



**1. Defendants' Statement**

The Class asserts claims against Defendants pursuant to 15 U.S.C. §§78(j)(b) and 78t(a) (§10(b) and §20(a) of the Securities Exchange Act of 1934) and 17 C.F.R. §2410.10b-5 (Securities and Exchange Commission Rule 10b-5). (AC ¶32) [citing Corrected Amended Consolidated Class Action Complaint "AC." (Doc. 50)]

**Plaintiffs' Response**

Undisputed.

**2. Defendants' Statement**

This Court has jurisdiction over such claims pursuant to §27 of the Securities Exchange Act, 15 U.S.C. §78aa.

**Plaintiffs' Response**

Undisputed.

**3. Defendants' Statement**

Venue is proper in the Northern District of Illinois pursuant to §27 of the Securities Exchange Act of 1934, 15 U.S.C. §78aa, because the headquarters of the corporate defendants or their successors are in this District and the corporate defendants or their successors transact business in this District.

**Plaintiffs' Response**

Undisputed.

**4. Defendants' Statement**

Co-Lead Plaintiff Glickenhau & Co. is an investment advisor. (AC ¶36(a))

**Plaintiffs' Response**

Undisputed.

**4.1. Defendants' Statement**

During the Class Period (July 30, 1999 through October 12, 2002) Glickenhau & Co. purchased approximately 179,700 shares of HII stock. (AC, Exh. 1, Glickenhau Certification, Sched. A)

**Plaintiffs' Response**

Immaterial and irrelevant.<sup>1</sup>

**4.2. Defendants' Statement**

At least three-fourths of such purchases were made after November 15, 2001. (AC, Exh. 1, Glickenhau Certification, Sched. A)

**Plaintiffs' Response**

Immaterial and irrelevant.

**4.3. Defendants' Statement**

During the Class Period the average volume of HII shares outstanding was 466,203,769. (Table filed with the Court by Lead Plaintiffs based on public record data from Thomsons Shareworld, Doc. 767-2, Exh. 5) [citing Tab 1 of Defendants' Appendix in Support of Their Motion for Summary Judgment ("Def. App.")].

**Plaintiffs' Response**

Undisputed.

**5. Defendants' Statement**

Co-Lead Plaintiff PACE Industry Union Management Pension Fund ("PACE") is a Taft-Hartley Defined Benefit pension plan. (AC ¶36(b))

**Plaintiffs' Response**

Undisputed.

**5.1. Defendants' Statement**

During the Class Period PACE purchased approximately 45,000 shares of HII stock and sold approximately 45,500 shares of HII stock. (AC, Exh. 1, PACE Certification, Sched. A)

**Plaintiffs' Response**

Immaterial and irrelevant.

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<sup>1</sup> Unless otherwise noted, Lead Plaintiffs do not dispute the statements identified herein as "immaterial and irrelevant" for purposes of this motion. Lead Plaintiffs reserve the right to dispute any inaccuracies in these statements if raised in another context.

**6. Defendants' Statement**

Co-Lead Plaintiff The International Union of Operating Engineers Local No. 132 Pension Plan ("IUOE") is a Taft-Hartley Defined Benefit pension plan. (AC ¶36(c))

**Plaintiffs' Response**

Undisputed.

**6.1. Defendants' Statement**

During the Class Period IUOE purchased approximately 27,800 shares of HII stock and sold approximately 3,000 shares of HII stock. (AC, Exh. 1, IUOE Certification, Schedule A)

**Plaintiffs' Response**

Immaterial and irrelevant.

**6.2. Defendants' Statement**

During the Class Period IUOE purchased HII bonds with an aggregate face value of \$160,000, and sold HII bonds with an aggregate face value of \$210,000. (*Id.*)

**Plaintiffs' Response**

Immaterial and irrelevant.

**7. Defendants' Statement**

Named Plaintiff The Archdiocese of Milwaukee Supporting Fund, Inc. ("AMSF") is a non-profit institution that made relatively small trades in HII debt securities during the Class Period. (AC ¶36(d), Exh. 1, AMSF Certification, Schedule A)

**Plaintiffs' Response**

Immaterial and irrelevant.

**8. Defendants' Statement**

Named Plaintiff The West Virginia Laborers' Trust Fund ("WVLTF") is a Taft-Hartley Defined Benefit pension plan that made relatively small trades in HII debt securities during the Class Period. (AC ¶36(e), Exh. 1, WVLTF Certification, Schedule A)

**Plaintiffs' Response**

Immaterial and irrelevant.

**9. Defendants' Statement**

During the Class Period Defendant Household International Inc. was a non-operating holding company with operating subsidiaries engaged in the consumer lending, mortgage services and credit card services businesses. (AC ¶37)

**Plaintiffs' Response**

Undisputed that Household International, Inc. ("Household") is a defendant; the remainder of this statement is immaterial and irrelevant.

**10. Defendants' Statement**

During the Class Period Defendant Household Finance Company was a wholly-owned subsidiary of HII engaged in the consumer lending business. (AC ¶37)

**Plaintiffs' Response**

Undisputed.

**11. Defendants' Statement**

During the Class Period Defendant William F. Aldinger served as HII's Chairman and Chief Executive Officer. (AC ¶38)

**Plaintiffs' Response**

Undisputed.

**12. Defendants' Statement**

During the Class Period Defendant David A. Schoenholz served as HII's Vice Chairman and Chief Financial Officer. (AC ¶39)

**Plaintiffs' Response**

Undisputed.

**13. Defendants' Statement**

During the Class Period Defendant Gary Gilmer served as HII's Vice Chairman of Consumer Lending and Group Executive of Consumer Finance. (AC ¶40)

**Plaintiffs' Response**

Undisputed.

**14. Defendants' Statement**

During the Class Period Defendant J. A. Vozar served as a director of HFC. (AC ¶47)

**Plaintiffs' Response**

Undisputed.

**15. Defendants' Statement**

During the course of discovery, Defendants produced approximately 5,000,000 pages of documents in response to six waves of document demands, responded to 85 multi-part interrogatories and 252 requests for admissions, and created new computer programs to produce quarterly loan origination data in the format requested by Lead Plaintiffs.

**Plaintiffs' Response**

Immaterial and irrelevant.

**16. Defendants' Statement**

Lead Plaintiffs deposed 61 fact witnesses, including 52 present or former employees of HII or HFC, over 75 deposition days.

**Plaintiffs' Response**

Immaterial and irrelevant.

**17. Defendants' Statement**

With the Court's permission, Lead Plaintiffs deferred responding to Defendants' contention interrogatories until two months before the scheduled close of fact discovery. (Minute Entry dated August 10, 2006, Doc. 630; Minute Entry dated September 19, 2006, Doc. 676)

**Plaintiffs' Response**

Immaterial and irrelevant.

**18. Defendants' Statement**

With the Court's permission, Lead Plaintiffs deferred providing final answers to certain contention interrogatories pending input from their retained expert witnesses. (Minute Entry dated June 29, 2007, Doc. 116)

**Plaintiffs' Response**

Immaterial and irrelevant.

**19. Defendants' Statement**

Discovery in this matter concluded on April 29, 2008. (Minute Entry dated April 29, 2008, Doc. 1229)

**Plaintiffs' Response**

Immaterial and irrelevant. On April 29, 2008, Magistrate Judge Nolan closed the referral and returned the case to this Court. (April 29, 2008 Order, Dkt. No. 1229).

**20. Defendants' Statement**

At the September 4, 2007 Presentment of Defendants' Motion for Implementation of This Court's February 28, 2006 Order (Doc. 1121), the Court indicated that it would prefer to address the subject matter of the motion at the summary judgment stage, with all discovery in hand. (Transcript of September 4, 2007 Presentment at 7, 10) [citing Def. App., Tab 2]

**Plaintiffs' Response**

Immaterial and irrelevant. During the September 4, 2007 hearing, this Court denied as premature Defendants' Motion for Implementation of This Court's February 28, 2006 Order.

