
SPENCER A. BURKHOLZ  
JOHN J. RICE  
JOHN A. LOWTHER  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)

Lead Counsel for Plaintiffs

MILLER LAW LLC  
MARVIN A. MILLER  
LORI A. FANNING  
115 S. LaSalle Street, Suite 2910  
Chicago, IL 60603  
Telephone: 312/332-3400  
312/676-2676 (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\BRF00049902.doc

# Exhibit 1

**Azra Mehdi**

---

**From:** Best, Landis C. [LBest@Cahill.com]  
**Sent:** Tuesday, March 11, 2008 12:51 PM  
**To:** Cameron Baker  
**Cc:** Spence Burkholz; Azra Mehdi; Luke Brooks; Deutsch, Adam  
**Subject:** RE: Motion for Contempt

Dear Cam,  
Your proposal is not acceptable to us. In light of the serious issues raised in our motion and that there are orders directly on point involving the very document that is the subject of our motion, we cannot agree to the "traditional" briefing schedule. If Judge Nolan does not ask for Plaintiffs' response at the status conference, we will ask the Court for an expedited briefing schedule.  
Sincerely,  
Landis

---

**From:** Cameron Baker [mailto:CBaker@csgrr.com]  
**Sent:** Tuesday, March 11, 2008 12:14 PM  
**To:** Best, Landis C.; Deutsch, Adam  
**Cc:** Spence Burkholz; Azra Mehdi; Luke Brooks  
**Subject:** Motion for Contempt

Dear Landis and Adam,  
We have received a copy of the motion for contempt filed yesterday and would like to agree to a briefing schedule prior to the Thursday telephonic status conference. We request the traditional two week/one week briefing schedule, i.e. plaintiffs to submit their opposition on March 25 and defendants to submit their reply on April 1. If that is acceptable, let us know.

NOTICE: This email message is for the sole use of the intended recipient(s) and may contain information that is confidential and protected from disclosure by the attorney-client privilege, as attorney work product, or by other applicable privileges. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

The information contained in this e-mail message may be privileged and confidential information and is intended only for the use of the individual and/or entity identified in the alias address of this message. If the reader of this message is not the intended recipient, or an employee or agent responsible to deliver it to the intended recipient, you are hereby requested not to distribute or copy this communication. If you have received this communication in error, please notify us immediately by telephone or return e-mail and delete the original message from your system. Thank you.

\*\*\*\*\*

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

\*\*\*\*\*



Exhibit 2

1 A. To the best of my recollection, and my  
2 recollection centers around reading this e-mail,  
3 this was a discussion back and forth.  
4 There are cost centers which capture  
5 costs.  
6 And the best I can read, these are  
7 internal costs, and I'm very unclear whether they  
8 were internal or external costs.  
9 The cost centers were where you  
10 accumulate the cost for performing a particular  
11 function.  
12 This is moving a cost center -- which  
13 just moving notes on the accounting system,  
14 PeopleSoft, I think -- moving the cost center note  
15 from Household Finance Corporation to Household  
16 International, so that the expenses associated with  
17 performing these audits would show up under a  
18 Household International expense.  
19 Q. When did that move take place, if you can  
20 recall?  
21 MS. BEST: Object to the form of the  
22 question.  
23 A. I don't know.  
24 Q. Going to the top of this mail -- top of  
25 this e-mail chain, I should say, the e-mail from

1 MS. BEST: Object to the form of the  
2 question. You can answer.  
3 A. No.  
4 Q. Do you recall ever reviewing any writings  
5 from Jefferson Wells that discussed the results of  
6 their review?  
7 A. I don't recall one way or the other.  
8 Q. Other than this prepayment penalty  
9 review, what other work did Jefferson Wells do for  
10 Household during this timeframe?  
11 MS. BEST: Object to the form of the  
12 question.  
13 A. I don't specifically, as I mentioned,  
14 even recall them doing this; nor do I recall  
15 anything else.  
16 MR. BAKER: Let's mark this as Exhibit  
17 141.  
18 Just so the record is clear, this  
19 document was originally an Excel spreadsheet that  
20 had been printed out.  
21 MS. BEST: This is a document that was  
22 produced by the Household defendants in Native  
23 format?  
24 MR. BAKER: Uh-huh.  
25 MS. BEST: Can you represent what disk it

