UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED, Plaintiff, - against - HOUSEHOLD INTERNATIONAL, INC., ET AL., Defendants.	Lead Case No. 02-C5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman

DECLARATION OF THOMAS J. KAVALER IN SUPPORT OF DEFENDANTS' MOTION *IN LIMINE* TO PRECLUDE PLAINTIFFS FROM ADVANCING CERTAIN STATEMENTS AS A BASIS FOR ANY DEFENDANT'S LIABILITY

I, THOMAS J. KAVALER, declare as follows:

1. I am a member of the bar of the State of New York and a member of the firm of Cahill Gordon & Reindel LLP, co-counsel for defendants Household International, Inc., Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer, and J.A. Vozar (the "Household Defendants") in this action. I am admitted *pro hac vice* in this Court for this action. I submit this declaration to place before the Court certain documents and information in support of Defendants' Motion In Limine to Preclude Plaintiffs from Advancing Certain Statements as a Basis for Any Defendant's Liability. I make this declaration based on my personal knowledge as well as my review of relevant documents.

2. Attached hereto as Exhibit 1 is a true and correct copy of the relevant portions of Plaintiffs' Third Response to Defendants' [Seventh] Interrogatories, dated February 1, 2008.

3. Attached hereto as Exhibit 2 is a true and correct copy of the relevant portions of the transcript of the December 16, 2008 proceedings upon presentment of Defendants' Motion Pursu-

ant to Local Rule 16.1 to Require Plaintiffs to Identify the Allegedly False and Misleading Statements to be Proved at Trial.

4. Attached hereto as Exhibit 3 is a true and correct copy of the January 16, 2009 Letter from Joshua Newville to Luke O. Brooks.

5. Attached hereto as Exhibit 4 is a true and correct copy of the January 20, 2009 e-mail from Spence Burkholz to Joshua Newville.

6. Attached hereto as Exhibit 5 is a true and correct copy of the list of the allegedly false statements provided by Plaintiffs as an attachment to the January 20, 2009 e-mail from Spence Burkholz to Joshua Newville. In addition, for the Court's convenience, attached as Exhibit 5 Appendix A is a reduced copy of Plaintiffs' January 20, 2009 list of allegedly false statements that includes only those statements and portions of statements that are inactionable as a matter of law.

7. Attached hereto as Exhibit 6 is a true and correct copy of the Court's Memorandum Opinion & Order, *Jaffe* v. *Household Int'l, Inc.*, 02 Civ. 5893 (Feb. 28, 2006).

8. Attached hereto as Exhibit 7 is a true and correct copy of the relevant portions of Lead Plaintiffs' Response to the Household Defendants' Motion to Compel Responses to Household Defendants' Second Set of Interrogatories, dated July 13, 2006.

9. Attached hereto as Exhibit 8 is a true and correct copy of the relevant portions of the Expert Witness Report of Catherine A. Ghiglieri, dated Aug. 15, 2007.

10. Attached hereto as Exhibit 9 is a true and correct copy of the relevant portions of the Deposition of Catherine Ghiglieri, conducted on February 13, 2008.

11. Attached hereto as Exhibit 10 is a true and correct copy of the relevant portions of the Deposition of Craig A. Streem, February 21, 2007.

12. Attached hereto as Exhibit 11 is a true and correct copy of the relevant portions of the Deposition of Megan Hayden-Hakes, August 18, 2006.

13. Attached hereto as Exhibit 12 is a true and correct copy of the unreported decision in *In re Neopharm, Inc. Sec. Litig.*, No. 02 Civ. 2976, 2003 WL 262369 (N.D.Ill. Feb.7, 2003) (Lefkow, J.).

14. Attached hereto as Exhibit 13 is a true and correct copy of the unreported decision in *In re ATI Techs. Inc. Sec. Litig.*, No. 05 Civ. 4414, 2007 WL 2301151 (E.D.Pa. Aug. 8, 2007) (O'Neill, J.).

/s/ Thomas J. Kavaler
Thomas J. Kavaler

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct. Executed this 30th day of January, 2009, in New York, New York.

Exhibit 1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

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

Pursuant to Fed. R. Civ. P. 26 and 33 as well as Civil L.R. 33.1, Glickenhaus & Company, PACE Industry Union-Management Pension Fund and International Union of Operating Engineers Local No. 132 Pension Plan (collectively "Lead Plaintiffs"), hereby respond and object to Household Defendants' [Seventh] Set of Interrogatories to Lead Plaintiffs (the "Interrogatories"). All responses contained herein are based only upon such information and documents presently available and specifically known to Lead Plaintiffs. Further independent discovery, independent investigation, legal research and analysis may supply additional facts and/or add meaning to the known facts. Moreover, the responses below are given without prejudice to Lead Plaintiffs' right at trial or other proceedings to produce evidence of any subsequently discovered fact or facts that may later develop.

I. GENERAL OBJECTIONS

Lead Plaintiffs generally object to the Interrogatories on the following grounds, each of which is incorporated by reference in the responses to the individual interrogatories below. All responses set forth herein are subject to and without waiver of any of these General Objections:

1. Lead Plaintiffs object to the Interrogatories because they are improperly designated as "Fourth Set of Interrogatories." Defendants Household International, Inc. and Household Finance Corporation ("Household" or the "Company") served six interrogatories on each of the Lead Plaintiffs on July 30, 2004. Also on July 30, 2004, Individual Defendants William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar served four interrogatories on each of the Lead Plaintiffs. Then, on January 23, 2006, defendants served four interrogatories on each of the Lead Plaintiffs which constituted the Third Set. Later, on February 14, 2006, defendants served their "Second" set of interrogatories, *i.e.*, the Fourth set. On May 26, 2006, defendants served their "Third" set of interrogatories, *i.e.*, the Fifth set. Pursuant to the Court's August 10, 2006 Order, the Court permitted defendants to serve "up to five additional and more specific interrogatories." *See* August 10, 2006 Order at 17 (Docket No. 631). Defendants improperly styled the interrogatories

Lead Plaintiffs further incorporate by reference and identify the Expert Report of Harris L. Devor dated August 15, 2007, and all documents referenced therein. Mr. Devor's report discusses, *inter alia*, the GAAP violations resulting from Household's reage, restructure and account management policies and practices, including but not limited to their impact on Household's reported 2+ delinquency rate and charge-off statistics; that such practices rendered the Company's loan loss reserve unreliable; and the inaccurate or inadequate disclosure of such policies and practices such as, *inter alia*, the purposes and changes relating thereto, forbearances, automatic restructures, exclusion of EZ pay restructures as restructures, late stage restructures, extensions, rewrites, skip-a-pays, and grace periods.

<u>INTERROGATORY NO. 142 [41]</u>:

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 that Plaintiffs contend that each statement was false.

<u>RESPONSE TO INTERROGATORY NO.142 [41]</u>:

Lead Plaintiffs hereby incorporate all the General Objections above, as if set forth fully herein. Lead Plaintiffs also object to this interrogatory because it suffers from the same infirmities plaguing all of defendants' interrogatories thus far – it is vague and ambiguous and fails to identify with particularity the information that defendants seek. Lead Plaintiffs object to this interrogatory because it is compound and contains numerous subparts. Lead Plaintiffs also object that this interrogatory is overly broad, unduly burdensome, harassing and vexatious in that it inquires into no fewer than 56 paragraphs of Lead Plaintiffs' Complaint. In addition, Lead Plaintiffs object to this interrogatory because it fails to specify a time period for which a response is sought.

Additionally, Lead Plaintiffs object to this interrogatory on the grounds that it cannot be fully answered until expert discovery has been completed. Further, although the fact-discovery cut-off was scheduled for January 31, 2007, defendants are still producing responsive documents notwithstanding their improper and evasive certification that their document production is complete. Defendants have also failed to log documents on privilege logs despite improperly withholding and/or redacting responsive documents in violation of Fed. R. Civ. P. 26. Lead Plaintiffs further object to this interrogatory because defendants have failed to provide evidence of the documents that were destroyed throughout the entire Company pursuant to the "purge" that occurred in mid-2001; the knowing destruction of relevant documents by certain of the defendants related to Andrew Kahr as well as the destruction of documents and spoliation of other relevant evidence that occurred both during and after the Class Period. Lead Plaintiffs' ability to fully respond to this interrogatory is limited due to defendants' spoliation of evidence. Lead Plaintiffs' response, thus, is based upon such facts as are currently known to them.

Further, defendants have objected to producing documents and/or deposition testimony from a number of witnesses that defendants have identified as having knowledge of facts relevant to this litigation. In addition, the Individual Defendants have refused to respond to the discovery propounded on them by the Class. Lead Plaintiffs will provide responses based upon such facts as are currently known to them. Lead Plaintiffs reserve the right, as necessary and appropriate, to supplement, amend, modify or revise their response to this interrogatory consistent with their obligations under Fed. R. Civ. P. 26(e).

Subject to and specifically incorporating the foregoing General and Specific Objections and without waiving them, Lead Plaintiffs further respond to these interrogatories as follows:

Lead Plaintiffs respond to this interrogatory (or more aptly "interrogatories") by stating as an initial matter that in its detailed and particularized Complaint, Lead Plaintiffs have identified false and misleading statements made during the Class Period, including the source of the statement (press release, SEC filing, presentation made to analysts, etc.), the date of the statement, and the circumstances in which the statement was made. Indeed, Judge Guzman found that Lead Plaintiffs had met this requirement of the Private Securities Litigation Reform Act in the Complaint itself by "identifying who made particular statements, when, how they were misleading, and the results of the statements." *See Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2004 U.S. Dist. LEXIS 4659, at *15-*26 (N.D. Ill. Mar. 19, 2004).

Additionally, Lead Plaintiffs identify the following statements that were affirmative misrepresentations made either by the Company or the Individual Defendants:

- *Copley News Services* – February 7, 2002: "We make good loans that not only are legal loans, but are beneficial for our customers."
- *Bellingham Herald* – April 22, 2002: "It is absolutely against our policy to in any way quote a rate that is different than what the true rate is . . . . I can't underscore that enough."
- *National Mortgage News* – May 20, 2002: "[Hayden] said, senior management 'has actively followed' the issue of responsible lending, compliance, quality assurance and making sure that the company is abiding by policies and procedures that 'indeed do represent the ethics of this company' as an industry leader."
- *American Banker* – May 31, 2002: "It is our regulators' and the attorney general's job to investigate any complaints brought forth by consumers in their state, and we don't find anything unique or surprising that they are doing their job. . . . [W]e take proper steps to work with the department to uncover the facts and if necessary formulate an appropriate resolution for the borrower." . . . [some] "customers in Bellingham may have indeed been justified in their confusion about the rate of their loans" and claimed Household "took full and prompt responsibility" and is "satisfied that this situation was localized to the Bellingham branch."
- *ABA Banking Journal* – May 2002: "For 124 years, we've set the standard for responsible lending. And now we're doing it again."
- *The Oregonian* – July 2, 2002: "Household International offices deny any pattern of wrongdoing and say the company is open to changes in its lending practices if they are harmful to consumers. 'We've made mistakes,' said Megan Hayden, spokeswoman for the Prospect Heights, Ill., company. 'Is there a companywide pattern of abuse? Absolutely not.'"
- *New York Times* – August 19, 2002: "Despite the industry wreckage, Household is hanging tough. On a conference call this week, its chief executive, William F. Aldinger, dismissed as groundless two lawsuits filed by the Association of Community Organizations for Reform Now, a community group that specializes in credit issues that affect law-and middle income people. Though nine states have enacted tougher anti-predatory lending laws in the last three

years, Aldinger said these had 'virtually no impact' on Household because the company began during the last 18 months two sets of reforms in lending practices. 'We are a good group of people, a high-quality team with good ethics,' Aldinger added."

- *Bellingham Herald* – July 26, 2002: "Household employees 'may' have misrepresented mortgage terms to 'some' Whatcom County homeowners who refinanced their home loans at the Bellingham office of HFC. . . . The manager of that office was replaced."

- *Star Tribune* – July 27, 2001: "Megan Hayden, a Household spokeswoman, said that terms of loans are disclosed to all customers, as required by state and federal laws. 'Frankly, you don't stay in business in this industry by taking advantage of your customers,' she said. 'So I take exception to any characterization that we engaged in predatory lending practices.'"

- *Albuquerque Journal* – September 11, 2001: "Household Corporate Communications Director Megan Hayden said ACORN members 'have made similar complaints about us in other states, and we have investigated all of their concerns and have found them to be baseless.'"

- November 7, 2000 Household Press Release entitled "Household International Responds to Citigroup's Announcement to Change Lending Practices at Associates First Capital": "Household International supports Citigroup's announcement today of its efforts to boost consumer protections at Associates First Capital. Their proposed changes are generally consistent with the stringent policies and procedures that have long been in place at Household International. Household's long-standing view has been that unethical lending practices of any type are abhorrent to our company, employees, and most importantly our customers. So-called "predatory lending" practices undermine the integrity of the industry in which we compete."

- *San Jose Mercury News* – July 13, 2001: "Megan Hayden, manager of corporate communications for Household, said it would be 'disingenuous' to say public perception did not have a role in the announcement. But she insisted that the decision had little to do with increasing activism. . . . Hayden said sales of the insurance total about $10 million and have been a small part of the company's income."

- *The New York Times* – July 24, 2001: The timing of these policies was not tied to actions by any fair-lending advocates and that the Company had been working on the announced changes for "quite some time. So, it really is a coincidence."

- *Copley News Service* – November 14, 2001: "'We recognized there was a problem when the department brought it to our attention' after the 2000 audit, said Megan Hayden, a Household spokeswoman. 'Following their instructions, we not only refunded the customers who were affected but also put the necessary technological and human controls in place to make sure that would never happen again.'"

- *Los Angeles Sentinel* – November 21, 2001: "In May, Hayden said, Household Finance 'promptly responded to the department's concern by issuing refunds to our customers and implementing the necessary systems and people controls to prevent such systems issues from happening again.' Hayden claims that 'technology is responsible for the overcharges.'"

- *American Banker* – November 21, 2001: "'It is very dangerous to confuse unintentional systematic inaccuracies on small administrative charges as predatory lending. Those two definitions do not match up,' said Megan Hayden, a spokeswoman with Household. . . . Ms. Hayden said her company made refunds to the borrowers and implemented what it believed was better system."