**21. Defendants' Statement**

Defendants' Interrogatory No. 41 asked the following:

"If Plaintiffs contend that Defendants made affirmative misrepresentations regarding Household's alleged 'Fraudulent Scheme' involving 'Illegal Predatory Lending Practices' as set forth in Part VI.A of the Complaint (AC ¶¶50-106), identify each statement that Plaintiffs contend was an affirmative misrepresentation and the reasons Plaintiffs contend each statement was false."

(Household Defendants' Fourth Set of Interrogatories to Lead Plaintiffs, Interrogatory No. 41).

**Plaintiffs' Response**

Undisputed.

**22. Defendants' Statement**

In response to Interrogatory No. 41, Lead Plaintiffs adopted by reference their listing of alleged "false and misleading statements" in the Amended Complaint, stating, "[a]dditionally, Lead Plaintiffs identify the following statements that were affirmative misrepresentations made by the Company or the Individual Defendants", and listed 70 alleged "affirmative misrepresentations." (Lead Plaintiffs' Third Supplemental Amended Responses and Objections to Household Defendants'

[Seventh] Set of Interrogatories to Lead Plaintiffs Pursuant to the Court's March 30, 2007 Order, Response to Interrogatory No. 41) [citing Def. App., Tab 3.]

### **Plaintiffs' Response**

Disputed. Lead Plaintiffs objected to this interrogatory as vague and ambiguous, in part due to the use of the term "affirmative misrepresentations" which defendants did not define. Def. App., Tab 3. Lead Plaintiffs' identification of statements was made subject to this objection and without conceding that the statement was an affirmative misrepresentation as opposed to an omission, even accepting that there is such a distinction. *Id.* Additionally, and consistent with the foregoing, in identifying the reason that the identified statements were false, Lead Plaintiffs incorporated by reference their responses to other interrogatories (Nos. 36 and 38) that called for the identification of facts defendants failed to disclose to the market. *Id.* As these responses demonstrate, Lead Plaintiffs have consistently taken the position that defendants' statements were false and misleading due to their failure to disclose the truth regarding Household's improper lending, restructuring and accounting policies and practices. Pls' App., Ex. J (Lead Plaintiffs' Third Supplemental Amended Responses and Objections to Household Defendants' [Seventh] Set of Interrogatories to Lead Plaintiffs Pursuant to the Court's March 30, 2007 Order, Response to Interrogatory Nos. 36, 38.).<sup>2</sup>

### **23. Defendants' Statement**

Defendants' Interrogatory No. 42 asked the following:

"If Plaintiffs contend that Defendants made affirmative misrepresentations regarding Household's alleged 'Fraudulent Scheme' involving 'Improperly 'Reaging' or 'Restructuring' Delinquent Accounts,' as set forth in Part VI.B of the Complaint (AC ¶¶50, 107-133), identify each statement that Plaintiffs contend was an affirmative misrepresentation and the reasons Plaintiffs contend each statement was false."

(Household Defendants' Fourth Set of Interrogatories to Lead Plaintiffs, Interrogatory No. 42)

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<sup>2</sup> A true and correct copy of the cited interrogatory response is attached to the Appendix of Exhibits in Support of Lead Plaintiffs' Rule 56.1 Statement of Additional Facts in Opposition to Summary Judgment ("Plaintiffs' Appendix" or "Pls' App.") as Exhibit J, filed herewith.



### **Plaintiffs' Response**

Undisputed.

#### **24. Defendants' Statement**

In response to Interrogatory No. 42, Lead Plaintiffs adopted their allegations of “affirmative misrepresentations” from the Amended Complaint and listed 43 alleged “affirmative misrepresentations” in this category. (Lead Plaintiffs' Third Supplemental Amended Responses and Objections to Household Defendants' [Seventh] Set of Interrogatories to Lead Plaintiffs Pursuant to the Court's March 30, 2007 Order, Response to Interrogatory No. 42) [citing Def. App., Tab 4]

### **Plaintiffs' Response**

Disputed. Lead Plaintiffs objected to this interrogatory as vague and ambiguous, in part due to the use of the term “affirmative misrepresentations” which defendants did not define. Def. App., Tab 4. Lead Plaintiffs' identification of statements was made subject to this objection and without conceding that the statement was an affirmative misrepresentation as opposed to an omission, even accepting that there is such a distinction. *Id.* Additionally, and consistent with the foregoing, in identifying the reason that the identified statements were false, Lead Plaintiffs incorporated by reference their responses to other interrogatories (Nos. 36, 37, 38) that called for the identification of facts defendants failed to disclose to the market. *Id.* As these responses demonstrate, Lead Plaintiffs have consistently taken the position that defendants' statements were false and misleading due to their failure to disclose the truth regarding Household's improper lending, restructuring and accounting policies and practices. Pls' App., Ex. J (Lead Plaintiffs' Third Supplemental Amended Responses and Objections to Household Defendants' [Seventh] Set of Interrogatories to Lead Plaintiffs Pursuant to the Court's March 30, 2007 Order, Response to Interrogatory Nos. 36-38).

#### **25. Defendants' Statement**

Defendants' Interrogatory No. 43 asked the following:

“If Plaintiffs contend that Defendants made affirmative misrepresentations regarding Household's alleged ‘Fraudulent Scheme’ involving ‘Improper Accounting of Costs Associated With Various Credit Card Co-Branding, Affinity and Marketing Agreements’ as set forth in Part VI.C of the Complaint (AC ¶¶50, 134-155), identify

each statement that Plaintiffs contend was an affirmative misrepresentation and the reasons Plaintiffs contend each statement was false.”

(Household Defendants’ Fourth Set of Interrogatories to Lead Plaintiffs, Interrogatory No. 43)

**Plaintiffs’ Response**

Undisputed.

**26. Defendants’ Statement**

In response to Interrogatory No. 43, Lead Plaintiffs adopted their allegations of “affirmative misrepresentations” from the Amended Complaint, and listed 17 alleged “affirmative misrepresentations” in this category. (Lead Plaintiffs’ Third Supplemental Amended Responses and Objections to Household Defendants’ [Seventh] Set of Interrogatories to Lead Plaintiffs Pursuant to the Court’s March 30, 2007 Order, Response to Interrogatory No. 43) [citing Def. App., Tab 5]

**Plaintiffs’ Response**

Disputed. Lead Plaintiffs objected to this interrogatory as vague and ambiguous, in part due to the use of the term “affirmative misrepresentations” which defendants did not define. Def. App., Tab 5. Lead Plaintiffs’ identification of statements was made subject to this objection and without conceding that the statement was an affirmative misrepresentation as opposed to an omission, even accepting that there is such a distinction. *Id.* Additionally, and consistent with the foregoing, in identifying the reason that the identified statements were false, Lead Plaintiffs incorporated by reference their responses to other interrogatories (Nos. 36, 37, 38) that called for the identification of facts defendants failed to disclose to the market. *Id.* As these responses demonstrate, Lead Plaintiffs have consistently taken the position that defendants’ statements were false and misleading due to their failure to disclose the truth regarding Household’s improper lending, restructuring and accounting policies and practices. Pls’ App., Ex. J (Lead Plaintiffs’ Third Supplemental Amended Responses and Objections to Household Defendants’ [Seventh] Set of Interrogatories to Lead Plaintiffs Pursuant to the Court’s March 30, 2007 Order, Response to Interrogatory Nos. 36-38.).