1 Mr. Sesterhenn to Mr. Pritchard and Ms. Emerson and  
2 ccing yourself, item one refers to a PPP review by  
3 Jefferson Wells conducted in '02; do you see that?  
4 A. Yes.  
5 Q. What can you tell me more about that --  
6 A. (No response.)  
7 Q. -- review?  
8 A. I really have no recollection --  
9 Q. Okay.  
10 A. -- of this.  
11 Q. What can you tell me about Jefferson  
12 Wells?  
13 A. They are an accounting firm.  
14 Q. And had they been retained by Household  
15 or Household Finance Corporation to review  
16 prepayment penalties?  
17 A. It appears from this email they had. And  
18 I have a vague recollection, but it's just from  
19 looking at this.  
20 Q. To your recollection, did they ever  
21 provide an estimate of refunds to be made for  
22 prepayment penalties?  
23 A. I have no recollection.  
24 Q. Do you remember what the scope of their  
25 review was into a prepayment penalty?

1 came from?  
2 MR. BAKER: Not right now. It's  
3 previously been used as an exhibit in Mr. Robin's  
4 deposition.  
5 But I reprinted it, just because it  
6 didn't copy good.  
7 Q. And the question I'm asking you,  
8 Ms. Allcock, is: Do you recall ever reviewing this  
9 document previously?  
10 A. No.  
11 Q. The top of this first page references a  
12 refund team; do you see that?  
13 MS. BEST: Object to the form of the  
14 question, but you can answer.  
15 A. Yes, I see that.  
16 Q. And was there a refund team within policy  
17 and compliance?  
18 A. No.  
19 Q. Was there a refund team working under  
20 your direction?  
21 A. I'm not sure I understand what -- the  
22 definition of "refund team."  
23 As I mentioned in previous testimony,  
24 there was a group within Ellen Kirkham and Beth  
25 Emerson's group that -- once any refunds were

1 determined. be they from E&Y or whomever might be  
2 doing an audit, that they would -- they are the  
3 financial group that would have access to the ledger  
4 to get the checks cut.

5 That may be what this is referring to,  
6 but I'm not certain.

7 Other than that, I don't know what it is.

8 Q. You weren't aware of any other refund  
9 team?

10 A. Not to the best of my recollection.

11 Q. Was there any team that was separately  
12 tasked with determining the amount of refunds?

13 MS. BEST: Object to the form of the  
14 question. You can answer.

15 A. I don't understand the question.

16 Q. Well, rather than a team that was  
17 involved in this document -- this on line three  
18 says: The refund team's current forecast is \$27.2  
19 million preinterest; do you see that?

20 A. Yes.

21 Q. So, were you aware of any group of  
22 individuals within your organization that were  
23 working on forecasting refunds?

24 A. The only thing I was aware of, as I have  
25 mentioned, has been Beth's group which would

1 Q. Did you ever have a communication with  
2 Ernst & Young about the specifics as referenced in  
3 your e-mail?

4 A. I don't recall one way or the other.

5 Q. This talks about web-based training; do  
6 you see that?

7 A. Yes.

8 Q. Had Household rolled out any web-based  
9 training as of this date, August 21, 2002?

10 A. I don't know.

11 Q. You don't recall one way or the other?

12 A. I don't know. I don't know.

13 MR. BAKER: Let's mark this as Exhibit  
14 143.

15 Q. And I'm just going to ask you one  
16 question about that.

17 Let's start with -- you see this is an  
18 e-mail from Mr. Hicks to yourself?

19 A. Yes.

20 Q. And if I direct your attention to the  
21 second page of this document, the first full  
22 paragraph, he's talking about retention of a manager  
23 position in that group.

24 And in the middle of it, he's talking  
25 about statistical models developed by E&Y; do you

1 accumulate a spreadsheet and make sure that the  
2 checks were cut when it was determined a refund was  
3 appropriate.

4 And the other is, as I mentioned, Mary's  
5 group -- Mary had a group of people who worked with  
6 Ernst & Young to determine where there were systemic  
7 errors that caused a customer to be overcharged.

8 Once they identified how much the  
9 overcharge was.

10 So, this would have been -- I can't tell  
11 you if it was Ernst & Young who did this, or someone  
12 within Mary's oversights.