- *Associated Press* – January 10, 2002: "Hayden said some of the repeated problems stemmed from Household's acquisition of its Beneficial subsidiary. 'Our solution wasn't adequate, and we're disappointed with that,' Hayden said. 'We're continuing to increase our own – Household's own – oversight of our compliance, because it's a priority for us.'"

- Household FY01 Report on Form 10-K filed with the SEC on March 13, 2002: "Management has long recognized its responsibility for conducting the company's affairs in a manner which is responsive to the interest of employees, shareholders, investors and society in general. This responsibility is included in the statement of policy on ethical standards which provides that the company will fully comply with laws, rules and regulations of every community in which it operates and adhere to the highest ethical standards. Officers, employees and agents of the company are expected and directed to manage the business of the company with complete honesty, candor and integrity."

- *The Patriot Ledger* – August 16, 2002: "Household spokeswoman Megan Hayden . . . denied the company broke any laws. . . . 'Clearly, as a national lender that operates in 46 states we cannot do so if we don't follow the laws and regulations,' she said."

- *Origination News* – September 1, 2002: "'We clearly follow all state and federal laws and regulations,' Household spokeswoman Megan Hayden said".

- *National Mortgage News* – September 2, 2002: "A household spokeswoman said she is not aware of any pending enforcement actions or settlement talks."

- *Copley News Services* – February 7, 2002: "You simply cannot stay in business for 125 years by misleading your borrowers . . . . We do the right thing for our borrowers. We make good loans that not only are legal loans, but are beneficial for our customers."

- *Contra Costa Times* – February 7, 2002: "They have charged us in the past with being a predatory lender, but those allegations have almost uniformly proven false and misleading,"

- *Star Tribune* – February 28, 2002: "Household International, parent of HFC and Beneficial Loan and Thrift brands, said new policies provide 'unprecedented protections' for subprime borrowers_normally people whose credit scores are too low to qualify for mortgage loans at market rate. . . . The new policies come from 'always looking at better ways we can serve our customers, and raising the bar for industry lending standards,' said Megan Hayden, Household's corporate communications manager."

- *Chicago Tribune* – May 3, 2002: "Household quickly denied that it misleads customers. . . . In response to the latest suit, Household denied that it misleads customers. 'Acorn continues to launch baseless accusations and lawsuits rather than work to enact real solutions to help eliminate predatory lending from the marketplace,' the lender's statement said."

- *Newsday* – May 7, 2002: "Household spokeswoman Megan Hayden said yesterday that the company 'was surprised and concerned by [the comptroller's] statement. We believe we have the highest standards for responsible lending, and we very much hope to speak directly with the comptroller to address his questions and concerns.'"

- *The Bellingham Herald* – April 5, 2002: "'You do not stay in business for 124 years by taking advantage of consumers,' Hayden aid. 'You do not make any money trying to take advantage of consumers. You lose money.'"

- *St. Paul Pioneer Press* – May 14, 2002: "Household spokeswoman Megan Hayden said the company denies misleading the Dodges or other families about the terms of their loans. . . . 'You don't stay in business 120 years if you simply take advantage of people,' Hayden said."

- *The Record* – May 10, 2002: "Our position is that the accusations [regarding predatory lending] are baseless . . . . The loans are legal, they are compliant with state and federal laws and our own policies, and in each instance they have benefits for each customer. . . . The loan[s] conform[] to the company's 'tangible benefits test."

- *AP Online* – May 14, 2002: "All of [Household's] lending policies are in accord with federal and state regulations and requirements . . . ."

- May 22, 2002 Household Press Release entitled "Household Names New Vice President-Director of Compliance": "The decision to appoint Kauffman furthers Household's ongoing efforts to strengthen policy and compliance functions, and enhances the company's long-standing commitment to serving middle market borrowers fairly and responsibly. 'We take compliance very seriously at Household,' said Gary Gilmer. 'We have made important steps to fortify our compliance functions, such as increasing our infrastructure, doubling the size of the centralized compliance and field audit team, and reengineering our exam reviews. The addition of James Kauffman is a meaningful next step. His impeccable credentials, financial services industry experience and first-hand knowledge of compliance requirements will be an invaluable resource as Household continues its focus on compliance excellence.'. . . Household leads the consumer lending industry with stringent responsible lending policies and practices.'"

- *Forbes* – September 16, 2002: "'Home Wrecker' (Sept. 2, p. 62) disregarded facts and instead crafted an inaccurate portrayal of William Aldinger's Household International and its consumer lending business. While one complaint is one too many, you neglected to mention that 99.99% of our consumer-lending customers do not have a complaint regarding their loan. FORBES neglected to say that our branches undergo three quality assurance audits a year and that more than 56,000 customer audit calls are made to ensure we meet the highest standards of responsible lending. FORBES did not give any credit to our industry-leading disclosures, such as our one-page, simple-language loan summary – in which customers are clearly communicated with about the terms of their contracts. We regret that FORBES didn't find these facts relevant. But at Household, our satisfied customers know the difference."

- *National Mortgage News* – February 18, 2002: [Predatory lending allegations] were "not a significant issue, not indicative of any widespread problem and certainly not a concern that it will spread elsewhere."

- *Associated Press* – October 31, 2001: "Household spokeswoman Megan Hayden denied the company engaged in predatory lending through its Beneficial and Household Finance subsidiaries, even as she pointed to steps the company took this year to end some of its most criticized practices. Hayden said the problem involved not her company, but 'rogue lenders.' Government regulators say predatory lenders often target the poor, racial and ethnic minorities, seniors and single women."

- *National Mortgage News* – February 18, 2002: "Our first take on [the allegations of predatory lending raised in the ACORN action] is that it is not a significant issue, not indicative of any widespread problem and certainly not a concern that it will spread elsewhere."

- March 12, 2001 Household Press Release entitled "Household International Applauds Federal Reserve Board's Proposed Amendments to Regulation Z: "'Household's position on predatory lending is perfectly clear,' said Gary Gilmer, president and CEO of HFC and Beneficial. 'Unethical lending practices of any type are abhorrent to our company, our employees, and most importantly, our customers.' . . . The company reaffirmed that it fully complies with all applicable federal and state laws and regulations."

- *Origination News* – March 23, 2001: Household's "position on predatory lending is perfectly clear. Unethical lending practices of any type are abhorrent to our company, our employees and most importantly our customers."

- October 22, 1998 Household Press Release entitled "Household International Reports Record Third Quarter Results": Household "reported net income rose 20 percent to a third-quarter record of $318.0 million, compared with $264.7 million for the third quarter of 1997. Earnings per share increased 19 percent to a third-quarter record of $.63 from $.53 a year ago."

- January 20, 1999 Household Press Release entitled "Household International Reports Q4 and Full Year Results": Household "announced that it achieved record net income and earnings per share for the fourth quarter ended December 31, 1998. Net income of $349.9 million was up 71 percent from $204.8 million recorded in Q497, and reported EPS of $.71 was up 73 percent from $.41 reported in Q497. . . . Receivables of the company's core consumer finance businesses, other than bankcard, grew 12 percent from a year ago and three percent sequentially. . . . The company's managed net interest margin widened to 8.03 percent, up from 7.92 percent in the prior quarter and 7.80 percent a year ago. The sequential quarter and year-over-year improvement resulted from higher yields on unsecured products and lower funding costs, partially offset by the effect of a shift in mix toward secured products."

- April 22, 1999 Household Press Release entitled "Household International Reports Record First Quarter Results": Household "reported record first quarter operating income and operating earnings per share. Net operating income rose 34 percent to $320.8 million, compared with net operating income of $239.3 million a year ago. Earnings per share increased 38 percent to $.65 from operating EPS of $.47 a year ago."

- July 22, 1999 Household Press Release entitled "Household International Reports Record Second Quarter Results": Household "reported that second quarter net income rose 31 percent to a record $326.9 million, compared with operating net income of $249.4 million a year ago. Earnings per share increased 37 percent to a record $.67, compared with operating EPS of $.49 a year ago. Cash basis EPS for the quarter rose 28 percent."

- October 19, 1999 Household Press Release entitled "Household International Reports Highest Quarterly Earnings in Company's History": Household "reported that third quarter net income rose 26 percent to a record $399.9 million, compared with $318.0 million a year ago. Earnings per share increased 32 percent to a record $.83, from $.63 a year ago."

- January 19, 2000 Household Press Release entitled "Household International Reports Best Quarter and Year in Its History": Household "reported that fourth quarter earnings per share increased 30 percent to a record $.92 from $.71 a year ago. Fourth quarter net income rose 25 percent to a record $438.8 million, compared with $349.9 million a year ago. For the full year, Household reported record earnings per share of $3.07, which was 33 percent over 1998 operating earnings per share. . . . Net income totaled $1.5 billion, or 29 percent above the prior year's operating net income . . . Credit quality improved from both the third quarter and a year ago. . . . Reserves to nonperforming loans were 100.1 percent at year end."

- Household FY99 Report on Form 10-K filed with the SEC on March 28, 2000: Household reported "return on average common shareholders' equity ("ROE") rose to 23.5 percent in 1999 compared to 18.2 percent in 1998, excluding merger and integration related costs and the gain on sale of Beneficial Canada, and 17.3 percent in 1997. Our return on average owned assets ("ROA") improved to 2.64 percent in 1999 compared to 2.29 percent in 1998, excluding the nonrecurring items, and 2.03 percent in 1997. Our return on average managed assets ("ROMA") improved to 1.99 percent in 1999 compared to 1.60 percent in 1998, excluding the nonrecurring items, and 1.38 percent in 1997. Including the merger and integration related costs and the gain on sale of Beneficial Canada, ROE was 8.1 percent, ROA was 1.04 percent and ROMA was .72 percent in 1998. Our operating net income, ROA, ROMA and ROE have increased steadily over the past three years as a result of our focus on higher-return core businesses and improved efficiency. We expect this trend to continue as we focus on growth of these higher return core businesses."

- April 19, 2000 Household Press Release entitled "Household International Reports Record First Quarter Results": Household "reported that earnings per share rose 20 percent to a first quarter record of $.78, from $.65 a year ago. Net income increased to $372.9 million, up 16 percent from $320.8 million in the first quarter of 1999. Cash earnings for the quarter totaled $415 million."

- July 19, 2000 Household Press Release entitled "Household International Reports Record Strongest Second Quarter in Its History": Household "reported that earnings per share rose to a second quarter record $.80, up 19 percent from $.67 a year ago. Net income increased 17 percent to $383.9 million, from $326.9 million in the second quarter of 1999. Cash earnings per share for the quarter totaled $.88. . . . The company's managed receivables portfolio grew 22 percent from a year ago, reaching almost $80 billion. The company added $4.5 billion of receivables in the quarter, an increase of 6 percent. Revenues rose 20 percent compared to the year-ago quarter."

- October 18, 2000 Household Press Release entitled "Household International Reports Highest Quarterly EPS in Its History; Ninth Consecutive Record Quarter": Household reported that "third quarter earnings per share rose 13 percent to $.94, compared to $.83 a year ago. Net income also rose to a third quarter record of $451.2 million, a 13 percent increase from $399.9 million a year ago. Cash earnings per share for the quarter totaled $1.02."

- January 17, 2001 Household Press Release entitled "Household International Reports Highest Full Year and Quarterly EPS in Its History; Tenth Consecutive Record Quarter": Household "reported full year earnings per share of $3.55, a 16 percent increase over $3.07 a year ago and the highest earnings per share in the company's 122-year history. Net income totaled $1.7 billion, or 14 percent above the prior year. Net managed revenues for the full year increased 18 percent to $8.9 billion, compared to $7.5 billion in 1999. Household's fourth quarter earnings per share rose 12 percent to a record $1.03, from $.92 a year ago. Fourth quarter net income rose 12 percent to an all-time high of $492.7 million, compared with $438.8 million a year ago."

- April 18, 2001 Household Press Release entitled "Household International Reports First Quarter Results; 11th Consecutive Record Quarter": Household "reported that earnings per share rose 17 percent to a first quarter record of $.91 from $.78 a year ago. Net income increased to $431.8 million, up 16 percent from $372.9 million in the first quarter of 2000. This quarter marked the 11th consecutive quarter of record results."

- July 18, 2001 Household Press Release entitled "Household International Reports Second Quarter Results; 12th Consecutive Record Quarter": Household "reported record earnings per share of $.93, up to 16 percent from a year ago. Net income rose 14 percent, to $439.0 million, from $383.9 million for the second quarter of 2000."

- October 17, 2001 Household Press Release entitled "Household Reports Highest Quarterly Net Income in Its 123-Year History": Household "reported earnings per share of $1.07 rose 14 percent from $.94 the prior year. Net income increased 12 percent, to $504 million, from $451 million in the third quarter of 2000."

- January 16, 2002 Household Press Release entitled "Household Reports Record Quarterly and Full Year Net Income": Household "reported fourth quarter earnings per share of $1.17, its fourteenth consecutive record quarter. Fourth quarter earnings per share rose 14 percent from $1.03 the prior year. Net income in the fourth quarter increased 11 percent, to an all-time quarterly record of $549 million. For the full year, Household reported earnings per share of $4.08, representing a 15 percent increase from $3.55 in 2000. Net income for 2001 totaled $1.9 billion, also an all-time high, 13 percent above $1.7 billion earned in 2000."

- April 17, 2002 Household Press Release entitled "Household Reports Record First Quarter Net Income": Household "reported first quarter earnings per share of $1.09, its fifteenth consecutive record quarter. First quarter earnings per share rose 20 percent from $.91 the prior year. Net income in the first quarter increased 18 percent, to a record $511 million."

- July 17, 2002 Household Press Release entitled "Household Reports Record Second Quarter Results on Strong Receivables Growth": Household "reported second quarter earnings per share increased 16 percent to $1.08, from $.93 the prior year. These results mark Household's sixteenth consecutive record quarter. Second quarter net income increased 17 percent, to a record $514 million."

- April 22, 1999 Household Press Release entitled "Household International Reports Record First Quarter Results": "Strong loan growth in our consumer finance business, improved efficiency and higher income from our tax refund loan business led to the strongest first quarter in our 120 year history. . . . We have great momentum in this business. . . . 1999 is off to a very good start and we are on track to meet our earnings and growth targets."