**27. Defendants' Statement**

All but four of the 83 separate statements that Lead Plaintiffs listed as “affirmative misrepresentations” in response to Interrogatories Nos. 41-43 were made during the Class Period. [citing Def. App., Tabs 3-5]

**Plaintiffs' Response**

Lead Plaintiffs do not dispute that 79 of the statements identified in response to Interrogatories Nos. 41-43 were made during the Class Period, but do dispute that Lead Plaintiffs identified them as “affirmative misrepresentations” as defendants now seek to define that term.

**28. Defendants' Statement**

Defendants' Interrogatory No. 15 asked the following:

“Identify any loss Plaintiffs contend they suffered as a result of any alleged ‘illegal predatory lending’ practice, procedure, or other activity identified in response to Interrogatory 9.”

(Household Defendants' Second Set of Interrogatories to Lead Plaintiffs, Interrogatory No. 15)

**Plaintiffs' Response**

Defendants have accurately quoted Interrogatory No. 15; however, Lead Plaintiffs deny that Interrogatory No. 15 sought a statement of plaintiffs' loss causation theory or “asked [plaintiffs] to explain their loss causation theory.” *See* Defs' Mem.<sup>3</sup> at 10, 15, 19 (citing this statement).

**29. Defendants' Statement**

In response to Defendants' Interrogatory No. 15, Lead Plaintiffs stated:

“Lead Plaintiffs incorporate by reference and identify the Report of Daniel R. Fischel, dated August 15, 2007, and the Rebuttal Report dated February 1, 2008, and all documents referenced therein.”

(Lead Plaintiffs' Third Amended Response and Objections to Household Defendants' [Fourth] Set of Interrogatories to Lead Plaintiffs, Response to Interrogatory No. 15) [citing Def. App., Tab 6, at 49]

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<sup>3</sup> “Defs' Mem.” refers to Memorandum of Law in Support of the Household Defendants' Motion for Summary Judgment Dismissing All Remaining Claims of the Class. Dkt. No. 1235.

### **Plaintiffs' Response**

Lead Plaintiffs do not dispute that in their response to Interrogatory No. 15, Lead Plaintiffs identified the “losses . . . they suffered” by, *inter alia*, incorporating by reference Professor Fischel’s reports. Lead Plaintiffs do dispute defendants’ statement No. 29 to the extent that it purports to assert: (a) that this incorporation by reference is Lead Plaintiffs’ complete response to Interrogatory No. 15 (Def. App., Tab 6 at 48-49 sets forth the complete response); or (b) that this interrogatory requests any information about Lead Plaintiffs’ loss causation contentions and evidence beyond the identification of “losses.”

#### **30. Defendants' Statement**

Defendants’ Interrogatory No. 31 asked the following:

“Identify the Disclosure(s) that Plaintiffs contend revealed to the market or any member of the class that Household was allegedly engaged in a ‘Fraudulent Scheme’ involving ‘Illegal Predatory Lending Practices’ as set forth in Part VI.A of the Complaint. (AC ¶¶50-105).”

(Household Defendants’ Third Set of Interrogatories to Lead Plaintiffs, Interrogatory No. 31)

### **Plaintiffs' Response**

Defendants have accurately quoted Interrogatory No. 31; however, Lead Plaintiffs deny that Interrogatory No. 31 sought a statement of plaintiffs’ loss causation theory. *See* Defs’ Mem. at 10, 15, 19 (citing this statement).

#### **31. Defendants' Statement**

In their response to Defendants’ Interrogatory No. 31, Lead Plaintiffs stated:

“Lead Plaintiffs incorporate by reference and identify the Report of Daniel R. Fischel, dated August 15, 2007, and the Rebuttal Report dated February 1, 2008, and all documents referenced therein.”

(Lead Plaintiffs’ Third Amended Response and Objections to Household Defendants’ [Fifth] Set of Interrogatories to Lead Plaintiffs, Response to Interrogatory No. 31) [citing Def. App., Tab 7, at 16]

### **Plaintiffs' Response**

Lead Plaintiffs do not dispute that in their response to Interrogatory No. 31, Lead Plaintiffs identified partial disclosures relating to Household's improper lending practices by, *inter alia*, incorporating by reference Professor Fischel's reports. Lead Plaintiffs do dispute defendants' statement No. 31 to the extent that it purports to assert: (a) that this incorporation by reference is Lead Plaintiffs' complete response to Interrogatory No. 31 (Def. App., Tab 7 at 12-16 sets forth the complete response); or (b) that this interrogatory requested any information about Lead Plaintiffs' loss causation contentions and evidence beyond the identification of disclosures relating to Household's improper lending practices.

#### **32. Defendants' Statement**

Defendants' Interrogatory No. 32 asked the following:

"Identify the Disclosure(s) that Plaintiffs contend revealed to the market or any member of the class that Household was allegedly engaged in a 'Fraudulent Scheme' involving 'Improperly 'Reaging' or 'Restructuring' Delinquent Accounts,' as set forth in Part VI.B of the Complaint. (AC ¶¶50, 107-133)."

(Household Defendants' Third Set of Interrogatories to Lead Plaintiffs, Interrogatory No. 32)

### **Plaintiffs' Response**

Defendants have accurately quoted Interrogatory No. 32; however, Lead Plaintiffs deny that Interrogatory No. 32 sought a statement of plaintiffs' loss causation theory. *See* Defs' Mem. at 10, 15, 19 (citing this statement).

#### **33. Defendants' Statement**

In their response to Defendants' Interrogatory No. 32, Lead Plaintiffs stated:

"Lead Plaintiffs incorporate by reference and identify the Report of Daniel R. Fischel, dated August 15, 2007, and the Rebuttal Report dated February 1, 2008, and all documents referenced therein."

(Lead Plaintiffs' Third Amended Response and Objections to Household Defendants' [Fifth] Set of Interrogatories to Lead Plaintiffs, Response to Interrogatory No. 32) [citing Def. App., Tab 8, at 19]

### **Plaintiffs' Response**

Lead Plaintiffs do not dispute that in their response to Interrogatory No. 32, Lead Plaintiffs identified partial disclosures relating to Household's improper reaging practices by, *inter alia*, incorporating by reference Professor Fischel's reports. Lead Plaintiffs do dispute defendants' statement No. 33 to the extent that it purports to assert: (a) that this incorporation by reference is Lead Plaintiffs' complete response to Interrogatory No. 32 (Def. App., Tab 8 at 17-19 sets forth the complete response); or (b) that this interrogatory requested any information about Lead Plaintiffs' loss causation contentions and evidence beyond the identification of disclosures relating to Household's improper reaging practices.

#### **34. Defendants' Statement**

Defendants' Interrogatory No. 33 asked the following:

"Identify the Disclosure(s) that Plaintiffs contend revealed to the market or any member of the class that Household was allegedly engaged in a 'Fraudulent Scheme' involving 'Improperly Accounting of Costs Associated With Various Credit Card Co-Branding Affinity and Marketing Agreements' as set forth in Part VI.C of the Complaint. (AC ¶¶50, 134-155)."

(Household Defendants' Third Set of Interrogatories to Lead Plaintiffs, Interrogatory No. 33)

### **Plaintiffs' Response**

Defendants have accurately quoted Interrogatory No. 33; however, Lead Plaintiffs deny that it sought a statement of plaintiffs' loss causation theory. *See* Defs' Mem. at 10, 15, 19 (citing this statement).

#### **35. Defendants' Statement**

In their response to Defendants' Interrogatory No. 33, Lead Plaintiffs stated:

"Lead Plaintiffs incorporate by reference and identify the Report of Daniel R. Fischel, dated August 15, 2007, and the Rebuttal Report dated February 1, 2008, and all documents referenced therein."