13 MR. BAKER: Let's mark this as Exhibit  
14 142.

15 Q. Did you have a chance to review Exhibit  
16 142?

17 A. Yes.

18 Q. Do you recall this series of  
19 communications between yourself, Mr. Detelich and --  
20 I guess -- Mr. Walker, relating to an issue raised  
21 by Ernst & Young as to the procedures for disclosing  
22 points on the HUD form?

23 A. No.

24 Q. No?

25 A. No.

1 see that?

2 A. Yes.

3 Q. Can you shed some light on what these  
4 statistical models were?

5 A. I have no idea.

6 Q. Did you ever review or utilize any of the  
7 statistical models developed by E&Y?

8 A. I have no idea what they are.

9 Q. Okay.

10 A. No.

11 MR. BAKER: Let's mark this as Exhibit  
12 144.

13 Q. Do you see this is a -- sorry -- another  
14 memo from Mr. Hicks to yourself?

15 A. Yes.

16 Q. And if you look at the second page on his  
17 projected August, 2002 activities; do you see that?

18 A. Yes.

19 Q. Item one talks about: Coordinate  
20 Tennessee, Michigan and Minnesota manual reviews  
21 with Jefferson Wells or other audit firm; do you see  
22 that?

23 A. Yes.

24 Q. Do you have any recollection, one way or  
25 the other, as to whether Jefferson Wells conducted a

Exhibit 3

**Appendix 4  
Table of Authorities**

Case Specific Documents

Supplement to Defendants Household International Inc. and Household Finance Corporation's Responses and Objections to Lead Plaintiffs' Second Set of Interrogatories (November 30, 2007)

Deposition of R. Allcock (3/7/07 - 3/8/07)

Deposition of P. Creatura (7/28/06)

Deposition of T. Detelich (12/22/06, 1/31/07)

Deposition of G. Gilmer (1/11/07 - 1/12/07)

Deposition of J. Kauffman (1/24/07)

Deposition of L. Levy (8/25/06)

Deposition of R. O'Han (5/24/06)

Deposition of C. Rodemoyer (6/27/06)

Deposition of M. Rutland-Drury (3/4/03)

Deposition of D. Schoenholz (2/28/07 - 3/1/07)

Deposition of L. Walter (3/15/06 - 3/16/06)

Plaintiffs' Complaint (3/7/03)

Plaintiffs' Opposition Brief (7/13/06)

H003772

H008124 - 8125

HHS 00669201

HHS 01942900

HHS 02063232 - 3338

HHS 02115539

HHS 02138685 - 8757

HHS 02138685 - 8757

HHS 02140082 - 0131

HHS 02140131 - 0082

HHS 02140440

HHS 02373601

HHS 02489539 - 9620

HHS 02880819

HHS 02909066

HHS 02911457 - 1486

HHS 02939889

HHS 02939935 - 9936

HHS 02939994 - 0002

HHS 02940004 - 0008

HHS 02940010 - 0016

HHS 02940018 - 0045

HHS 02980107

HHS 02980445

HHS 02993169  
HHS 03032136  
HHS 03063520 - 3549  
HHS 03117369  
HHS 03143167  
HHS 03143178  
HHS 03143189  
HHS 03143191  
HHS 03143204  
HHS 03143208  
HHS 03143217  
HHS 03143615  
HHS 03143623  
HHS 03155274 - 5279  
HHS 03242986 - 2987  
HHS 03244469  
HHS 03244454 - 4475  
HHS 03418183 - 8207  
HHS 03418264 - 8276  
HHS 03443147 - 3161  
HHS 03446709 - 6711  
HHS 03446712 - 6714  
HHS 03446719 - 6722  
HHS 03468760 - 8774  
HHS-ED 001036 - 1053  
MS/Household 000435

Non-Case Specific Documents - Legal Authorities

1999 N.C. Sess. Laws 332  
67 Fed. Reg. 60, 542-01  
Federal Reserve Board Regulation,  
<http://www.federalreserve.gov/boardDocs/press/boardacts/2001/200112142/attachment.pdf>  
Alternative Mortgage Transaction Parity Act (AMTPA) (Pub. L. No. 97-320, 96 Stat. 1545))  
Real Estate Settlement Protection Act (RESPA) (Pub. L. No. 93-533, 88 Stat. 1724 (1974))  
The Home Mortgage Disclosure Act (HMDA) (Pub. L. No. 94-200, 89 Stat. 1125 (1975))  
The Home Owner and Equity Protection Act of 1994 (HOEPA) (Pub. L. No. 103-325, 108 Stat. 2190))  
Truth in Lending Act (Pub. L. No. 90-321, 82 Stat. 146 (1968))