- July 22, 1999 Household Press Release entitled "Household International Reports Record Second Quarter Results": "Our results, a second quarter record, highlight the growth and improved profitability of our consumer finance businesses. . . . Business fundamentals are strong and reflect the positive trends we have seen since late last year. Our net interest margin percentage expanded substantially, credit quality improved and costs remained well under control. Receivable growth was strong in the consumer finance business. We have excellent momentum. . . . Growth in the HFC and Beneficial consumer finance branch business continues to improve and also gives us an excellent platform from which to cross-sell many of our other products. Our 1,400 branches and 7,000 branch employees give us a real advantage as we focus on satisfying more of our customers' credit needs."

- October 19, 1999 Household Press Release entitled "Household International Reports Highest Quarterly Earnings in Company's History": "Our quarter reflects excellent performance in all of our businesses, with the key drivers being accelerating internal receivable and revenue growth. Retail consumer finance growth was particularly strong. Looking ahead to the fourth quarter and into next year, we see great momentum across all businesses, but most notably in our HFC/Beneficial finance business. I am confident we will achieve our earnings goal for this year and we are well positioned for next year."

- January 19, 2000 Household Press Release entitled "Household International Reports Best Quarter and Year in Its History": "We are very pleased to report another record quarter, the culmination of an absolutely outstanding year for Household. Growth and profitability in the quarter were excellent and exceeded our expectations. Revenues were particularly strong. . . . Our record earnings reflect an outstanding year in our consumer finance business, a dramatic turnaround in our MasterCard/Visa business, and strong results in all of our other businesses. We are particularly pleased with excellent receivable growth in 1999, particularly in our branches, while fully realizing all of the acquisition synergies of the Beneficial merger. We move into the new year with a real sense of excitement, great momentum throughout the company and strong competitive positions in each of our businesses."

- April 19, 2000 Household Press Release entitled "Household International Reports Record First Quarter Results": "This was the strongest first quarter in our company's history, with all of our businesses performing well. Revenue and receivable growth were strong, and credit quality continued to improve. To build upon the momentum that is evident in these results, we increased our investment in marketing programs and e commerce initiatives.... The year is off to a great start.... We are seeing a continuation of the very positive business trends that emerged in the second half of 1999. We remain comfortable with our receivable, revenue and earnings per share growth targets for 2000."

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- October 18, 2000 Household Press Release entitled "Household International Reports Highest Quarterly EPS in Its History; Ninth Consecutive Record Quarter": "Our strong third quarter results reflect a continuation of outstanding receivables and revenue growth. At the same time, we achieved year-over-year improvements in credit quality.... These positive trends give us a high degree of confidence in our ability to deliver 15 percent EPS growth for 2000."

- January 17, 2001 Household Press Release entitled "Household International Reports Highest Full Year and Quarterly EPS in its History": "These strong fourth quarter results cap off a terrific year in which we delivered on all or our earnings and growth goals.... Growth and profitability in the quarter were excellent, while credit quality and our balance sheet remained strong. . . . Our record earnings per share reflect strong top-line growth and improved credit quality. At the same time, we made significant investments in our technology and human capital that enhance our ability to achieve sustainable and consistent revenue and receivables growth. We have built a powerful franchise that is capable of delivering 13 to 15 percent annual earnings per share growth."

- April 18, 2001 Household Press Release entitled "Household International Reports First Quarter Results; 11th Consecutive Record Quarter": "Our outstanding results reflect the sustainability and earnings power of our franchise. Receivables and revenues grew nicely in the quarter. At the same time, credit quality remained stable and we strengthened our balance sheet. We also repurchased 8.8 million shares in the quarter. . . . All of our businesses are performing well and have great momentum.... We are very comfortable with our ability to achieve our receivable and earnings per share growth targets for 2001.... I look forward to another record year."

- July 18, 2001 Household Press Release entitled "Household International Reports Second Quarter Results; 12th Consecutive Record Quarter": "We had a terrific quarter – our 12th consecutive quarter of record results. Given the softening economic environment, I am particularly pleased with our ability to consistently deliver strong, quality earnings. . . . Results for the quarter were excellent.... We enjoyed strong receivable and revenue growth compared to a year ago, with all of our businesses performing well. In addition, delinquency was stable in the quarter . . . . Our strong performance to date has positioned us well to achieve another record year in 2001."

- October 17, 2001 Household Press Release entitled "Household Reports Highest Quarterly Net Income in Its 123-Year History": "Household's performance this year has been outstanding, even as the economy has continued to weaken. . . . The third quarter was no exception. Receivable and revenue growth were strong, and credit performance was within our expectations. We further strengthened our balance sheet and continued to repurchase shares. . . . The strength of our franchise gives me confidence that we will achieve the high end of our earnings target of 13 to 15 percent EPS growth for the year."

- January 16, 2002 Household Press Release entitled "Household Reports Record Quarterly and Full Year Net Income": "Household's fourth quarter results were simply outstanding . . . demonstrating the tremendous strength and earnings power of the Household franchise. Receivable and revenue growth exceeded our expectations while credit indicators weakened only modestly in a tough economic environment. Recognizing the importance of a strong balance sheet, we provided $154 million in excess of owned chargeoffs, bringing our reserves to their highest level ever. . . . In 2001, we demonstrated that our business model generates superior results in a weak economy as well as in the strong economic periods of previous years. Exceptional revenue growth of 18 percent more than offset the increases in credit losses during the year. We further strengthened our balance sheet while investing in sales and marketing to position our franchise for sustainable growth in the future. We are well-positioned to deliver 13 to 15 percent EPS growth for 2002."

- April 17, 2002 Household Press Release entitled "Household Reports Record First Quarter Net Income": "Household turned in a very strong first quarter. . . . In addition to delivering record results this quarter, we strongly added to our capital and reserve levels and further enhanced liquidity. We remain committed to maintaining a strong balance sheet and maximum financial flexibility." "Our credit quality performance was well within our expectations in light of the continued weakness in the economy. . . . We anticipate a very manageable credit environment for the remainder of the year. . . . We are off to a great start, and I am comfortable with our ability to meet our 13 to 15 percent earnings per share growth target for 2002."

- July 17, 2002 Household Press Release entitled "Household Reports Record Second Quarter Results on Strong Receivables Growth": "Our results this quarter were fueled by ongoing strong demand for our loan products. . . . Growth this quarter was strong, while we have maintained our conservative underwriting criteria. . . . The company's operating performance has been very strong in the first half of 2002, and, although the economic environment is likely to remain uncertain, we believe our businesses are well-positioned for the remainder of the year."

- July 17, 2002 Household Conference Call: "The impact on us of those changed laws has been virtually nil or minimal. That is because we already have in place our best practices. In many cases, our best practices exceed what these states have been asking or are in line with what these states are asking. . . . Now let's talk about the lawsuits. We think straight out that the class action suits brought by Acorn (phonetic) in particular are just baseless, and we don't see any long-term impact there. We think they are wrong. . . . On the AGS, obviously again, it is a political issue. There has been lots of talk. We will like we do on everything else focus on resolving that issue over the next six months or so, but I cannot go into any details except to say that I am confident that our best practices and our current model ultimately will prevail, and we will do what we do because we do not do predatory lending. . . . [T]he final message is lots of moving parts, lots of headline issues, but economically, we run a very strict model and a very good model for our customers, and we don't think when we are sitting here talking to you next year there will be anything substantially different in the returns or practices. I am sorry for such a long answer."

- August 14, 2002 Household Press Release entitled "Household International Certifies Accuracy of SEC filings in 2002": "Household's results for the year-to-date have been fueled by strong demand for our loan products throughout our businesses. Our loan underwriting approach continues to be conservative in these times of economic uncertainty, and we remain committed to strong reserve and capital levels. The company's operating performance in the first half of the year has been very strong, and our businesses are well-positioned for the remainder of the year. . . . Household has undergone a thorough review of our financial statements and related accounting policies in conjunction with our new auditors, KPMG LLP. As part of this review, we have determined to adopt certain revisions to the accounting treatment of our Mastercard/Visa co-branding and affinity credit card relationships, and a credit card marketing agreement with a third party. We are restating earnings to reflect the cumulative impact of the adjusted items over the period in which the adjustments are applicable as determined in consultation with our new auditors at KPMG. The restatement associated with these matters has the effect of reducing second quarter earnings per share by $.01, or approximately 1 percent, and EPS for the six months ended June 30, 2002 by $.06, or 2.8 percent, versus what was reported in the company's earnings release of July 17, 2002. These changes are not expected to have any significant impact on our future results of operations."

Lead Plaintiffs specifically incorporate by reference the reasons outlined in Responses to Interrogatory Nos. 137 [36] and 139 [38] for why the statements outlined above were false and misleading. Additionally, Lead Plaintiffs also incorporate by reference their responses to all prior interrogatories served by the defendants in this litigation.

INTERROGATORY NO.143 [42]:

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 that Plaintiffs contend that each statement was false.

RESPONSE TO INTERROGATORY NO.143 [42]:

Lead Plaintiffs hereby incorporate all the General Objections above, as if set forth fully herein. Lead Plaintiffs also object to this interrogatory because it suffers from the same infirmities plaguing all of defendants' interrogatories thus far – it is vague and ambiguous and fails to identify with particularity the information that defendants seek. Lead Plaintiffs object to this interrogatory because it is compound and contains numerous subparts. Lead Plaintiffs also object that this interrogatory is overly broad, unduly burdensome, harassing and vexatious in that it inquires into no fewer than 27 paragraphs of Lead Plaintiffs' Complaint. In addition, Lead Plaintiffs object to this interrogatory because it fails to specify a time period for which a response is sought.

Additionally, Lead Plaintiffs object to this interrogatory on the grounds that it cannot be fully answered until expert discovery has been completed. Further, although the fact-discovery cut-off was scheduled for January 31, 2007, defendants are still producing responsive documents notwithstanding their improper and evasive certification that their document production is complete. Defendants have also failed to log documents on privilege logs despite improperly withholding and/or redacting responsive documents in violation of Fed. R. Civ. P. 26. Lead Plaintiffs further object to this interrogatory because defendants have failed to provide evidence of the documents that were destroyed throughout the entire Company pursuant to the "purge" that occurred in mid-2001; the knowing destruction of relevant documents by certain of the defendants related to Andrew Kahr as well as the destruction of documents and spoliation of other relevant evidence that occurred both during and after the Class Period. Lead Plaintiffs' ability to fully respond to this interrogatory is limited due to defendants' spoliation of evidence. Lead Plaintiffs' response, thus, is based upon such facts as are currently known to them.

Further, defendants have objected to producing documents and/or deposition testimony from a number of witnesses that defendants have identified as having knowledge of facts relevant to this litigation. In addition, the Individual Defendants have refused to respond to the discovery propounded on them by the Class. Lead Plaintiffs will provide responses based upon such facts as are currently known to them. Lead Plaintiffs reserve the right, as necessary and appropriate, to supplement, amend, modify or revise their response to this interrogatory consistent with their obligations under Fed. R. Civ. P. 26(e).

Subject to and specifically incorporating the foregoing General and Specific Objections and without waiving them, Lead Plaintiffs further respond to this interrogatory as follows:

Lead Plaintiffs respond to this interrogatory (or more aptly "interrogatories") by stating as an initial matter that in its detailed and particularized Complaint, Lead Plaintiffs have identified all the false and misleading statements made during the Class Period, including the source of the statement (press release, SEC filing, presentation made to analysts, etc.), the date of the statement, and the circumstances in which the statement was made. Indeed, Judge Guzman found that Lead Plaintiffs had met this requirement of the Private Securities Litigation Reform Act in the Complaint itself by "identifying who made particular statements, when, how they were misleading, and the results of the statements." *See Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2004 U.S. Dist. LEXIS 4659, at *15-*26 (N.D. Ill. Mar. 19, 2004).

Additionally, Lead Plaintiffs identify the following statements that were affirmative misrepresentations made either by the Company or the Individual Defendants:

- Household FY99 Report on Form 10-K filed with the SEC on March 28, 2000, Household falsely stated: "Our focus is to continue using risk-based pricing and effective collection efforts for each loan. We have a process that gives us a reasonable basis for predicting the asset quality of new accounts. This process is based on our experience with numerous marketing, credit and risk management tests. We also believe that our frequent and early contact with delinquent customers is helpful in managing net credit losses." This statement was repeated in Household's FY00 Report on Form 10-K, filed March 28, 2001.

- Household FY01 Report on Form 10-K filed with the SEC on March 13, 2002, Household falsely stated: "Our credit and portfolio management procedures focus on risk-based pricing and effective collection efforts for each loan. We have a process which we believe gives us a reasonable basis for predicting the credit quality of new accounts. This process is based on our experience with numerous marketing, credit and risk management tests. We also believe that our frequent and early contact with delinquent customers, as well as policies designed to manage customer relationships, such as reaging delinquent accounts to current in specific situations, are helpful in maximizing customer collections. We have been preparing for an economic slowdown since late 1999. Throughout 2000 and 2001, we emphasized real estate secured loans which historically have a lower loss rate as compared to our other loan products, grew sensibly, tightened underwriting policies, reduced unused credit lines, strengthened risk model capabilities and invested heavily in collections capability by adding over 2,500 collectors. As a result, 2001 charge-off and delinquency performance has been well within our expectations."

- Household FY01 Report on Form 10-K filed with the SEC on March 13, 2002: "We believe our policies are responsive to the specific needs of the customer segment we serve. . . . Our policies have been consistently applied and there have been no significant changes to any of our policies during any of the periods reported. Our loss reserve estimates consider our charge-off policies to ensure appropriate reserves exist for products with longer charge-off lives. We believe our charge-off policies are appropriate and result in proper loss recognition."

- *Business Week* – December 3, 2001: Household stated that the practice of reaging was is an industry norm. Household also stated that collection rates improve after loans were "reaged", that the Company's charge-off policy followed industry standards closely, that applying bank regulatory rules would barely increase the amount of charge-offs and that total reserves were at the highest level in company history.

- December 4, 2001 Goldman Sachs Presentation: defendants made false statements regarding Household's accounting practices, including reaging and restructuring.