(Lead Plaintiffs' Third Amended Response and Objections to Household Defendants' [Fifth] Set of Interrogatories to Lead Plaintiffs, Response to Interrogatory No. 33) [citing Def. App., Tab 9, at 22]

### **Plaintiffs' Response**

Lead Plaintiffs do not dispute that in their response to Interrogatory No. 33, Lead Plaintiffs identified a disclosure relating to Household's improper accounting practices by, *inter alia*, incorporating by reference Professor Fischel's reports. Lead Plaintiffs do dispute defendants' statement No. 35 to the extent that it purports to assert: (a) that this incorporation by reference is Lead Plaintiffs' complete response to Interrogatory No. 33 (Def. App., Tab 9 at 20-22 sets forth the complete response); or (b) that this interrogatory requested any information about Lead Plaintiffs' loss causation contentions and evidence beyond the identification of disclosures relating to Household's improper accounting practices.

#### **36. Defendants' Statement**

Defendants' Interrogatory No. 64 asked the following:

"For each Disclosure identified in response to Interrogatory Nos. 31-33, set forth the 'truth' that you contend was revealed to the market by the Disclosure."

(Household Defendants' Sixth Set of Interrogatories to Lead Plaintiffs, Interrogatory No. 64)

### **Plaintiffs' Response**

Defendants have accurately quoted Interrogatory No. 64; however, Lead Plaintiffs deny that it sought a statement of plaintiffs' loss causation theory. *See* Defs' Mem. at 10, 15, 19 (citing this statement).

#### **37. Defendants' Statement**

In their response to Defendants' Interrogatory No. 64, Lead Plaintiffs stated:

"Lead Plaintiffs incorporate by reference and identify the Report of Daniel R. Fischel, dated August 15, 2007, and the Rebuttal Report dated February 1, 2008, and all documents referenced therein."

(Lead Plaintiffs' Fourth Amended Response and Objections to Household Defendants' [Ninth] Set of Interrogatories to Lead Plaintiffs, Response to Interrogatory No. 64) [citing Def. App., Tab 10, at 24]

### **Plaintiffs' Response**

Lead Plaintiffs do not dispute that in their response to Interrogatory No. 64, Lead Plaintiffs identified examples of disclosures relating to Household's true financial and operating condition and described the information those partial disclosures revealed by, *inter alia*, incorporating by reference Professor Fischel's reports. Lead Plaintiffs do dispute defendants' statement No. 37 to the extent that it purports to assert: (a) that this incorporation by reference is Lead Plaintiffs' complete response to Interrogatory No. 64 (Def. App., Tab 10 at 8-24 sets forth the complete response); or (b) that this interrogatory requested any information about Lead Plaintiffs' loss causation contentions and evidence beyond the identification of disclosures and description of the information those disclosures revealed.

### **38. Defendants' Statement**

In his August 15, 2007 Expert Report that Lead Plaintiffs incorporated by reference in their interrogatory answers, Professor Daniel R. Fischel identified no artificial inflation entering HII's stock price on any of the days that the Class claims Defendants made "affirmative misrepresentations", as identified in the Amended Complaint and in Lead Plaintiffs' responses to Interrogatories Nos. 41-43. (*See* Expert Report of Daniel R. Fischel ("Fischel Report") at Exhibits 53 and 56.) [citing Def. App., Tabs 11, 12]

### **Plaintiffs' Response**

Disputed. As stated in his report, Professor Fischel found that "the economic evidence is consistent with plaintiffs' claim," *i.e.* that defendants' Class Period misrepresentations, including those identified in the Complaint and in response to Interrogatory Nos. 41-43 caused inflation in Household's stock price and that plaintiffs suffered economic losses when that inflation dissipated as the result of disclosures and leakage. Pls' App., Ex. A (Fischel Report, ¶11); *see also* Pls' App., Ex. B (Fischel Rebuttal Report at ¶¶5, 38); Pls' App., Ex. C (Fischel Depo Tr. at 47:19-48:14; 49:21-



51:1)<sup>4</sup> (explaining the significance of the phrase “the economic evidence is consistent with plaintiffs’ claim”). As explained in the Fischel Rebuttal Report, defendants’ early Class Period false statements (during the July 30, 1999 to November 14, 2001 period), whether characterized as affirmative misrepresentations or omissions, were inflationary events that caused inflation to exist in the stock price and prevented the stock price from falling to its true value. Pls’ App., Ex. B (Fischel Rebuttal Report, ¶¶37, 38 n.30); Pls’ App., Ex. A (Fischel Report ¶¶12-27, 34-42, Exs. 53, 56); Pls’ App., Ex. C (Fischel Depo. Tr. at 134:21-135:5; 120:6-14; 120:23-121:11; 127:18-128:4; 132:21-133:18; 137:13-138:18). Thus, Professor Fischel did identify artificial inflation in Household’s stock price as a result of each misrepresentation identified in the Complaint and Lead Plaintiffs’ response to Interrogatory Nos. 41-43, including the August 16, 1999 misrepresentations.

### 39. **Defendants’ Statement**

In the course of his deposition on March 21, 2008, Professor Fischel made the following statement:

“I didn’t find any statistically significant price increases that resulted in inflation from the beginning of the [class] period, and through November 15, 2001.”

(Transcript of March 21, 2008 Deposition of Daniel R. Fischel (“Fischel Tr.”) at 123:8-11) [citing Def. App., Tab 13]

### **Plaintiffs’ Response**

Lead Plaintiffs do not dispute that Professor Fischel did not identify any statistically significant price increases in Household stock during the time period July 30, 1999 to November 14, 2001, but do dispute defendants’ assertion that this constitutes an admission that defendants’ misrepresentations during this time period were not inflationary events. *See* Defs’ Mem. at 3, 10, 15, 19, 22, 23 (asserting such an admission based on this statement). Professor Fischel specifically

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<sup>4</sup> True and correct copies of the Fischel Report, Fischel Rebuttal Report and relevant excerpts of the Fischel Deposition Transcript are attached to Plaintiffs’ Appendix as Exs. A, B and C.

testified that “it would be an incorrect interpretation of regression analysis to conclude that because there is no statistically significant price reaction to a statement, that necessarily means that the statement did not produce artificial inflation.” Pls’ App., Ex. C (Fischel Depo Tr. at 134:21-135:5). *See also id.* at 124:10-14, 126:7-9.

Professor Fischel also refuted this assertion to be “incorrect and misleading” and explained in his Rebuttal Report that inflationary events can occur without a price movement because the misrepresentation prevents the stock from dropping to its true value. Pls’ App., Ex. B (Fischel Rebuttal Report, ¶37). “[T]he observed market price can become inflated even if it remains basically constant because, had adverse information been disclosed, the market price would have declined.” *Id.*, ¶38 n.30 (citing B. Cornell and R.G. Morgan).

#### 40. **Defendants’ Statement**

In his February 1, 2008 Expert Rebuttal Report that Lead Plaintiffs incorporated by reference in their interrogatory answers, Professor Fischel made the following statement:

“I further understand that the Class Period was shortened to begin on July 30, 1999, making this date the first day that Plaintiffs allege the stock price was artificially inflated because *they allege that Defendants failed to reveal the adverse information on July 22, 1999 when the Company announced its second quarter financial results*”

(Fischel Rebuttal at ¶36; emphasis added) [citing Def. App., Tab 12]

#### **Plaintiffs’ Response**

Defendants have accurately quoted a portion of Professor Fischel’s Rebuttal Report; however, Lead Plaintiffs deny that this statement is an admission that Household’s stock contained pre-Class Period inflation. *See* Defs’ Mem. at 3-4 (citing this statement). Professor Fischel’s analysis establishes inflation as of July 30, 1999, the first day of the Class Period or alternative, August 16, 1999. Pls’ App., Ex. A (Fischel Report, Exs. 53 and 56); Pls’ App., Ex. B (Fischel Rebuttal Report, ¶36).