Non-Case Specific Documents - Other Authorities

Barry Zigas, Carol Parry & Paul Weech, "The Rise of Sub-prime Lending: Causes, Implications, and Proposals" (Washington, DC: Fannie Mae)

Departments of Housing and Urban Development and the Treasury, *Curbing Predatory Home Mortgage Lending: A Joint Report* (June 2000)

Edward M. Gramlich, *Sub-prime Mortgages: America's Latest Boom and Bust* (2007)

Household International Inc., (Form 8-K) (April 9, 2002)

Household International Inc., Annual Report (Form 10-K) (March 12, 2001)

Household International Inc., Annual Report (Form 10-K) (March 24, 2003)

Household International Inc., Annual Report (Form 10-K/A) (August 27, 2002)

Household International Inc., Quarterly Report (Form 10-Q) (August 14, 2002)

Household International Inc., Quarterly Report (Form 10-Q) (October 24, 2002)

Household Home Equity Loan Trust, Prospectus Supplement (Form 424B5) (November 8, 1999)

Household Home Equity Loan Trust, Prospectus Supplement (Form 424B5) (May 11, 2001)

Household Home Equity Loan Trust, Prospectus Supplement (Form 424B2) (March 8, 2002)

HRSI Funding Inc. II, Prospectus Supplement (Form 424B5) (August 9, 2001)

Household Home Equity Loan Trust, Prospectus Supplement (Form 424B5) (June 17, 2002)

Household Home Equity Loan Trust, Prospectus Supplement (Form 424B5) (August 27, 2002)

John McDonald, "HI: California Files \$8.5 Million Lawsuit, Cites Unlawful Charges" (UBS Warburg, 11/16/01)

Joint Center for Housing Studies, *The State of the Nation's Housing* (2006)

Matthew L. Vetto, Sonia Parechian & Sanjay Sakhrani, "HI: Initiating Coverage with Outperform Rating" (Salomon Smith Barney, 10/29/01)

R. Hagerty, Kara Scannell & Sarah Lueck, "Congress Takes up Mortgages" (Wall St. Journal, 9/6/07)

Richard Bookstaber, *A Demon of Our Own Design* 5 (2007)

S&P/Case Shiller index ([www.ofheo.gov](http://www.ofheo.gov))

John Stark, "Report: Household Settles for \$480 Million" (The Bellingham Herald, at 1A 10/11/02)

DECLARATION OF SERVICE BY E-MAIL AND BY U.S. MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on March 13, 2008, declarant served by electronic mail and by U.S. Mail to the parties: **LEAD PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' MOTION FOR CONTEMPT FOR FAILURE TO COMPLY WITH LOCAL RULES 37.1 & 37.2, OR IN THE ALTERNATIVE, A REQUEST FOR AN EVIDENTIARY HEARING PURSUANT TO LOCAL RULE 37.1.** The parties' email addresses are as follows:

<a href="mailto:TKavaler@cahill.com">TKavaler@cahill.com</a> <a href="mailto:PSloane@cahill.com">PSloane@cahill.com</a> <a href="mailto:PFarren@cahill.com">PFarren@cahill.com</a> <a href="mailto:LBest@cahill.com">LBest@cahill.com</a> <a href="mailto:DOwen@cahill.com">DOwen@cahill.com</a>	<a href="mailto:NEimer@EimerStahl.com">NEimer@EimerStahl.com</a> <a href="mailto:ADeutsch@EimerStahl.com">ADeutsch@EimerStahl.com</a> <a href="mailto:MMiller@MillerLawLLC.com">MMiller@MillerLawLLC.com</a> <a href="mailto:LFanning@MillerLawLLC.com">LFanning@MillerLawLLC.com</a>
--	--

and by U.S. Mail to:

Lawrence G. Soicher, Esq.  
Law Offices of Lawrence G. Soicher  
110 East 59th Street, 25th Floor  
New York, NY 10022

David R. Scott, Esq.  
Scott & Scott LLC  
108 Norwich Avenue  
Colchester, CT 06415

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of March, 2008, at San Francisco, California.

/s/ Marcy Medeiros  
\_\_\_\_\_  
MARCY MEDEIROS