- Household FY01 Report on Form 10-K filed with the SEC on March 13, 2002: Household filed a Form 10-K that disclosed Household's restructuring policies. Specifically, the Management's Discussion and Analysis of Financial Condition and Results of Operations portion of Household's Form 10-K included the statement that "[o]ur policies for consumer receivables permit reset of the contractual delinquency status of an account to current, subject to certain limits, if a predetermined number of consecutive payments has been received and there is evidence that the reason for the delinquency has been cured."

- Household reiterated this false disclosure in its Form 10-Q for second quarter 2002, filed with the SEC on August 14, 2002, its Form 10-K/A for fiscal year 2001, filed with the SEC August 27, 2002, and its Form 10-Q for third quarter 2002, filed with the SEC October 24, 2002. Beginning in April 2002, Household also disclosed inaccurate and misleading statistics related to restructures in SEC filings and elsewhere.

- April 9, 2002 Financial Relations Conference: Defendants made numerous false statements regarding Household's reaging and restructuring policies. For example, defendants informed investors that Household's policies were "appropriate for each customer segment; that the Company's reage policies were [n]ot intended to defer credit loss recognition or to overstate net income; that the reage policies were in place to for the customer's benefit; that customers who were reaged had indicated willingness and ability to pay; that Household's reage policies had been "consistently applied and [were] appropriate for each product. Defendants also falsely assured investors at the April 9, 2002 conference that Household had in place strict restructuring controls. Household also presented inaccurate statistical data regarding restructures and assured investors that the Company was adequately reserved.

- Household FY01 Report on Form 10-K filed with the SEC on March 13, 2002. "We service each customer with a focus to understand that customer's personal financial needs. . . . [O]ur policies are designed to be flexible to maximize the collectibility of our loans while not incurring excessive collection expenses on loans that have a high probability of being ultimately uncollectible. Cross-selling of products, proactive credit management, 'hands-on' customer care and targeted product marketing are means we use to retain customers and grow our business."

- Gary Gilmer February 2000 Acceptance Speech for the "Enterprise Valve Award" from *CIO Magazine*: "Vision has had an overwhelmingly positive effect on virtually every aspect of our consumer finance business. We have enjoyed faster and more profitable growth because our account executives are provided with greater numbers of qualified leads, prioritized by the Vision system. Our credit losses are minimized because of the real-time links to our underwriting system. . . ."

- October 22, 1998 Household Press Release entitled "Household International Reports Record Third Quarter Results": Household International "reported net income rose 20 percent to a third-quarter record of $318.0 million, compared with $264.7 million for the third quarter of 1997. Earnings per share increased 19 percent to a third-quarter record of $.63 from $.53 a year ago."

- January 20, 1999 Household Press Release entitled "Household International Reports Q4 and Full Year Results": Household "announced that it achieved record net income and earnings per share for the fourth quarter ended December 31, 1998. Net income of $349.9 million was up 71 percent from $204.8 million recorded in Q497, and reported EPS of $.71 was up 73 percent from $.41 reported in Q497. . . . Receivables of the company's core consumer finance businesses, other than bankcard, grew 12 percent from a year ago and three percent sequentially. . . . The company's managed net interest margin widened to 8.03 percent, up from 7.92 percent in the prior quarter and 7.80 percent a year ago. The sequential quarter and year-over-year improvement resulted from higher yields on unsecured products and lower funding costs, partially offset by the effect of a shift in mix toward secured products."

- April 22, 1999 Household Press Release entitled "Household International Reports Record First Quarter Results": Household "reported record first quarter operating income and operating earnings per share. Net operating income rose 34 percent to $320.8 million, compared with net operating income of $239.3 million a year ago. Earnings per share increased 38 percent to $.65 from operating EPS of $.47 a year ago."

- July 22, 1999 Household Press Release entitled "Household International Reports Record Second Quarter Results": Household "reported that second quarter net income rose 31 percent to a record $326.9 million, compared with operating net income of $249.4 million a year ago. Earnings per share increased 37 percent to a record $.67, compared with operating EPS of $.49 a year ago. Cash basis EPS for the quarter rose 28 percent."

- October 19, 1999 Household Press Release entitled "Household International Reports Highest Quarterly Earnings in Company's History": Household "reported that third quarter net income rose 26 percent to a record $399.9 million, compared with $318.0 million a year ago. Earnings per share increased 32 percent to a record $.83, from $.63 a year ago."

- January 19, 2000 Household Press Release entitled "Household International Reports Best Quarter and Year in Its History": Household "reported that fourth quarter earnings per share increased 30 percent to a record $.92 from $.71 a year ago. Fourth quarter net income rose 25 percent to a record $438.8 million, compared with $349.9 million a year ago. For the full year, Household reported record earnings per share of $3.07, which was 33 percent over 1998 operating earnings per share. Net income totaled $1.5 billion, or 29 percent above the prior year's operating net income. Credit quality improved from both the third quarter and a year ago. Reserves to nonperforming loans were 100.1 percent at year end."

- Household FY99 Report on Form 10-K filed with the SEC on March 28, 2000: Household "reported return on average common shareholders' equity ("ROE") rose to 23.5 percent in 1999 compared to 18.2 percent in 1998, excluding merger and integration related costs and the gain on sale of Beneficial Canada, and 17.3 percent in 1997. Our return on average owned assets ("ROA") improved to 2.64 percent in 1999 compared to 2.29 percent in 1998, excluding the nonrecurring items, and 2.03 percent in 1997. Our return on average managed assets ("ROMA") improved to 1.99 percent in 1999 compared to 1.60 percent in 1998, excluding the nonrecurring items, and 1.38 percent in 1997. Including the merger and integration related costs and the gain on sale of Beneficial Canada, ROE was 8.1 percent, ROA was 1.04 percent and ROMA was .72 percent in 1998. Our operating net income, ROA, ROMA and ROE have increased steadily over the past three years as a result of our focus on higher-return core businesses and improved efficiency. We expect this trend to continue as we focus on growth of these higher return core businesses."

- April 19, 2000 Household Press Release entitled "Household International Reports Record First Quarter Results": Household "reported that earnings per share rose 20 percent to a first quarter record of $.78, from $.65 a year ago. Net income increased to $372.9 million, up 16 percent from $320.8 million in the first quarter of 1999. Cash earnings for the quarter totaled $415 million."

- July 19, 2000 Household Press Release entitled "Household International Reports Record Strongest Second Quarter in Its History": Household "reported that earnings per share rose to a second quarter record $.80, up 19 percent from $.67 a year ago. Net income increased 17 percent to $383.9 million, from $326.9 million in the second quarter of 1999. Cash earnings per share for the quarter totaled $.88. . . . The company's managed receivables portfolio grew 22 percent from a year ago, reaching almost $80 billion. The company added $4.5 billion of receivables in the quarter, an increase of 6 percent. Revenues rose 20 percent compared to the year-ago quarter."

- October 18, 2000 Household Press Release entitled "Household International Reports Highest Quarterly EPS in Its History; Ninth Consecutive Record Quarter": Household "reported that third quarter earnings per share rose 13 percent to $.94, compared to $.83 a year ago. Net income also rose to a third quarter record of $451.2 million, a 13 percent increase from $399.9 million a year ago. Cash earnings per share for the quarter totaled $1.02."

- January 17, 2001 Household Press Release entitled "Household International Reports Highest Full Year and Quarterly EPS in Its History; Tenth Consecutive Record Quarter": Household "reported full year earnings per share of $3.55, a 16 percent increase over $3.07 a year ago and the highest earnings per share in the company's 122-year history. Net income totaled $1.7 billion, or 14 percent above the prior year. Net managed revenues for the full year increased 18 percent to $8.9 billion, compared to $7.5 billion in 1999. Household's fourth quarter earnings per share rose 12 percent to a record $1.03, from $.92 a year ago. Fourth quarter net income rose 12 percent to an all-time high of $492.7 million, compared with $438.8 million a year ago."

- April 18, 2001 Household Press Release entitled "Household International Reports First Quarter Results; 11th Consecutive Record Quarter": Household "reported that earnings per share rose 17 percent to a first quarter record of $.91 from $.78 a year ago. Net income increased to $431.8 million, up 16 percent from $372.9 million in the first quarter of 2000. This quarter marked the 11th consecutive quarter of record results."

- July 18, 2001 Household Press Release entitled "Household International Reports Second Quarter Results; 12th Consecutive Record Quarter": Household "reported record earnings per share of $.93, up to 16 percent from a year ago. Net income rose 14 percent, to $439.0 million, from $383.9 million for the second quarter of 2000."

- October 17, 2001 Household Press Release entitled "Household Reports Highest Quarterly Net Income in Its 123-Year History": Household "reported earnings per share of $1.07 rose 14 percent from $.94 the prior year. Net income increased 12 percent, to $504 million, from $451 million in the third quarter of 2000."

- January 16, 2002 Household Press Release entitled "Household Reports Record Quarterly and Full Year Net Income": Household "reported fourth quarter earnings per share of $1.17, its fourteenth consecutive record quarter. Fourth quarter earnings per share rose 14 percent from $1.03 the prior year. Net income in the fourth quarter increased 11 percent, to an all-time quarterly record of $549 million. For the full year, Household reported earnings per share of $4.08, representing a 15 percent increase from $3.55 in 2000. Net income for 2001 totaled $1.9 billion, also an all-time high, 13 percent above $1.7 billion earned in 2000."

- April 17, 2002 Household Press Release entitled "Household Reports Record First Quarter Net Income": Household "reported first quarter earnings per share of $1.09, its fifteenth consecutive record quarter. First quarter earnings per share rose 20 percent from $.91 the prior year. Net income in the first quarter increased 18 percent, to a record $511 million."

- July 17, 2002 Household Press Release entitled "Household Reports Record Second Quarter Results on Strong Receivables Growth": Household "reported second quarter earnings per share increased 16 percent to $1.08, from $.93 the prior year. These results mark Household's sixteenth consecutive record quarter. Second quarter net income increased 17 percent, to a record $514 million."

- April 22, 1999 Household Press Release entitled "Household International Reports Record First Quarter Results": "Strong loan growth in our consumer finance business, improved efficiency and higher income from our tax refund loan business led to the strongest first quarter in our 120 year history. . . . We have great momentum in this business." "1999 is off to a very good start and we are on track to meet our earnings and growth targets."

- July 22, 1999 Household Press Release entitled "Household International Reports Record Second Quarter Results": "Our results, a second quarter record, highlight the growth and improved profitability of our consumer finance businesses. . . . Business fundamentals are strong and reflect the positive trends we have seen since late last year. Our net interest margin percentage expanded substantially, credit quality improved and costs remained well under control. Receivable growth was strong in the consumer finance business. We have excellent momentum. . . . Growth in the HFC and Beneficial consumer finance branch business continues to improve and also gives us an excellent platform from which to cross-sell many of our other products. Our 1,400 branches and 7,000 branch employees give us a real advantage as we focus on satisfying more of our customers' credit needs."

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- October 17, 2001 Household Press Release entitled "Household Reports Highest Quarterly Net Income in Its 123-Year History": "Household's performance this year has been outstanding, even as the economy has continued to weaken. . . . The third quarter was no exception. Receivable and revenue growth were strong, and credit performance was within our expectations. We further strengthened our balance sheet and continued to repurchase shares. . . . The strength of our franchise gives me confidence that we will achieve the high end of our earnings target of 13 to 15 percent EPS growth for the year."

- January 16, 2002 Household Press Release entitled "Household Reports Record Quarterly and Full Year Net Income": "Household's fourth quarter results were simply outstanding . . .demonstrating the tremendous strength and earnings power of the Household franchise. Receivable and revenue growth exceeded our expectations while credit indicators weakened only modestly in a tough economic environment. Recognizing the importance of a strong balance sheet, we provided $154 million in excess of owned chargeoffs, bringing our reserves to their highest level ever. . . In 2001, we demonstrated that our business model generates superior results in a weak economy as well as in the strong economic periods of previous years. Exceptional revenue growth of 18 percent more than offset the increases in credit losses during the year. We further strengthened our balance sheet while investing in sales and marketing to position our franchise for sustainable growth in the future. We are well-positioned to deliver 13 to 15 percent EPS growth for 2002."

- April 17, 2002 Household Press Release entitled "Household Reports Record First Quarter Net Income": "Household turned in a very strong first quarter. . . . In addition to delivering record results this quarter, we strongly added to our capital and reserve levels and further enhanced liquidity. We remain committed to maintaining a strong balance sheet and maximum financial flexibility. . . . Our credit quality performance was well within our expectations in light of the continued weakness in the economy. . . . We anticipate a very manageable credit environment for the remainder of the year. . . . We are off to a great start, and I am comfortable with our ability to meet our 13 to 15 percent earnings per share growth target for 2002."

- July 17, 2002 Household Press Release entitled "Household Reports Record Second Quarter Results on Strong Receivables Growth": "Our results this quarter were fueled by ongoing strong demand for our loan products. . . . Growth this quarter was strong, while we have maintained our conservative underwriting criteria. . . . The company's operating performance has been very strong in the first half of 2002, and, although the economic environment is likely to remain uncertain, we believe our businesses are well-positioned for the remainder of the year."

- July 17, 2002 Household Conference Call: "The impact on us of those changed laws has been virtually nil or minimal. That is because we already have in place our best practices. In many cases, our best practices exceed what these states have been asking or are in line with what these states are asking. . . . Now let's talk about the lawsuits. We think straight out that the class action suits brought by Acorn (phonetic) in particular are just baseless, and we don't see any long-term impact there. We think they are wrong. . . . On the AGS, obviously again, it is a political issue. There has been lots of talk. We will like we do on everything else focus on resolving that issue over the next six months or so, but I cannot go into any details except to say that I am confident that our best practices and our current model ultimately will prevail, and we will do what we do because we do not do predatory lending. . . . [T]he final message is lots of moving parts, lots of headline issues, but economically, we run a very strict model and a very good model for our customers, and we don't think when we are sitting here talking to you next year there will be anything substantially different in the returns or practices. I am sorry for such a long answer."