41. **Defendants' Statement**

In the course of his March 21, 2008 deposition, Professor Fischel stated that he assumed that artificial inflation was present in the price of HII stock as of the first day of the class period. (Fischel Transcript at 84:3-7) [citing Def. App., Tab 13]

**Plaintiffs' Response**

Disputed. Professor Fischel made no assumption about "inflation" on that date. Professor Fischel assumed the existence of an actionable disclosure defect on either July 30, 1999 or August 16, 1999. Pls' App., Ex. B (Fischel Rebuttal Report, ¶36) Pls' App., Ex. C (Fischel Depo Tr. at 83:10-18; 84:18-23; 90:11-22; 107:24-109:1; 134:2-6; 127:18-128:4). Professor Fischel's conclusions about inflation in the stock, including the amount of such inflation on any given day, were based on his economic analysis and not assumptions about inflation. *Id.* at 122:13-18; 127:18-128:4; *see also id.* at 133:8-18 (event study calculates the impact of the assumed nondisclosures).

Finally, Professor Fischel was instructed by defense counsel to limit his deposition testimony to his Specific Disclosures Analysis. *Id.* at 33:10-14. For this additional reason, the quoted testimony does not support defendants' contention that Professor Fischel's Leakage Analysis assumed that pre-Class Period artificial inflation was in place in Household's stock as of July 30, 1999. Defs' Mem. at 19 n.11 (citing this statement).

42. **Defendants' Statement**

In their February 6, 2008 status report to Magistrate Judge Nolan, Lead Plaintiffs made the following statement:

*"Household's stock price was artificially inflated on July 30, 1999 by Household's failure to disclose material adverse facts in connection with its July 22, 1999 statement announcing its second quarter results. . . . Indeed, Household's stock may have been inflated since the beginning of the old Class Period [October 23, 1997], or even before that time."*

(Lead Plaintiffs' Status Report For the February 7, 2008 Telephone Status Conference ("February 6, 2008 Status Report") at 3; emphasis added) [citing Def. App., Tab 14]

### **Plaintiffs' Response**

Lead Plaintiffs do not dispute that the quoted language is contained in Lead Plaintiffs' February 6, 2008 Status Report, but dispute: (a) that this partial quotation fully and accurately reflects Lead Plaintiffs' position on that date (*see, e.g.*, Def. App., Tab 14 for the full statement); and (b) that defendants may rely upon this quotation as admissible evidence to support their summary judgment motion.

The same status report demonstrates that plaintiffs held the exact opposite position:

Professor Fischel's opinion that Household stock was inflated during the Class Period does not change if the Court shortens the start of the Class Period from July 30, 1999 to August 16, 1999, or to a later date; nor does it matter if, or how much Household's stock was inflated prior to the first actionable statement. . . . The existence of pre-Class Period artificial inflation would not preclude plaintiffs' cause of action for defendants' subsequent false statements that continued to artificially prop up Household's share price. This is because each statement made by defendants to the market that failed to disclose the adverse information regarding Household's improper business practices (predatory lending, improper re-aging and improper accounting) was an inflationary event. *Id.*, ¶¶36- 38. Had the adverse information been disclosed, Household's share price would have fallen to its true value as identified by Professor Fischel in Exhibits 53 and 56. *Id.* at ¶¶36-39.

(Def. App., Tab 14 at 3-4.)

#### **43. Defendants' Statement**

During the February 7, 2008 status conference before Magistrate Judge Nolan, Class Counsel made the following statement:

“[Professor Fischel] also responds to the issue of the source of inflation in Household stock on the first day of the class period. And he says, according to the plaintiffs, there was a statement on July 22nd before the class period.”

(Transcript of Proceedings, Telephone Status Conference Before the Honorable Nan R. Nolan, Magistrate Judge, February 7, 2008 (“February 7, 2008 Transcript”) at 15:14-18). [citing Def. App., Tab 15]

### **Plaintiffs' Response**

Lead Plaintiffs do not dispute that the quoted language is contained in the February 7, 2008 hearing transcript, but dispute: (a) that this partial quotation fully and accurately reflects Lead

Plaintiffs' position (*see, e.g.*, Def. App., Tab 15); and (b) that defendants may rely upon this quotation as admissible evidence to support their summary judgment motion. During the same hearing counsel for plaintiffs stated:

[O]ur theory of the case is it is not anything that happened before the class period, it is the statement for the day of – in the class period when they speak and a failure to disclose the truth that keeps the stock at an inflated price.

(Def. App., Tab 15 at 19:21-25.)

**44. Defendants' Statement**

During the February 7, 2008 status conference before Magistrate Judge Nolan, Class Counsel made the following statement:

“Now we don't know when there is zero inflation in Household stock before the class period. First of all, it is not relevant to our case. Household stock may have been inflated – may have been inflated going back to the beginning of our old class period in 1997 or even before that.”

(February 7, 2008 Transcript at 18:13-17) [citing Def. App., Tab 15]

**Plaintiffs' Response**

Lead Plaintiffs do not dispute that the quoted language is contained in the February 7, 2008 hearing transcript, but dispute: (a) that this partial quotation fully and accurately reflects Lead Plaintiffs' position (*see, e.g.*, Def. App., Tab 15); and (b) that defendants may rely upon this quotation as admissible evidence to support their summary judgment motion. During the same hearing counsel for plaintiffs stated:

[O]ur theory of the case is it is not anything that happened before the class period, it is the statement for the day of – in the class period when they speak and a failure to disclose the truth that keeps the stock at an inflated price.

(Def. App., Tab 15 at 19:21-25.)

**45. Defendants' Statement**

During his deposition on March 21, 2008, Professor Fischel made the following statements:

“In order for there to be artificial inflation, there has to be an actionable disclosure defect. I'm assuming the existence of actionable disclosure defects.”

\* \* \*

“I’m not expressing an opinion on whether there were in fact misrepresentations or omissions. The economic evidence that I’ve looked at does not allow me to express an opinion on that subject.”

(Fischel Transcript at 133:24-134:3; 49:11-26) [citing Def. App., Tab 13]

### **Plaintiffs’ Response**

Disputed. The selected quotations are incomplete, misleading and quoted out of context.

With respect to the first quote, the full question and answer read as follows (omitted portion in **bold**):

Q: It’s not your opinion in connection with this case that there was artificial inflation in the stock?

A: I think I’ve answered that numerous times. In order for there to be artificial inflation, there has to be an actionable disclosure defect. I’m assuming the existence of actionable disclosure defects. **Based on that assumption, I have attempted, using two different methods, to calculate the amount of inflation resulting from those disclosure defects.**

Pls’ App., Ex. C (Fischel Depo Tr. at 133:20-134:6)

This testimony does not support the conclusion defendants seek to draw, *i.e.*, that the artificial inflation identified by Professor Fischel was simply assumed to be present in Household’s stock. *See* Defs’ Mem. at 3, 7, 10, 24 (citing this statement). In fact, in response to the prior question, Professor Fischel stated the exact opposite:

Q: . . . The impact of the nondisclosures you are talking about can’t be measured with an event study using specific disclosures of the kind you use in your report?

A: ***I don’t agree with that.***

Q: Well, illuminate me.

\* \* \*

A: ***The impact of those assume[d] nondisclosures is exactly what’s calculated using an events study.***

Pls’ App., Ex. C (Fischel Depo Tr. at 133:8-133:18; *see also* 90:19-22, 122:13-18; 127:18-128:4; 134:2-6)

With respect to the second quote, Lead Plaintiffs provide Professor Fischel's full response (omitted portion in **bold**) and the next question and answer:

I'm not expressing an opinion on whether there were in fact misrepresentations or omissions. The economic evidence that I've looked at does not allow me to express an opinion on that subject. ***I can express an opinion as to whether the economic evidence is consistent with those allegations, but does not establish that the allegations themselves are true.***

(*Id.* at 49:11-20)

Q: Let me just see if I understood that. The economic evidence could be consistent with the claims, but the claims themselves could be false?

A: The claim that there is legal liability for misrepresentations or omissions – that may or may not be correct. I don't have an opinion one way or the other on whether the claims that there were disclosure defects that were actionable under the securities laws – I don't have an opinion on that.

***I have an opinion as to whether the economic evidence is consistent with those allegations in the way that I described; that if those allegations were accurate, I would expect to see a certain pattern of stock price behavior as well as a certain pattern to my analysis of publicly available information. I was able to test those things by looking at relevant disclosures, publicly available information, stock price movements, controlling for market and industry movements.*** I looked at all of Doctor Bajaj's criticisms, responded to those, and I reached the opinions that I reached.

But that's why the last sentence of paragraph 11 says that, "the economic evidence is consistent with plaintiffs' claim" as opposed to establishes plaintiffs' claim.

(*Id.* at 49:21-51:1)

#### 46. **Defendants' Statement**

In a status report submitted to Magistrate Judge Nolan on February 6, 2008, Lead Plaintiffs stated that Professor Fischel's Expert Report "was not designed to determine the date on which inflation came into the stock . . . ." (February 6, 2008 Status Report at 4) [citing Def App., Tab 14]

#### **Plaintiffs' Response**

Lead Plaintiffs dispute that this partial quotation fully and accurately reflects Lead Plaintiffs' position (*see, e.g.*, Def. App., Tab 14) and that defendants may rely upon this quotation as admissible evidence to support their summary judgment motion.

47. **Defendants' Statement**

During a February 7, 2008 Status Conference before Magistrate Judge Nolan, Class Counsel stated the following:

“Now we don't know when there is zero inflation in Household stock before the class period. First of all, it is not relevant to our case.”

(February 7, 2008 Transcript at 18:14-15) [citing Def. App., Tab 15]

**Plaintiffs' Response**

Lead Plaintiffs note that this “fact” is part of the quotation cited in defendants' statement No. 44 and incorporated by reference in their response to that statement.

48. **Defendants' Statement**

On February 14, 2008, Defendants filed a Motion to Compel Plaintiffs to Supplement Their Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iii), seeking disclosure of “when (*i.e.*, the specific date or dates) the ‘artificial inflation’ upon which Plaintiffs’ claim for damages is based was first introduced into Household’s stock price.” (Doc. 1178; Doc. 1179 at 10)

**Plaintiffs' Response**

Disputed. Defendants’ motion sought identification of the date prior to the Class Period when inflation was “first introduced into Household’s stock price as a result of the alleged fraud that Plaintiffs claim existed prior to July 30, 1999,” not information about the inflation on which plaintiffs’ claim for damages is based (*i.e.*, defendants’ false and misleading Class Period statements). Dkt. No. 1179 at 1; *see also* February 27, 2008 Order at 1, Dkt. No. 1189.

49. **Defendants' Statement**

Lead Plaintiffs opposed Defendants’ motion to compel disclosure of the origin of the alleged artificial inflation. In their response brief Lead Plaintiffs stated:

“The fact that Household’s stock was inflated on July 22, 1999 or July 30, 1999 has no bearing on whether Plaintiffs’ claims are actionable . . . .”

\* \* \*

“Plaintiffs case will not involve showing any pre-Class Period inflation as that information has no bearing on plaintiffs’ methodology for calculating damages.”



(Lead Plaintiffs' Opposition to Household Defendants' Motion to Compel Plaintiffs to Supplement Their initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iii), Doc. 1182 at 3, 7.)

### **Plaintiffs' Response**

Lead Plaintiffs do not dispute that the quoted language is contained in plaintiffs' opposition brief, but dispute: (a) that this partial quotation fully and accurately reflects Lead Plaintiffs' position (*see* Dkt. No. 1182 for the full argument); and (b) that defendants may rely upon this quotation to support their summary judgment motion.

The first sentence cited above reads in full:

The fact that Household's stock was inflated on July 22, 1999 or July 30, 1999 has no bearing on whether Plaintiffs' claims are actionable *even with a Class Period start of August 16, 1999 since Household's stock was inflated that day (Fischel Rebuttal Report, ¶36) by defendants' failure to show the truth.*

Dkt. No. 1182 at 3. (omitted portion in *bold*)

Defendants' motion sought identification of the *first day* Household's stock had artificial inflation pre-Class Period, not the existence, origin and inception date of the 'artificial inflation.' *See* Defs' Mem. at 11 (citing this statement).

### 50. **Defendants' Statement**

On February 27, 2008, in denying Defendants' motion, Magistrate Judge Nolan stated:

"... Plaintiffs initially identified numerous alleged misstatements made between October 23, 1997 and July 29, 1999, that are no longer actionable. (*See, e.g.*, Doc. 50, at 70-87.) Defendants are free to utilize those statements as evidence that some or all of the inflation Plaintiffs *attribute* to the July 22 and/or August 16, 1999 statements actually entered the stock price as far back as October 23, 1997."

(Minute Entry dated February 27, 2008, Doc. 1189 at 2)

### **Plaintiffs' Response**

Lead Plaintiffs do not dispute that this statement is an accurate quote of part of Judge Nolan's February 27, 2008 Order, but dispute that it is a full and complete characterization of that order or

Lead Plaintiffs' position in that Lead Plaintiffs do not attribute and have not attributed Class Period inflation to pre-Class Period statements.

**51. Defendants' Statement**

On January 14, 2000, the Dow Jones Industrial Average closed at 11,723, a record high at the time, and on October 11, 2002, the last day of the Class Period, the Dow Jones Industrial Average closed at 7,850. (Dow Jones Industrial Average Chart) [citing Def. App., Tab 16]

**Plaintiffs' Response**

Immaterial and irrelevant. Defendants have presented no evidence, expert or otherwise, as to why this index is relevant and why selection of these dates is appropriate. Defendants themselves used different indices during the Class Period when measuring Household's comparable performance. Pls' App., Exs. E, F, G (Investor Relation Reports)<sup>5</sup>; Pls' App., Ex. D (Murphy Depo Tr. at 47:10-23), Pls' App. Ex. B (Fischel Rebuttal Report, ¶31).<sup>6</sup> Professor Fischel's regression analysis removed the impact of market factors and found a statistically significant decline in Household's stock due to partial revelations of the fraud. Pls. App., Ex. A (Fischel Report, ¶¶28-42; Exs. 49, 53, 56-57).

**52. Defendants' Statement**

The highest closing price for HII stock during the Class Period was \$69.48 on July 18, 2001. (Chart of HII Class Period Stock Prices) [citing Def. App., Tab 17.]

**Plaintiffs' Response**

Undisputed.

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<sup>5</sup> True and correct copies of Household's Investor Relation Reports are attached to Plaintiffs' Appendix as Exs. E, F and G.

<sup>6</sup> A true and correct copy of relevant excerpts from the Deposition Transcript of Celeste Murphy, taken on April 11, 2006, is attached to Plaintiffs' Appendix as Ex. D.

**53. Defendants' Statement**

HII stock closed at \$28.20 on October 11, 2002, a decline of 59.41% from its Class Period high on July 18, 2001. (*See id.*)

**Plaintiffs' Response**

Undisputed.

**54. Defendants' Statement**

During the period July 18, 2001 through October 11, 2002, the Standard & Poors Supercomposite 1500 Consumer Finance Index, which encompasses all publicly traded companies classified by Standard & Poors as "consumer finance companies," declined by approximately 53.17%. (Standard & Poors Consumer Finance Index) [citing Def. App., Tab 18.]