- August 14, 2002 Household Press Release entitled "Household International Certifies Accuracy of SEC filings in 2002": "Household's results for the year-to-date have been fueled by strong demand for our loan products throughout our businesses. Our loan underwriting approach continues to be conservative in these times of economic uncertainty, and we remain committed to strong reserve and capital levels. The company's operating performance in the first half of the year has been very strong, and our businesses are well-positioned for the remainder of the year." "Household has undergone a thorough review of our financial statements and related accounting policies in conjunction with our new auditors, KPMG LLP. As part of this review, we have determined to adopt certain revisions to the accounting treatment of our Mastercard/Visa co-branding and affinity credit card relationships, and a credit card marketing agreement with a third party. We are restating earnings to reflect the cumulative impact of the adjusted items over the period in which the adjustments are applicable as determined in consultation with our new auditors at KPMG. The restatement associated with these matters has the effect of reducing second quarter earnings per share by $.01, or approximately 1 percent, and EPS for the six months ended June 30, 2002 by $.06, or 2.8 percent, versus what was reported in the company's earnings release of July 17, 2002. These changes are not expected to have any significant impact on our future results of operations."

Lead Plaintiffs specifically incorporate by reference the reasons outlined in Responses to Interrogatory Nos. 138 [37] and 139 [38] for why the statements outlined above were false and misleading. Additionally, Lead Plaintiffs also incorporate by reference their responses to all prior interrogatories served by the defendants in this litigation.

INTERROGATORY NO.144 [43]:

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 that Plaintiffs contend that each statement was false.

RESPONSE TO INTERROGATORY NO.144 [43]:

Lead Plaintiffs hereby incorporate all the General Objections above, as if set forth fully herein. Lead Plaintiffs also object to this interrogatory because it suffers from the same infirmities plaguing all of defendants' interrogatories thus far – it is vague and ambiguous and fails to identify with particularity the information that defendants seek. Lead Plaintiffs object to this interrogatory because it is compound and contains numerous subparts. Lead Plaintiffs also object that this interrogatory is overly broad, unduly burdensome, harassing and vexatious in that it inquires into no fewer than 22 paragraphs of Lead Plaintiffs' Complaint. In addition, Lead Plaintiffs object to this interrogatory because it fails to specify a time period for which a response is sought.

Additionally, Lead Plaintiffs object to this interrogatory on the grounds that it cannot be fully answered until expert discovery has been completed. Further, although the fact-discovery cut-off was scheduled for January 31, 2007, defendants are still producing responsive documents notwithstanding their improper and evasive certification that their document production is complete. Defendants have also failed to log documents on privilege logs despite improperly withholding and/or redacting responsive documents in violation of Fed. R. Civ. P. 26. Lead Plaintiffs further object to this interrogatory because defendants have failed to provide evidence of the documents that were destroyed throughout the entire Company pursuant to the "purge" that occurred in mid-2001; the knowing destruction of relevant documents by certain of the defendants related to Andrew Kahr; as well as the destruction of documents and spoliation of other relevant evidence that occurred both during and after the Class Period. Lead Plaintiffs' ability to fully respond to this interrogatory is limited due to defendants' spoliation of evidence. Lead Plaintiffs' response, thus, is based upon such facts as are currently known to them.

Further, defendants have objected to producing documents and/or deposition testimony from a number of witnesses that defendants have identified as having knowledge of facts relevant to this litigation. In addition, the Individual Defendants have refused to respond to the discovery propounded on them by the Class. Lead Plaintiffs will provide a response based upon such facts as are currently known to them. Lead Plaintiffs reserve the right, as necessary and appropriate, to supplement, amend, modify or revise their response to this interrogatory consistent with their obligations under Fed. R. Civ. P. 26(e).

Subject to and specifically incorporating the foregoing General and Specific Objections and without waiving them, Lead Plaintiffs further respond to these interrogatories as follows:

Lead Plaintiffs respond to this interrogatory (or more aptly "interrogatories") by stating as an initial matter that in its detailed and particularized Complaint, Lead Plaintiffs have identified all the false and misleading statements made during the Class Period, including the source of the statement (press release, SEC filing, presentation made to analysts, etc.), the date of the statement, and the circumstances in which the statement was made. Indeed, Judge Guzman found that Lead Plaintiffs had met this requirement of the Private Securities Litigation Reform Act in the Complaint itself by "identifying who made particular statements, when, how they were misleading, and the results of the statements." *See Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2004 U.S. Dist. LEXIS 4659, at *15-*26 (N.D. Ill. Mar. 19, 2004).

Additionally, Lead Plaintiffs identify the following statements that were affirmative misrepresentations made either by the Company or the Individual Defendants:

- October 22, 1998 Household Press Release entitled "Household International Reports Record Third Quarter Results": Household "reported net income rose 20 percent to a third-quarter record of $318.0 million, compared with $264.7 million for the third quarter of 1997. Earnings per share increased 19 percent to a third-quarter record of $.63 from $.53 a year ago."

- January 20, 1999 Household Press Release entitled "Household International Reports Q4 and Full Year Results": Household "announced that it achieved record net income and earnings per share for the fourth quarter ended December 31, 1998. Net income of $349.9 million was up 71 percent from $204.8 million recorded in Q497, and reported EPS of $.71 was up 73 percent from $.41 reported in Q497. . . . Receivables of the company's core consumer finance businesses, other than bankcard, grew 12 percent from a year ago and three percent sequentially. . . . The company's managed net interest margin widened to 8.03 percent, up from 7.92 percent in the prior quarter and 7.80 percent a year ago. The sequential quarter and year-over-year improvement resulted from higher yields on unsecured products and lower funding costs, partially offset by the effect of a shift in mix toward secured products."

- April 22, 1999 Household Press Release entitled "Household International Reports Record First Quarter Results": Household "reported record first quarter operating income and operating earnings per share. Net operating income rose 34 percent to $320.8 million, compared with net operating income of $239.3 million a year ago. Earnings per share increased 38 percent to $.65 from operating EPS of $.47 a year ago."

- July 22, 1999 Household Press Release entitled "Household International Reports Record Second Quarter Results" Household "reported that second quarter net income rose 31 percent to a record $326.9 million, compared with operating net income of $249.4 million a year ago. Earnings per share increased 37 percent to a record $.67, compared with operating EPS of $.49 a year ago. Cash basis EPS for the quarter rose 28 percent."

- October 19, 1999 Household Press Release entitled "Household International Reports Highest Quarterly Earnings in Company's History": Household "reported that third quarter net income rose 26 percent to a record $399.9 million, compared with $318.0 million a year ago. Earnings per share increased 32 percent to a record $.83, from $.63 a year ago."

- January 19, 2000 Household Press Release entitled "Household International Reports Best Quarter and Year in Its History": Household "reported that fourth quarter earnings per share increased 30 percent to a record $.92 from $.71 a year ago. Fourth quarter net income rose 25 percent to a record $438.8 million, compared with $349.9 million a year ago. For the full year, Household reported record earnings per share of $3.07, which was 33 percent over 1998 operating earnings per share. Net income totaled $1.5 billion, or 29 percent above the prior year's operating net income. . . . Credit quality improved from both the third quarter and a year ago. . . . Reserves to nonperforming loans were 100.1 percent at year end."

- Household FY99 Report on Form 10-K filed with the SEC on March 28, 2000: Household reported "return on average common shareholders' equity ("ROE") rose to 23.5 percent in 1999 compared to 18.2 percent in 1998, excluding merger and integration related costs and the gain on sale of Beneficial Canada, and 17.3 percent in 1997. Our return on average owned assets ("ROA") improved to 2.64 percent in 1999 compared to 2.29 percent in 1998, excluding the nonrecurring items, and 2.03 percent in 1997. Our return on average managed assets ("ROMA") improved to 1.99 percent in 1999 compared to 1.60 percent in 1998, excluding the nonrecurring items, and 1.38 percent in 1997. Including the merger and integration related costs and the gain on sale of Beneficial Canada, ROE was 8.1 percent, ROA was 1.04 percent and ROMA was .72 percent in 1998. Our operating net income, ROA, ROMA and ROE have increased steadily over the past three years as a result of our focus on higher-return core businesses and improved efficiency. We expect this trend to continue as we focus on growth of these higher return core businesses."

- April 19, 2000 Household Press Release entitled "Household International Reports Record First Quarter Results": Household "reported that earnings per share rose 20 percent to a first quarter record of $.78, from $.65 a year ago. Net income increased to $372.9 million, up 16 percent from $320.8 million in the first quarter of 1999. Cash earnings for the quarter totaled $415 million."

- July 19, 2000 Household Press Release entitled "Household International Reports Record Strongest Second Quarter in Its History": Household "reported that earnings per share rose to a second quarter record $.80, up 19 percent from $.67 a year ago. Net income increased 17 percent to $383.9 million, from $326.9 million in the second quarter of 1999. Cash earnings per share for the quarter totaled $.88. . . . The company's managed receivables portfolio grew 22 percent from a year ago, reaching almost $80 billion. The company added $4.5 billion of receivables in the quarter, an increase of 6 percent. Revenues rose 20 percent compared to the year-ago quarter."

- October 18, 2000 Household Press Release entitled "Household International Reports Highest Quarterly EPS in Its History; Ninth Consecutive Record Quarter": Household reported that "[t]hird quarter earnings per share rose 13 percent to $.94, compared to $.83 a year ago. Net income also rose to a third quarter record of $451.2 million, a 13 percent increase from $399.9 million a year ago. Cash earnings per share for the quarter totaled $1.02."

- January 17, 2001 Household Press Release entitled "Household International Reports Highest Full Year Quarterly EPS in Its History; Tenth Consecutive Record Quarter": Household "reported full year earnings per share of $3.55, a 16 percent increase over $3.07 a year ago and the highest earnings per share in the company's 122-year history. Net income totaled $1.7 billion, or 14 percent above the prior year. Net managed revenues for the full year increased 18 percent to $8.9 billion, compared to $7.5 billion in 1999. Household's fourth quarter earnings per share rose 12 percent to a record $1.03, from $.92 a year ago. Fourth quarter net income rose 12 percent to an all-time high of $492.7 million, compared with $438.8 million a year ago."

- April 18, 2001 Household Press Release entitled "Household International Reports First Quarter Results; 11th Consecutive Record Quarter": Household "reported that earnings per share rose 17 percent to a first quarter record of $.91 from $.78 a year ago. Net income increased to $431.8 million, up 16 percent from $372.9 million in the first quarter of 2000. This quarter marked the 11th consecutive quarter of record results."

- July 18, 2001 Household Press Release entitled "Household International Reports Second Quarter Results; 12th Consecutive Record Quarter": Household "reported record earnings per share of $.93, up to 16 percent from a year ago. Net income rose 14 percent, to $439.0 million, from $383.9 million for the second quarter of 2000."

- October 17, 2001 Household Press Release entitled "Household Reports Highest Quarterly Net Income in Its 123-Year History": Household reported "[e]arnings per share of $1.07 rose 14 percent from $.94 the prior year. Net income increased 12 percent, to $504 million, from $451 million in the third quarter of 2000."

- January 16, 2002 Household Press Release entitled "Household Reports Record Quarterly and Full Year Net Income": Household "reported fourth quarter earnings per share of $1.17, its fourteenth consecutive record quarter. Fourth quarter earnings per share rose 14 percent from $1.03 the prior year. Net income in the fourth quarter increased 11 percent, to an all-time quarterly record of $549 million. For the full year, Household reported earnings per share of $4.08, representing a 15 percent increase from $3.55 in 2000. Net income for 2001 totaled $1.9 billion, also an all-time high, 13 percent above $1.7 billion earned in 2000."

- April 17, 2002 Household Press Release entitled "Household Reports Record First Quarter Net Income": Household "reported first quarter earnings per share of $1.09, its fifteenth consecutive record quarter. First quarter earnings per share rose 20 percent from $.91 the prior year. Net income in the first quarter increased 18 percent, to a record $511 million."

- July 17, 2002 Household Press Release entitled "Household Reports Record Second Quarter Results on Strong Receivables Growth": Household "reported second quarter earnings per

> share increased 16 percent to $1.08, from $.93 the prior year. These results mark Household's sixteenth consecutive record quarter. Second quarter net income increased 17 percent, to a record $514 million."

Lead Plaintiffs specifically incorporate by reference the reasons outlined in Responses to Interrogatory Nos. 137 [36], 138 [37] and 139 [38] for why the statements outlined above were false and misleading. Additionally, Lead Plaintiffs also incorporate by reference their responses to all prior interrogatories served by the defendants in this litigation.

DATED: February 1, 2008

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Lead Counsel for Plaintiffs

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, on behalf of itself and all others similarly situated,	)
Plaintiff,	)
vs.	) No. 02 C 5893
HOUSEHOLD INTERNATIONAL, INC., et al.,	) Chicago, Illinois
	) December 16, 2008
Defendants.	) 9:30 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RONALD A. GUZMAN

APPEARANCES:

For the Plaintiff:

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APPEARANCES: (Continued)

For the Household Defendants:

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(Proceedings heard in open court:)

THE CLERK: 02 C 5893, Jaffe v. Household International, Incorporated.

MR. MILLER: Good morning, your Honor. Marvin Miller on behalf of the plaintiff.

MS. MEHDI: Good morning, your Honor. Azra Mehdi with Coughlin Stoia on behalf of plaintiffs.

MS. FANNING: Good morning, your Honor. Lori Fanning on behalf of plaintiffs.

MR. DEUTSCH: Good morning, your Honor. Adam Deutsch on behalf of the defendants.

MR. KAVALER: Good morning, your Honor. Thomas Kavaler on behalf of the defendants.

THE COURT: Good morning, everyone.

Do you wish to respond to the motion?

MS. MEHDI: Yes, your Honor.

We believe that the motion is both frivolous and premature. Frivolous because we've already given defendants all of the affirmative misrepresentations, both in the form of the complaint, which I know was broader, a longer class period, but subsequently in the form of interrogatory responses, in detailed form identifying the dates, as well as the source of the false statement, whether it be financial statement or newspaper articles or analysts' reports. And, in fact, one such exhibit was filed with defendants' motion for

That's what the final pretrial conference is for.

MS. MEHDI: Right.

THE COURT: And we'll rule on those as best we can before the evidence at that time.

I do think that you need to designate a narrower number of false statements that you're going to be relying on.

MS. MEHDI: Okay.

THE COURT: Unless you are going to represent to me that you intend to present evidence to support all of those statements, in which case I guess I'll have to accept that, with the caveat that you better do what you say you're going to do or --

MS. MEHDI: Well, your Honor --

THE COURT: -- you might find yourself out of a trial.