**Plaintiffs' Response**

Immaterial and irrelevant. Defendants have presented no admissible evidence to support this statement. Additionally, defendants offer no expert evidence as to why this index is relevant and why selection of these dates is appropriate. Defendants themselves used different indices during the Class Period when measuring Household's comparable performance. Pls' App., Exs. E, F, G (Investor Relation Reports); Pls' App., Ex. D (Murphy Depo Tr. at 47:10-23), Pls' App. Ex. B (Fischel Rebuttal Report, ¶31). Professor Fischel's regression analysis removed the impact of market factors and found a statistically significant decline in Household's stock due to partial revelations of the fraud. Pls' App., Ex. A (Fischel Report, ¶¶28-42, Exs. 49, 53, 56-57).

**54.1. Defendants' Statement**

The consumer finance companies tracked by the Standard & Poors Consumer Finance Index were HII, Americredit, CapitalOne, CashAmerica, Countrywide, MBNA, and Providian. (*See id.*)

**Plaintiffs' Response**

Immaterial and irrelevant. Defendants have presented no admissible evidence to support this statement.

#### 54.2 Defendants' Statement

During the period July 18, 2001 through October 11, 2001, the price of Providian stock declined by 92.55%, from \$59.04 to \$4.40. (*Id.*)

#### Plaintiffs' Response

Immaterial and irrelevant. Defendants have presented no admissible evidence to support this statement. Additionally, defendants have presented no expert evidence as to why this stock is relevant and why selection of these dates is appropriate. Defendants themselves used different indices during the Class Period when measuring Household's comparable performance. Pls' App., Exs. E, F, G (Investor Relation Reports); Pls' App., Ex. D (Murphy Depo Tr. at 47:10-23), Pls' App. Ex. B (Fischel Rebuttal Report, ¶31). Professor Fischel's regression analysis removed the impact of market factors and found a statistically significant decline in Household's stock due to partial revelations of the fraud. Pls' App., Ex. A (Fischel Report, ¶¶28-42; Exs. 49, 53, 56-57).

#### 54.3 Defendants' Statement

During the same period, the price of Americredit stock declined by 88.23%, from \$60.25 to \$7.09. (*Id.*)

#### Plaintiffs' Response

Immaterial and irrelevant. Defendants have presented no admissible evidence to support this statement. Additionally, defendants have presented no evidence, expert or otherwise, as to why this stock is relevant and why selection of these dates is appropriate. Defendants themselves used different indices during the Class Period when measuring Household's comparable performance. Pls' App., Exs. E, F, G (Investor Relation Reports); Pls' App., Ex. D (Murphy Depo Tr. at 47:10-23), Pls' App. Ex. B (Fischel Rebuttal Report, ¶31). Professor Fischel's regression analysis removed the impact of market factors and found a statistically significant decline in Household's stock due to partial revelations of the fraud. Pls' App., Ex. A (Fischel Report, ¶¶28-42; Exs. 49, 53, 56-57).

#### 54.4 **Defendants' Statement**

During the same period, the price of CapitalOne stock declined by 53.18%, down from \$65.48 to \$30.66. (*Id.*)

#### **Plaintiffs' Response**

Immaterial and irrelevant. Defendants have presented no admissible evidence to support this statement and offer no expert evidence as to why this stock is relevant and why selection of these dates is appropriate. Defendants themselves used different indices during the Class Period when measuring Household's comparable performance. Pls' App., Exs. E, F, G (Investor Relation Reports); Pls' App., Ex. D (Murphy Depo Tr. at 47:10-23), Pls' App. Ex. B (Fischel Rebuttal Report, ¶31). Professor Fischel's regression analysis removed the impact of market factors and found a statistically significant decline in Household's stock due to partial revelations of the fraud. Pls' App., Ex. A (Fischel Report, ¶¶28-42; Exs. 49, 53, 56-57).

#### 55. **Defendants' Statement**

In connection with their theory of fraud based on Household's reaging practices, Lead Plaintiffs alleged in the Amended Complaint that "it was not until an analyst presentation on 4/9/02 that defendants finally revealed the impact of "reaging." (AC ¶127 )

#### **Plaintiffs' Response**

Lead Plaintiffs did not make this precise allegation, but do not dispute that they made a similar allegation. AC, ¶127. Lead Plaintiffs dispute defendants' characterization of this allegation as the "revelation" of the entire fraud. The Complaint specifically alleges that defendants' fraud with respect to reaging continued after April 9, 2002. AC, ¶¶342(c)-(d). Additionally, as defendants are aware, Lead Plaintiffs discovered during discovery that the April 9, 2002 conference was a furtherance of the fraud and notified defendants of this contention. *See, e.g.*, Lead Plaintiffs' Response to Interrogatory No. 143[42], Lead Plaintiffs' Third Supplemental Amended Responses and Objections to Household Defendants' [Seventh] Set of Interrogatories to Lead Plaintiffs Pursuant to the Court's March 30, 2007 Order at 54 [Def. App., Tab 4]. Professor Fischel noted that

the market did not consider the April 9, 2002 disclosure to be complete and the market participants continued to question the accuracy and completeness of Household's reaging disclosures. Pls' App., Ex. A (Fischel Report, ¶¶25-26) (citing Exs. 16, 40-42).

**55.1 Defendants' Statement**

On April 9, 2002, HII stock closed at \$59.25, up \$0.19 from the previous day's closing price. (HII Stock Chart). [citing Def. App., Tab 17]

**Plaintiffs' Response**

Immaterial and irrelevant.

**55.2 Defendants' Statement**

On April 10, 2002, Household stock closed at \$59.35, up an additional \$0.10. (*Id.*)

**Plaintiffs' Response**

Immaterial and irrelevant.

**56. Defendants' Statement**

In connection with their theory of fraud based on Household's accounting for certain credit card marketing agreements at least as far back as 1994 (*see* AC ¶¶134-35), Lead Plaintiffs alleged in the Amended Complaint that HII's restatement of certain financial statements on August 14, 2002 revealed "that the financial statements originally issued were false and that the misstatements were material." (AC ¶142)

**Plaintiffs' Response**

Undisputed.

**56.1 Defendants' Statement**

On August 14, 2002, the price of HII stock closed at \$38.09, up \$0.29 from the previous day. (HII Stock Chart) [citing Def. App., Tab 17]

**Plaintiffs' Response**

Immaterial and irrelevant. Defendants offer no evidence to dispute plaintiffs' evidence that using a regression analysis to exclude general economic and industry news, Professor Fischel found

that there was a statistically significant stock price *decline* on August 14, 2002. Pls' App., Ex. A (Fischel Report, ¶34 n.16, Ex. 49); Pls' App., Ex. B (Fischel Rebuttal Report, ¶8).

#### 56.2 Defendants' Statement

On August 15, 2002, the price of HII stock closed at \$39.60, up an additional \$1.80. (*Id*)

#### Plaintiffs' Response

Immaterial and irrelevant. Defendants offer no evidence to dispute plaintiffs' evidence that using a regression analysis to exclude general economic and industry news, Professor Fischel found that there was a statistically significant stock price *decline* on August 14, 2002. Pls' App., Ex. A (Fischel Report at 20 n.16, Ex. 49); Pls' App., Ex. B (Fischel Rebuttal Report, ¶8).