But I think it's pretty clear from -- I mean, gee, when did we rule on the -- what was it, how many motions to dismiss were there for failure to state with particularity? I can't recall.

MS. MEHDI: Three, at least.

MR. KAVALER: Two, your Honor, and the motion --

THE COURT: I've got one here that was still in my file, a March 19, 2004, ruling where we spend, I think, pages 9 through 16 articulating the allegedly false and misleading statements or omissions that were pled with particularity.

MR. KAVALER: And that's one of the rulings I don't quarrel with, your Honor. That was a pleading motion. I fully agree that brought us here.

THE COURT: The point I'm making is that I don't think you're going to present evidence as to all of those. I don't think you are. And if you're not, throw them out and let's give us all -- them and the Court -- a list of the statements that you're actually going to rely upon at trial.

MS. MEHDI: Okay.

THE COURT: I don't think that's unduly restrictive. I mean, you're going to make that determination; so the question is how far ahead of trial do you make it. You have to be pretty far along, if not already set.

So you tell me. When can we have a more particularized listing of the allegedly false and misleading statements and/or omissions that you're going to actually use at trial?

MS. MEHDI: The particularized listing will at least be all of the statements listed in our interrogatory responses. No more than that. We're not going to do any more than that.

THE COURT: So your assertion is that you are going to present evidence as to each of the statements alleged in your interrogatory answers?

MS. MEHDI: Yes.

THE COURT: There you have it, counsel. The interrogatory answers is the blueprint of misleading statements.

MS. MEHDI: And it's listed in bullet form.

THE COURT: I'm sorry?

MS. MEHDI: It's listed in bullet form, the statements, with dates and the source of the false statement.

MR. KAVALER: Very good, your Honor. So when we are -- we will submit a revised draft of the special verdict form. And where we currently have said the following false statements one through X, we will list at a minimum the 84 affirmative misrepresentations listed by the interrogatories, as well as the numerous omissions listed by the interrogatories. And we will try to find a vehicle to hold Ms. Mehdi to what she said. As your Honor said, if they fail to prove that at the trial, I assume you'll remember this morning's conversation and whatever flows will flow.

MS. MEHDI: Well, your Honor, using the JDS Uniphase case, you know, they had a listing of false statements. And by the time that trial began and the Court determined that certain of the statements that -- that plaintiffs had not proven -- in fact, I think they lost at trial because the jury found the statements weren't false. The fact of the matter is that some of those statements were eliminated. Now, I hope and my expectation is we will be able to prove all of those.

Exhibit 3

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WRITER'S DIRECT NUMBER
(212) 701-3150

January 16, 2009

Re: Lawrence E. Jaffe Pension Plan v. Household International, Inc., et al.
Case No. 02-CV-5893 (N.D. Ill.)

Dear Luke:

On December 16, 2008, Azra Mehdi unequivocally represented to the Court and to Defendants that Plaintiffs intended to present evidence at trial as to each of the bulleted statements alleged in Plaintiffs' interrogatory answers, which translated into over 100 statements. (Transcript of Proceedings, December 16, 2008, presentment of Defendants' Motion to Require Plaintiffs to Identify the Allegedly False and Misleading Statements to be Proved at Trial, at 16). Although Defendants had previously provided an eight-page proposed verdict form, in reliance on Ms. Mehdi's representation to the Court, Defendants (as Mr. Kavaler said they would, *id.* at 17) amended their proposed verdict form, and, on January 9, 2009, furnished you with a new version that spans 64 pages. As you well know, the time between December 16 and January 9 -- in addition to including the holiday season -- was time that Defendants planned and needed to devote to other necessary pretrial activities. Ms Mehdi's representation to the Court (which remained operative until last night at 9:30 p.m. when I started to receive your revised PTO components) was the direct and proximate cause of this enormous waste of time.

Plaintiffs' January 15, 2009 amended Statement of Contested Issues of Fact and Law includes a list of 46 alleged misstatements and three alleged omissions. (Ex. B-1 at Exs. A & B). While we applaud the fact that Plaintiffs are at last making some effort to come up with a reasonable trial presentation (without in any way suggesting that we think the list of 46 statements has come close to success), we are concerned that the parameters of the case continue to shift. Given the history recited above, we need clarity and commitment.

Accordingly, I request that you confirm that Plaintiffs intend to present evidence at trial in an effort to prove that Plaintiffs were defrauded by each of the 46 alleged misstatements and three alleged omissions contained in Plaintiffs January 15 Statement of Contested Issues of Fact and

Law, and only those allegedly false and misleading statements or omissions, notwithstanding Ms. Mehdi's recent prior representation to the contrary. In light of recent developments, if I should be addressing this request to another member of your team, please let me know.

Sincerely,

Joshua M. Newville

Luke O. Brooks, Esq.
Coughlin Stoia Geller
Rudman & Robbins LLP
100 Pine Street, Suite 2600
San Francisco, CA 94111

VIA ELECTRONIC MAIL AND U.S. MAIL

cc: D. Cameron Baker, Esq. (via electronic mail)
Azra Z. Mehdi, Esq. (via electronic mail)
Spencer A. Burkholz, Esq. (via electronic mail)
Lori Fanning, Esq. (via electronic mail)
Adam Deutsch, Esq. (via electronic mail)
Landis C. Best, Esq.

Exhibit 4

From: Spence Burkholz [mailto:SpenceB@csgrr.com]
Sent: Tuesday, January 20, 2009 8:46 PM
To: Newville, Josh
Cc: Luke Brooks; Kavaler, Thomas J.; Best, Landis C.; Azra Mehdi; Cameron Baker; Spence Burkholz
Subject:

Dear Joshua-

In response to your letter of 1/20/09 to Luke Brooks,

Attached please find:

1. Plaintiffs Witness List. The only changes to the list provided on 1/15/09 is that we have deleted Messrs. Ancona and McDonald from the list, and added James Bernstein. As we previously notified you in the last week, we inadvertently left Mr. Bernstein off the witness list. Mr. Bernstein was on plaintiffs witness list provided to defendants in October 2008. Plaintiffs have also now learned that Messrs. Ancona and McDonald are not within the subpoena power of the Court and have taken them off their live witness list. We may need to add a Household Custodian of Records to our Witness List but want to meet and confer with you first. Defendants have objected to many of plaintiffs exhibits on the grounds that they are not authentic (Evidence Code 901) even though they are documents produced from Household's own files. We are hopeful that after we meet and confer you will withdraw those objections, but if not we will need to add a Household Custodian of Records to our witness list.

2. Plaintffs False Statements. There were a few typographical errors on the false statement chart we provided to you on 1/15/09 as Ex. B-1 at Ex A and a revised version is attached. The 47 statements are the same (Statement 44 of the chart should have been listed as two statements because it is a Household August 14, 2002 press release and also Household's 10-Q for the 6/30/02 quarter that was also issued on August 14, 2002. We have split out the two different documents (nos. 44 and 45) in this chart.) In the prior chart some parens were not included, and some of the charts had a few typos. The attached chart should be accurate in terms of the information in the source documents for the 47 statements. If you believe there are any errors in the information we have taken from the source documents, let us know. We have attached a Word version of the statement chart as you requested.

3. Attached are revised deposition responses for Cross and Markel.

Other than these changes, we believe our draft PTO materials we provided to you on 1/15/09 are accurate. Of course, as part of the meet and confer process we are attempting to reduce the number of exhibits on our exhibit list and assume you are doing the same with your 1200 exhibits listed and after receiving plaintiffs objections. We are available this Friday to discuss issues related to the PTO materials, including both parties exhibit lists and objections. Let us know what time works for you.

In response to your prior inquiry to Luke Brooks, we agree that demonstratives do not include blowups of parts of exhibits.

It should be noted that Defendants provided a number of additional documents in the week following the defendants due date of December 8th. Plaintiffs have been acting in good faith throughout this process and remain available to meet and confer on any issues to streamline the PTO and pretrial process.

Spence

Exhibit 5

HOUSEHOLD INTERNATIONAL
FALSE STATEMENTS

<table>
<tr><th></th><th>Date</th><th>Document Title</th><th>Statement</th></tr>
<tr><td>1.</td><td>07/22/1999

*Plaintiffs' use of this false statement is dependent on the Court's ruling on defendants' motion for summary judgment, and other pretrial rulings by the Court.</td><td>Household Press Release</td><td>July 22, 1999 Household Press Release entitled "Household International Reports Record Second Quarter Results": Household "reported that second quarter net income rose 31 percent to a record $326.9 million, compared with operating net income of $249.4 million a year ago. Earnings per share increased 37 percent to a record $.67, compared with operating EPS of $.49 a year ago. Cash basis EPS for the quarter rose 28 percent to $.74."
* * *
"Credit quality continued to improve. The managed delinquency ratio (60+days) declined for the third consecutive quarter to 4.72 percent at June 30, compared with 4.81 percent at March 31 and 4.65 percent a year ago. The annualized managed net chargeoff ratio for the second quarter improved to 4.10 percent, lower than 4.37 percent in the first quarter and 4.26 percent in the year-ago quarter."
* * *
"Our results, a second quarter record, highlight the growth and improved profitability of our consumer finance businesses. . . . Business fundamentals are strong and reflect the positive trends we have seen since late last year. Our net interest margin percentage expanded substantially, credit quality improved and costs remained well under control. Receivable growth was strong in the consumer finance business."</td></tr>
<tr><td>2.</td><td>08/16/1999</td><td>Household 10-Q</td><td>Household 10-Q for quarter ending 6/30/99: Household reported net income of $326.9 million for the quarter ended June 30, 1999 and EPS of $0.67:

Delinquency
Two-Months-and-Over Contractual Managed Delinquency (as a percent of managed consumer receivables):<table><tr><th></th><th>6/30/99</th><th>3/31/99</th><th>12/31/98</th><th>9/30/98</th><th>6/30/98</th></tr><tr><td>First mortgage</td><td>12.72%</td><td>10.91%</td><td>14.90%</td><td>11.80%</td><td>11.07%</td></tr><tr><td>Home equity</td><td>3.29</td><td>3.54</td><td>3.67</td><td>3.73</td><td>3.55</td></tr><tr><td>Auto finance</td><td>1.87</td><td>1.74</td><td>2.29</td><td>2.05</td><td>1.67</td></tr><tr><td>MasterCard/Visa</td><td>3.11</td><td>3.61</td><td>3.75</td><td>3.73</td><td>3.30</td></tr><tr><td>Private label</td><td>6.62</td><td>6.37</td><td>6.20</td><td>6.55</td><td>6.10</td></tr></table></td></tr>
</table>

	Date	Document Title	Statement
			Other unsecured 8.17 7.84 7.94 8.03 7.82 Total 4.72% 4.81% 4.90% 4.96% 4.65% * * * "Owned consumer two-months-and-over contractual delinquency as a percent of owned consumer receivables was 4.96 percent, compared with 5.04 percent at March 31, 1999 and 4.89 percent at June 30, 1998. The annualized total consumer owned chargeoff ratio in the second quarter of 1999 was 3.54 percent, compared with 3.92 percent in the prior quarter and 3.69 percent in the year-ago quarter. Managed consumer two-months-and-over contractual delinquency ("delinquency") as a percent of managed consumer receivables was 4.72 percent, compared with 4.81 percent at March 31, 1999 and 4.65 percent at June 30, 1998. The annualized total consumer managed chargeoff ratio in the second quarter of 1999 was 4.10 percent, compared with 4.37 percent in the prior quarter and 4.26 percent in the year-ago quarter."
3.	10/19/1999	Household Press Release	October 19, 1999 Household Press Release entitled "Household International Reports Highest Quarterly Earnings in Company's History": Household "reported that third quarter net income rose 26 percent to a record $399.9 million, compared with $318.0 million a year ago. Earnings per share increased 32 percent to a record $.83, from $.63 a year ago." * * * "Our quarter reflects excellent performance in all of our businesses, with the key drivers being accelerating internal receivable and revenue growth." * * * "Credit Quality and Loss Reserves Credit quality remained stable in the quarter and improved from a year ago. The annualized managed net chargeoff ratio for the third quarter was 4.09 percent, compared with 4.10 percent in the second quarter and 4.33 percent in the year-ago quarter. The managed delinquency ratio (60+ days) was 4.89 percent at September 30, compared with 4.72 percent at June 30 and 4.96 percent a year ago."
4.	11/12/1999	Household 10-Q	Household 10-Q for quarter ending 9/30/99: Household reported net income of $399.9 million for the quarter ended September 30, 1999 and EPS of $0.84: "Owned consumer two-months-and-over contractual delinquency as a percent of owned consumer receivables was 5.24 percent at September 30, 1999, compared with 4.96 percent at June 30, 1999 and 5.23 percent at September 30, 1998. The annualized total consumer owned chargeoff ratio was

<table>
<tr><th></th><th>Date</th><th>Document Title</th><th>Statement</th></tr>
<tr><td></td><td></td><td></td><td>3.63 percent in the third quarter of 1999, compared with 3.54 percent in the prior quarter and 3.79 percent in the year-ago quarter.

Managed consumer two-months-and-over contractual delinquency as a percent of managed consumer receivables was 4.89 percent at September 30, 1999, compared with 4.72 percent at June 30, 1999 and 4.96 percent at September 30, 1998. The annualized total consumer managed chargeoff ratio was 4.09 percent in the third quarter of 1999, compared with 4.10 percent in the prior quarter and 4.33 percent in the year-ago quarter."

* * *

Delinquency
Two-Months-and-Over Contractual Managed Delinquency (as a percent of managed consumer receivables):
<table>
<tr><th></th><th>9/30/99</th><th>6/30/99</th><th>3/31/99</th><th>12/31/98</th><th>9/30/98</th></tr>
<tr><td>First mortgage</td><td>12.56%</td><td>12.72%</td><td>10.91%</td><td>14.90%</td><td>11.80%</td></tr>
<tr><td>Home equity</td><td>3.46</td><td>3.29</td><td>3.54</td><td>3.67</td><td>3.73</td></tr>
<tr><td>Auto finance</td><td>2.26</td><td>1.87</td><td>1.74</td><td>2.29</td><td>2.05</td></tr>
<tr><td>MasterCard/Visa</td><td>3.10</td><td>3.11</td><td>3.61</td><td>3.75</td><td>3.73</td></tr>
<tr><td>Private label</td><td>6.66</td><td>6.62</td><td>6.37</td><td>6.20</td><td>6.55</td></tr>
<tr><td>Other unsecured</td><td>8.57</td><td>8.17</td><td>7.84</td><td>7.94</td><td>8.03</td></tr>
<tr><td>Total</td><td>4.89%</td><td>4.72%</td><td>4.81%</td><td>4.90%</td><td>4.96%</td></tr>
</table>
"Credit quality remained relatively stable in the quarter and improved from a year ago. The modest increase in managed delinquency as a percent of managed consumer receivables from the prior quarter was due to the seasoning of our Beneficial home equity and other unsecured products."</td></tr>
<tr><td>5.</td><td>01/19/2000</td><td>Household Press Release</td><td>January 19, 2000 Household Press Release entitled "Household International Reports Best Quarter and Year in Its History": Household "reported that fourth quarter earnings per share increased 30 percent to a record $.92 from $.71 a year ago. Fourth quarter net income rose 25 percent to a record $438.8 million, compared with $349.9 million a year ago. For the full year, Household reported record earnings per share of $3.07, which was 33 percent over 1998 operating earnings per share. Net income totaled $1.5 billion, or 29 percent above the prior year's operating net income."
* * *
"We are very pleased to report another record quarter, the culmination of an absolutely outstanding year for Household. Growth and profitability in the quarter were excellent and exceeded our</td></tr>
</table>

	Date	Document Title	Statement
			expectations. Revenues were particularly strong. . . . Our record earnings reflect an outstanding year in our consumer finance business, a dramatic turnaround in our MasterCard/Visa business, and strong results in all of our other businesses. We are particularly pleased with excellent receivable growth in 1999, particularly in our branches, while fully realizing all of the acquisition synergies of the Beneficial merger." * * * "Credit Quality and Loss Reserves Credit quality improved from both the third quarter and a year ago. The annualized net chargeoff ratio for the fourth quarter fell 13 basis points to 3.96 percent, the lowest level since 1997. The chargeoff ratio was 4.09 percent in the third quarter and 4.39 percent in the year-ago quarter. The managed delinquency ratio (60+days) improved 23 basis points to 4.66 percent at December 31, compared with 4.89 percent at September 30 and 4.90 percent a year ago."
6.	03/28/2000	Household FY99 Report on Form 10-K	Household FY99 Report on Form 10-K filed with the SEC on March 28, 2000 Household reported net income of 1.486 billion and E.P.S. of $3.10: * * * "Delinquency and Chargeoffs. Our delinquency and net chargeoff ratios reflect, among other factors, the quality of receivables, the average age of our loans, the success of our collection efforts and general economic conditions. . . . We track delinquency and chargeoff levels on an owned and a managed basis. We apply the same credit and portfolio management procedures to both our owned and off-balance sheet portfolios. Our focus is to use risk-based pricing and effective collection efforts for each loan. We have a process which we believe gives us a reasonable basis for predicting the asset quality of new accounts. This process is based on our experience with numerous marketing, credit and risk management tests. We also believe that our frequent and early contact with delinquent customers is helpful in managing net credit losses." * * * Consumer Two-Month-and-Over Contractual Delinquency Ratios Managed Two Month and Over Contractual Delinquency Ratios — 1999 — 1998 — 1997 — 1996 — 1995 Home equity — 3.27% — 3.67% — 3.69% — 3.04% — 2.76%

<table>
<tr><th></th><th>Date</th><th>Document Title</th><th>Statement</th></tr>
<tr><td></td><td></td><td></td><td>
<table>
<tr><td>Auto finance/1/</td><td>2.43</td><td>2.29</td><td>2.09</td><td>–</td><td>–</td></tr>
<tr><td>MasterCard/Visa</td><td>2.78</td><td>3.75</td><td>3.10</td><td>2.73</td><td>2.19</td></tr>
<tr><td>Private label</td><td>5.97</td><td>6.20</td><td>5.81</td><td>4.60</td><td>3.93</td></tr>
<tr><td>Other unsecured</td><td>8.81</td><td>7.94</td><td>7.81</td><td>6.21</td><td>5.68</td></tr>
<tr><td>Total consumer</td><td>4.66%</td><td>4.90%</td><td>4.64%</td><td>3.92%</td><td>3.36%</td></tr>
<tr><td>Ratio of Net Chargeoffs to Average Managed Receivables for the Year</td><td>1999</td><td>1998</td><td>1997</td><td>1996</td><td>1995</td></tr>
<tr><td>Home equity</td><td>0.58%</td><td>0.63%</td><td>0.64%</td><td>0.60%</td><td>0.64%</td></tr>
<tr><td>Auto finance /1/</td><td>4.96</td><td>5.39</td><td>4.60</td><td>–</td><td>–</td></tr>
<tr><td>MasterCard/Visa</td><td>6.66</td><td>5.95</td><td>5.55</td><td>4.54</td><td>4.12</td></tr>
<tr><td>Private label</td><td>5.65</td><td>5.65</td><td>4.62</td><td>3.42</td><td>3.75</td></tr>
<tr><td>Other unsecured</td><td>6.52</td><td>6.97</td><td>5.48</td><td>4.29</td><td>3.60</td></tr>
<tr><td>Total Consumer loan products</td><td>4.13</td><td>4.29</td><td>3.84</td><td>2.96</td><td>2.51</td></tr>
<tr><td>Commercial</td><td>0.93</td><td>0.52</td><td>1.66</td><td>0.92</td><td>2.10</td></tr>
<tr><td>Total</td><td>4.09%</td><td>4.24</td><td>3.80%</td><td>2.92%</td><td>2.49%</td></tr>
</table>
</td></tr>
<tr><td>7.</td><td>04/19/2000</td><td>Household Press Release</td><td>April 19, 2000 Household Press Release entitled "Household International Reports Record First Quarter Results": Household "reported that earnings per share rose 20 percent to a first quarter record of $.78, from $.65 a year ago. Net income increased to $372.9 million, up 16 percent from $320.8 million in the first quarter of 1999."
* * *
"This was the strongest first quarter in our company's history, with all of our businesses performing well. Revenue and receivable growth were strong, and credit quality continued to improve."
* * *
"Credit Quality and Loss Reserves
At March 31, the managed delinquency ratio (60+days) declined to 4.43 percent, from 4.66 percent at December 31 and 4.81 percent a year ago. Dollars of delinquency were flat with year-end 1999. The annualized managed net chargeoff ratio for the first quarter was 4.00 percent compared to 3.96 percent in the prior quarter and improved 37 basis points from the year-ago quarter."</td></tr>
<tr><td>8.</td><td>05/10/2000</td><td>Household 10-Q</td><td>Household 10-Q for 3/31/00 quarter ending: Household reported net income of $372.9 million for the quarter ended March 30, 2000 and EPS of $0.79 per share:

CREDIT QUALITY</td></tr>
</table>

<table>
<tr><th></th><th>Date</th><th>Document Title</th><th>Statement</th></tr>
<tr><td></td><td></td><td></td><td>
We track delinquency and chargeoff levels on a managed basis and we apply the same credit and portfolio management procedures as on our owned portfolio.
Delinquency
Two-Months-and-Over Contractual Managed Delinquency (as a percent of managed consumer receivables):
<table>
<tr><th></th><th>3/31/00</th><th>12/31/99</th><th>9/30/99</th><th>6/30/99</th><th>3/31/99</th></tr>
<tr><td>Managed:</td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Real estate secured</td><td>2.99%</td><td>3.27%</td><td>3.46%</td><td>3.29%</td><td>3.54%</td></tr>
<tr><td>Auto finance</td><td>1.52</td><td>2.43</td><td>2.26</td><td>1.87</td><td>1.74</td></tr>
<tr><td>MasterCard/Visa</td><td>3.06</td><td>2.78</td><td>3.10</td><td>3.11</td><td>3.61</td></tr>
<tr><td>Private label</td><td>5.94</td><td>5.97</td><td>6.66</td><td>6.62</td><td>6.37</td></tr>
<tr><td>Other unsecured</td><td>8.56</td><td>8.81</td><td>8.57</td><td>8.17</td><td>7.84</td></tr>
<tr><td>Total</td><td>4.43%</td><td>4.66%</td><td>4.89%</td><td>4.72%</td><td>4.81%</td></tr>
<tr><td>Owned</td><td>4.58%</td><td>4.81%</td><td>5.24%</td><td>4.96%</td><td>5.04%</td></tr>
</table>
* * *

“Owned consumer two-months-and-over contractual delinquency as a percent of owned consumer receivables was 4.58 percent at March 31, 2000, compared with 4.81 percent at December 31, 1999 and 5.04 percent at March 31, 1999. The annualized consumer owned chargeoff ratio was 3.53 percent in the first quarter of 2000, compared with 3.62 percent in the prior quarter and 3.92 percent in the year-ago quarter.

Managed consumer two-months-and-over contractual delinquency as a percent of managed consumer receivables was 4.43 percent at March 31, 2000, compared with 4.66 percent at December 31, 1999 and 4.81 percent at March 31, 1999. The annualized total consumer managed chargeoff ratio was 4.00 percent in the first quarter of 2000, compared with 3.96 percent in the prior quarter and 4.37 percent in the year-ago quarter.”
</td></tr>
<tr><td>9.</td><td>07/19/2000</td><td>Household Press Release</td><td>July 19, 2000 Household Press Release entitled “Household International Reports Record Strongest Second Quarter in Its History”: Household “reported that earnings per share rose to a second quarter record $.80, up 19 percent from $.67 a year ago. Net income increased 17 percent to $383.9 million, from $326.9 million in the second quarter of 1999. . . . The company’s managed receivables portfolio grew 22 percent from a year ago, reaching almost $80 billion. The company added $4.5 billion of receivables in the quarter, an increase of 6 percent. Revenues rose 20 percent compared to the year-ago quarter.”
* * *</td></tr>
</table>

<table>
<tr><th></th><th>Date</th><th>Document Title</th><th>Statement</th></tr>
<tr><td></td><td></td><td></td><td>"Our superb second quarter results were highlighted by outstanding receivables and revenue growth and a significant improvement in credit quality . . . . Our record performance reflects strong sales and marketing results in all of our businesses coupled with our continued focus on risk management and operational efficiency."
* * *
"Credit Quality and Loss Reserves
Credit quality improved dramatically during the quarter, as dollars of chargeoff and delinquency declined from first quarter levels. At June 30, the managed delinquency ratio (60+days) improved for the third consecutive quarter, to 4.16 percent. This represented a 27 basis-point improvement from the first quarter and a 56 basis-point improvement from a year ago. The annualized managed net chargeoff ratio for the second quarter feel 26 basis points sequentially, to 3.74 percent. The chargeoff ratio was 4.10 percent a year ago."</td></tr>
<tr><td>10.</td><td>08/11/2000</td><td>Household 10-Q</td><td>Household 10-Q for 6/30/00 quarter ending: Household reported net income of $383.9 million for the quarter ended June 30, 2000 and EPS of $0.80:

CREDIT QUALITY
We track delinquency and chargeoff levels on a managed basis and we apply the same credit and portfolio management procedures as on our owned portfolio.
Delinquency
Two-Months-and-Over Contractual Managed Delinquency (as a percent of managed consumer receivables):
<table>
<tr><th></th><th>6/30/00</th><th>3/31/00</th><th>12/31/99</th><th>9/30/99</th><th>6/30/99</th></tr>
<tr><td>Managed:</td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Real estate secured</td><td>2.72%</td><td>2.99%</td><td>3.27%</td><td>3.46%</td><td>3.29%</td></tr>
<tr><td>Auto finance</td><td>1.99</td><td>1.52</td><td>2.43</td><td>2.26</td><td>1.87</td></tr>
<tr><td>MasterCard/Visa</td><td>3.14</td><td>3.06</td><td>2.78</td><td>3.10</td><td>3.11</td></tr>
<tr><td>Private label</td><td>5.77</td><td>5.94</td><td>5.97</td><td>6.66</td><td>6.62</td></tr>
<tr><td>Other unsecured</td><td>7.92</td><td>8.56</td><td>8.81</td><td>8.57</td><td>8.17</td></tr>
<tr><td>Total</td><td>4.16%</td><td>4.43%</td><td>4.66%</td><td>4.89%</td><td>4.72%</td></tr>
<tr><td>Owned</td><td>4.25%</td><td>4.58%</td><td>4.81%</td><td>5.24%</td><td>4.96%</td></tr>
</table>
* * *
"Owned consumer two-months-and-over contractual delinquency as a percent of owned consumer receivables was 4.25 percent, compared with 4.58 percent at March 31, 2000 and 4.96 percent at June 30, 1999. The annualized total consumer owned chargeoff ratio in the second quarter of 2000</td></tr>
</table>

	Date	Document Title	Statement
			was 3.27 percent, compared with 3.53 percent in the prior quarter and 3.54 percent in the year-ago quarter. Managed consumer two-months-and-over contractual delinquency as a percent of managed consumer receivables was 4.16 percent, compared with 4.43 percent at March 31, 2000 and 4.72 percent at June 30, 1999. The annualized total consumer managed chargeoff ratio in the second quarter of 2000 was 3.74 percent, compared with 4.00 percent in the prior quarter and 4.10 percent in the year-ago quarter."
11.	10/18/2000	Household Press Release	October 18, 2000 Household Press Release entitled "Household International Reports Highest Quarterly EPS in Its History; Ninth Consecutive Record Quarter": Household reported that "third quarter earnings per share rose 13 percent to $.94, compared to $.83 a year ago. Net income also rose to a third quarter record of $451.2 million, a 13 percent increase from $399.9 million a year ago." * * * "Our strong third quarter results reflect a continuation of outstanding receivables and revenue growth. At the same time, we achieved year-over-year improvements in credit quality." * * * "Credit Quality and Loss Reserves The annualized managed net chargeoff ratio for the third quarter improved for a second consecutive quarter, to 3.47 percent from 3.74 percent in the second quarter. Dollars of net chargeoff also fell for the second consecutive quarter. The third quarter chargeoff ratio dropped 62 basis points from the level of a year ago, with improvement across all products. At September 30, the managed delinquency ratio (60+days) was 4.21 percent, compared with 4.16 percent in the second quarter and significantly below the year-ago level of 4.89 percent."
12.	11/01/2000	*St. Louis Dispatch* article	Article in *St. Louis Dispatch* on November 1, 2000 "ACORN cited a loan made in July by another subprime lender, HFC Mortgage Corp. According to loan documents, HFC charged a University City couple 12.5 percent interest on a $76,900 loan. Added in were $5,700 for credit life insurance and an origination fee of $5,200, adding nearly $11,000 to the cost. Mainstream lenders were charging 8 percent in interest on such 15-year loans at the time." * * *

<table>
<tr><th></th><th>Date</th><th>Document Title</th><th>Statement</th></tr>
<tr><td></td><td></td><td></td><td>"HFC spokesman Craig Streem said that the loan was 'not a predatory loan by any definition.'"
* * *
"Streem says HFC never pressures people to buy credit life insurance."</td></tr>
<tr><td>13.</td><td>11/07/2000</td><td>Household Press Release</td><td>November 7, 2000 Household Press Release entitled "Household International Responds to Citigroup's Announcement to Change Lending Practices at Associates First Capital: Household International supports Citigroup's announcement today of its efforts to boost consumer protections at Associates First Capital. Their proposed changes are generally consistent with the stringent policies and procedures that have long been in place at Household International.