#### 57. Defendants' Statement

In connection with their "predatory lending" theory of fraud, Lead Plaintiffs alleged in the Amended Complaint that "[i]t was only at the end of the Class Period, on 10/11/02", when defendants announced a settlement with certain state attorneys general, "that investors learned Household had been conducting nationwide operations in direct violation of state and federal laws." (AC ¶23)

#### Plaintiffs' Response

Lead Plaintiffs acknowledge this allegation, but dispute defendants' interpretation. The Complaint affirmatively notes the substantial stock price drop from the first quarter of 2002 through the end of the Class Period and discusses numerous disclosures to the market that revealed parts of the truth. AC, ¶¶19, 21, 29, 56, 86, 90, 134, 344. Additionally, Professor Fischel found October 4, 2002 to be more significant with respect to disclosure of the AG settlement and explained why the October 11, 2002 announcement resulted in a positive market reaction. Pls' App., Ex. B (Fischel Rebuttal Report, ¶¶15-18); Pls' App., Ex. A (Fischel Report, ¶¶34 n.16, 35 n.21). Professor Fischel also explained that the positive market reaction on October 10 and 11, 2002 is consistent with plaintiffs' claim:

The fact that the stock increased in value upon disclosure of such negative information is evidence that it had declined earlier by at least as much in anticipation

of a larger payment and/or changes in Household's business practices that would have had a worse impact on the Company's future prospects.

Pls' App., Ex. A (Fischel Report, ¶35 n.21)

#### 57.1 Defendants' Statement

On October 10, 2002, *The American Banker* reported that Household's stock price had "surged more than 25% on market talk that it could reach an agreement as soon as Friday [October 11] that would settle investigations by state attorneys general into its subprime consumer lending business." (Rieker, Matthias, *The American Banker*, "Banks Regain Ground; Household Shares Climb; Household International Inc.; Brief Article") [citing Def. App., Tab 19]

#### Plaintiffs' Response

Immaterial and irrelevant. Professor Fischel found October 4, 2002 to be more significant with respect to disclosure of the AG settlement and explained why the October 10, 2002 announcement resulted in a positive market reaction. Pls' App., Ex. B (Fischel Rebuttal Report, ¶¶15-18); Pls' App., Ex. A (Fischel Report, ¶¶34 n.16, 35 n.21). Professor Fischel also explained that the positive market reaction on October 10 and 11, 2002 is consistent with plaintiffs' claim:

The fact that the stock increased in value upon disclosure of such negative information is evidence that it had declined earlier by at least as much in anticipation of a larger payment and/or changes in Household's business practices that would have had a worse impact on the Company's future prospects.

Pls' App., Ex. A (Fischel Report, ¶35 n.21)

#### 57.2 Defendants' Statement

On October 10, 2002, HII stock closed at \$26.30, up \$5.30 from the previous day's closing. (HII Stock Chart) [citing Def. App., Tab 17]

#### Plaintiffs' Response

Immaterial and irrelevant. Professor Fischel found October 4, 2002 to be more significant with respect to disclosure of the AG settlement and explained why the October 10, 2002 announcement resulted in a positive market reaction. Pls' App., Ex. B (Fischel Rebuttal Report, ¶¶15-18); Pls' App., Ex. A (Fischel Report, ¶¶34 n.16, 35 n.21). Professor Fischel also explained that the positive market reaction on October 10 and 11, 2002 is consistent with plaintiffs' claim:



The fact that the stock increased in value upon disclosure of such negative information is evidence that it had declined earlier by at least as much in anticipation of a larger payment and/or changes in Household's business practices that would have had a worse impact on the Company's future prospects.

Pls' App., Ex. A (Fischel Report, ¶35 n.21)

### 57.3 Defendants' Statement

On October 11, 2002, HII stock closed at \$28.20, an increase of \$1.90 from the previous day's closing. (*Id.*)

### Plaintiffs' Response

Immaterial and irrelevant. Professor Fischel found October 4, 2002 to be more significant with respect to disclosure of the AG settlement and explained why the October 11, 2002 announcement resulted in a positive market reaction. Pls' App., Ex. B (Fischel Rebuttal Report, ¶¶15-18); Pls' App., Ex. A (Fischel Report, ¶¶34 n.16, 35 n.21). Professor Fischel also explained that the positive market reaction October 10 and 11, 2002 is consistent with plaintiffs' claim:

The fact that the stock increased in value upon disclosure of such negative information is evidence that it had declined earlier by at least as much in anticipation of a larger payment and/or changes in Household's business practices that would have had a worse impact on the Company's future prospects.

Pls' App., Ex. A (Fischel Report, ¶35 n.21)

### 58. Defendants' Statement

In his August 15, 2007 Expert Report that Lead Plaintiffs incorporated by reference in their interrogatory answers, Professor Fischel states as follows:

“Because this news [of the settlement] had substantial negative implications for Household's market value, one would have expected that it would have caused the Company's stock price to decline significantly. However, the stock price increased \$1.90 on October 11, 2002 after increasing \$5.30 on the previous day.”

(Fischel Report at 22 n.21) [citing Def. App., Tab 11]

### Plaintiffs' Response

Disputed. This statement is an incomplete recitation of Professor Fischel's analysis of Household's stock price movement on October 10 and 11, 2002. Professor Fischel specifically

stated in his report that this price movement provided additional evidence that defendants' concealment of Household's predatory practices caused plaintiffs' loss. In the same footnote, Professor Fischel concluded:

The fact that the stock increased in value upon disclosure of such negative information is evidence that it had declined earlier by at least as much in anticipation of a larger payment and/or changes in Household's business practices that would have had a worse impact on the Company's future prospects.

Pls' App., Ex. A (Fischel Report, ¶35 n.21); *see also* Pls' App., Ex. B (Fischel Rebuttal Report, ¶¶15-18)

**59. Defendants' Statement**

Defendants' Interrogatory No. 6 asked the following:

"Identify all documents or other facts that Plaintiffs contend support, refute, or otherwise concern the allegation set forth in ¶21 of the Complaint that 'the Officer Defendants worked tirelessly to conceal their wrongful course of business.'"

(Household Defendants' Second Set of Interrogatories to Lead Plaintiffs, Interrogatory No. 6)

**Plaintiffs' Response**

Undisputed.

**60. Defendants' Statement**

Defendants' Interrogatory 8 asked the following:

"Identify all documents or other facts that Plaintiffs contend support, refute, or otherwise concern the allegation set forth in ¶3 of the Complaint that '[D]efendants concealed that Household was engaged in a massive predatory lending scheme.'"

(Household Defendants' Second Set of Interrogatories to Lead Plaintiffs, Interrogatory No. 8)

**Plaintiffs' Response**

Undisputed.

**61. Defendants' Statement**

In their response to Interrogatories Nos. 6 and 8, Lead Plaintiffs stated as follows:

"In an effort to conceal their predatory lending, defendants consistently took the public position that no predatory lending practices were occurring at Household, and any assertion to the contrary was false."

(Lead Plaintiffs' Third Amended Supplemental Response and Objections to Household Defendants' [Fourth] Set of Interrogatories to Lead Plaintiffs, Responses to Interrogatories 6 and 8) [citing to Def. App., Tabs 3 & 20, at 16, 34.]

**Plaintiffs' Response**

Lead Plaintiffs do not dispute that this quote is a part of plaintiffs' response to these interrogatories.

**62. Defendants' Statement**

In their responses to Interrogatories Nos. 6, 8, and 41, Lead Plaintiffs identified statements on February 7, April 22, July 16, July 17 and July 26, and September 2, 2002 as examples of Defendants' alleged on-going concealment. (*Id.*)

**Plaintiffs' Response**

Lead Plaintiffs do not dispute that these statements are identified in interrogatory responses 6, 8 and 41 as examples of defendants' ongoing attempt to conceal the full extent of their fraud from investors.

DATED: June 12, 2008

Respectfully submitted,

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DECLARATION OF SERVICE BY ELECTRONIC 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 June 12, 2008, declarant served by electronic mail and by U.S. Mail to the parties the: **LEAD PLAINTIFFS' RESPONSE TO DEFENDANTS' RULE 56.1 STATEMENT IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT.** 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>
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I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of June, 2008, at San Francisco, California.

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