Household's long-standing view has been that unethical lending practices of any type are abhorrent to our company, employees, and most importantly our customers. So-called "predatory lending" practices undermine the integrity of the industry in which we compete."</td></tr>
<tr><td>14.</td><td>11/10/2000</td><td>Household 10-Q</td><td>Household 10-Q for quarter ending 9/30/2000: "Household reported net income of $451.2 million for the quarter ended September 30, 2000 and EPS of $0.95:

CREDIT QUALITY
We track delinquency and chargeoff levels on a managed basis and we apply the same credit and portfolio management procedures as on our owned portfolio.
Delinquency
Two-Months-and-Over Contractual Managed Delinquency (as a percent of managed consumer receivables):
<table>
<tr><th></th><th>September 30, 2000</th><th>June 30, 2000</th><th>March 31, 2000</th><th>December 31, 2000</th><th>September 30, 2000</th></tr>
<tr><td>Managed:</td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Real estate secured</td><td>2.77%</td><td>2.72%</td><td>2.99%</td><td>3.27%</td><td>3.46%</td></tr>
<tr><td>Auto finance</td><td>2.19</td><td>1.99</td><td>1.52</td><td>2.43</td><td>2.26</td></tr>
<tr><td>MasterCard/Visa</td><td>3.48</td><td>3.14</td><td>3.06</td><td>2.78</td><td>3.10</td></tr>
<tr><td>Private label</td><td>5.67</td><td>5.77</td><td>5.94</td><td>5.97</td><td>6.66</td></tr>
<tr><td>Other unsecured</td><td>7.72</td><td>7.92</td><td>8.56</td><td>8.81</td><td>8.57</td></tr>
<tr><td>Total</td><td>4.21%</td><td>4.16%</td><td>4.43%</td><td>4.66%</td><td>4.89%</td></tr>
<tr><td>Owned</td><td>4.29%</td><td>4.25%</td><td>4.58%</td><td>4.81%</td><td>5.24%</td></tr>
</table>
* * *
"Owned consumer two-months-and-over contractual delinquency as a percent of owned consumer receivables was 4.29 percent, compared with 4.25 percent at June 30, 2000 and 5.24 percent at September 30, 1999. The annualized consumer owned chargeoff ratio in the third quarter of 2000</td></tr>
</table>

	Date	Document Title	Statement
			was 3.01 percent, compared with 3.27 percent in the prior quarter and 3.63 percent in the year-ago quarter. Managed consumer two-months-and-over contractual delinquency as a percent of managed consumer receivables was 4.21 percent at September 30, 2000, compared with 4.16 percent at June 30, 2000 and 4.89 percent at September 30, 1999. The annualized total consumer managed chargeoff ratio in the third quarter of 2000 was 3.47 percent, compared with 3.74 percent in the prior quarter and 4.09 percent in the year-ago quarter."
15.	01/17/2001	Household Press Release	January 17, 2001 Household Press Release entitled "Household International Reports Highest Full Year and Quarterly EPS in Its History; Tenth Consecutive Record Quarter": Household reported full year earnings per share of $3.55, a 16 percent increase over $3.07 a year ago and the highest earnings per share in the company's 122-year history. Net income totaled $1.7 billion, or 14 percent above the prior year. Net managed revenues for the full year increased 18 percent to $8.9 billion, compared to $7.5 billion in 1999. Household's fourth quarter earnings per share rose 12 percent to a record $1.03, from $.92 a year ago. Fourth quarter net income rose 12 percent to an all-time high of $492.7 million, compared with $438.8 million a year ago." "These strong fourth quarter results cap off a terrific year in which we delivered on all or our earnings and growth goals. . . . Growth and profitability in the quarter were excellent, while credit quality and our balance sheet remained strong. . . . Our record earnings per share reflect strong top-line growth and improved credit quality." * * * "Credit Quality and Loss Reserves The fourth quarter annualized managed net chargeoff ratio improved for the third consecutive quarter to 3.41 percent from 3.47 percent in the third quarter. The fourth quarter chargeoff ratio was 55 basis points lower than a year ago and reached its lowest level since the fourth quarter of 1996. The managed delinquency ratio (60+days) at December 31, 2000 was 4.20 percent, stable with 4.21 percent in the third quarter and 46 basis points better than a year ago."
16.	03/12/2001	Household Press Release	March 12, 2001 Household Press Release entitled "Household International Applauds Federal Reserve Board's Proposed Amendments to Regulation Z": "'Household's position on predatory lending is perfectly clear,' said Gary Gilmer, president and CEO of HFC and Beneficial. 'Unethical lending practices of any type are abhorrent to our company, our employees, and most importantly,

	Date	Document Title	Statement
			our customers.' . . . The company reaffirmed that it fully complies with all applicable federal and state laws and regulations."
17.	03/28/2001	Household FY00 Report on Form 10-K	Household FY00 Report on Form 10-K filed with the SEC on March 28, 2001 Household reported net income of 1.7 billion and E.P.S. of $3.55: * * * "Our focus is to use risk-based pricing and effective collection efforts for each loan. We have a process which we believe gives us a reasonable basis for predicting the credit quality of new accounts. This process is based on our experience with numerous marketing, credit and risk management tests. We also believe that our frequent and early contact with delinquent customers is helpful in managing net credit losses." * * * "Delinquency and Chargeoffs Our delinquency and net chargeoff ratios reflect, among other factors, changes in the mix of loans in our portfolio, the quality of our receivables, the average age of our loans, the success of our collection efforts and general economic conditions." . . . We track delinquency and chargeoff levels on both an owned and a managed basis. We apply the same credit and portfolio management procedures to both our owned and off-balance sheet portfolios. Our focus is to use risk-based pricing and effective collection efforts for each loan. We have a process which we believe gives us a reasonable basis for predicting the credit quality of new accounts. This process is based on our experience with numerous marketing, credit and risk management tests. We also believe that our frequent and early contact with delinquent customers is helpful in managing net credit losses." * * * Credit Quality Statistics: CONSUMER TWO-MONTH-AND-OVER CONTRACTUAL DELINQUENCY RATIOS 2000 Quarter End 1999 Quarter End 4 3 2 1 4 3 2 1

<table>
<tr><th></th><th>Date</th><th>Document Title</th><th>Statement</th></tr>
<tr><td></td><td></td><td></td><td>Managed:
<table>
<tr><td>Real estate secured</td><td>2.63%</td><td>2.77%</td><td>2.72%</td><td>2.99%</td><td>3.27%</td><td>3.46%</td><td>3.29%</td><td>3.54%</td></tr>
<tr><td>Auto finance</td><td>2.55</td><td>2.19</td><td>1.99</td><td>1.52</td><td>2.43</td><td>2.26</td><td>1.87</td><td>1.74</td></tr>
<tr><td>MasterCard/Visa</td><td>3.49</td><td>3.48</td><td>3.14</td><td>3.06</td><td>2.78</td><td>3.10</td><td>3.11</td><td>3.61</td></tr>
<tr><td>Private label</td><td>5.48</td><td>5.67</td><td>5.77</td><td>5.94</td><td>5.97</td><td>6.66</td><td>6.62</td><td>6.37</td></tr>
<tr><td>Other unsecured</td><td>7.97</td><td>7.72</td><td>7.92</td><td>8.56</td><td>8.81</td><td>8.57</td><td>8.17</td><td>7.84</td></tr>
<tr><td>Total Managed</td><td>4.20%</td><td>4.21%</td><td>4.16%</td><td>4.43%</td><td>4.66%</td><td>4.89%</td><td>4.72%</td><td>4.81%</td></tr>
<tr><td>Total Owned</td><td>4.26%</td><td>4.29%</td><td>4.25%</td><td>4.58%</td><td>4.81%</td><td>5.24%</td><td>4.96%</td><td>5.04%</td></tr>
</table></td></tr>
<tr><td>18.</td><td>04/18/2001</td><td>Household Press Release</td><td>April 18, 2001 Household Press Release entitled “Household International Reports First Quarter Results; 11th Consecutive Record Quarter”: Household “reported that earnings per share rose 17 percent to a first quarter record of $.91 from $.78 a year ago. Net income increased to $431.8 million, up 16 percent from $372.9 million in the first quarter of 2000. This quarter marked the 11th consecutive quarter of record results.”
* * *
“Our outstanding results reflect the sustainability and earnings power of our franchise. Receivables and revenues grew nicely in the quarter. At the same time, credit quality remained stable and we strengthened our balance sheet.”
* * *
“Credit Quality and Loss Reserves
At March 31, the managed delinquency ratio (60+days) was 4.25 percent, compared to 4.43 percent a year ago and 4.20 percent at December 31, 2000. The annualized managed net chargeoff ratio for the first quarter was 3.56 percent, a 44 basis points improvement from the year-ago quarter and up modestly from 3.41 percent in the prior quarter.”</td></tr>
<tr><td>19.</td><td>04/20/2001</td><td>Origination News article</td><td>Origination News – March 23, 2001: “Gary Gilmer, president and chief executive of Household’s subsidiaries HFC and Beneficial said the company’s ‘position on predatory lending is perfectly clear. Unethical lending practices of any type are abhorrent to our company, our employees and most importantly our customers.’”</td></tr>
<tr><td>20.</td><td>05/09/2001</td><td>Household 10-Q</td><td>Household 10-Q for 3/31/01 quarter ended: Household reported net income of $431.8 million for the quarter ended March 31, 2001 and EPS of $0.92:

CREDIT QUALITY
We track delinquency and chargeoff levels on a managed basis and we apply the same credit and portfolio management procedures as on our owned portfolio.
Delinquency</td></tr>
</table>

<table>
<tr><th></th><th>Date</th><th>Document Title</th><th>Statement</th></tr>
<tr><td></td><td></td><td></td><td>
Two-Months-and-Over Contractual Managed Delinquency (as a percent of managed consumer receivables):
<table>
<tr><th></th><th>March 31, 2001</th><th>December 31, 2000</th><th>September 30, 2000</th><th>June 30, 2000</th><th>March 31, 2000</th></tr>
<tr><td>Managed:</td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Real estate secured</td><td>2.61%</td><td>2.63%</td><td>2.77%</td><td>2.72%</td><td>2.99%</td></tr>
<tr><td>Auto finance</td><td>1.79</td><td>2.55</td><td>2.19</td><td>1.99</td><td>1.52</td></tr>
<tr><td>MasterCard/Visa</td><td>3.68</td><td>3.49</td><td>3.48</td><td>3.14</td><td>3.06</td></tr>
<tr><td>Private label</td><td>5.50</td><td>5.48</td><td>5.67</td><td>5.77</td><td>5.94</td></tr>
<tr><td>Other unsecured</td><td>8.37</td><td>7.97</td><td>7.72</td><td>7.92</td><td>8.56</td></tr>
<tr><td>Total managed</td><td>4.25%</td><td>4.20%</td><td>4.21%</td><td>4.16%</td><td>4.43%</td></tr>
<tr><td>Owned</td><td>4.36%</td><td>4.26%</td><td>4.29%</td><td>4.25%</td><td>4.58%</td></tr>
</table>
* * *

“Owned consumer two-months-and-over contractual delinquency as a percent of owned consumer receivables was 4.36 percent at March 31, 2001, compared with 4.26 percent at December 31, 2000 and 4.58 percent at March 31, 2000. The annualized consumer owned chargeoff ratio in the first quarter of 2001 was 3.12 percent, compared with 2.98 percent in the prior quarter and 3.53 percent in the year-ago quarter.

Managed consumer two-months-and-over contractual delinquency as a percent of managed consumer receivables was 4.25 percent at March 31, 2001, compared with 4.20 percent at December 31, 2000 and 4.43 percent at March 31, 2000. The annualized consumer managed chargeoff ratio in the first quarter of 2001 was 3.56 percent, compared with 3.41 percent in the prior quarter and 4.00 percent in the year-ago quarter.”
</td></tr>
<tr><td>21.</td><td>07/18/2001</td><td>Household Press Release</td><td>
July 18, 2001 Household Press Release entitled “Household International Reports Second Quarter Results; 12th Consecutive Record Quarter”: Household “reported record earnings per share of $.93, up 16 percent from a year ago. Net income rose 14 percent, to $439.0 million, from $383.9 million for the second quarter of 2000.” . . .

“We had a terrific quarter – our 12th consecutive quarter of record results. Given the softening economic environment, I am particularly pleased with our ability to consistently deliver strong, quality earnings. Results for the quarter were excellent. . . . We enjoyed strong receivable and revenue growth compared to a year ago, with all of our businesses performing well. In addition, delinquency was stable in the quarter.”
</td></tr>
</table>

<table>
<tr><th></th><th>Date</th><th>Document Title</th><th>Statement</th></tr>
<tr><td></td><td></td><td></td><td>"Credit Quality and Loss Reserves
At June 30th, the managed delinquency ratio (60+days) was 4.27 percent, stable with 4.25 percent in the first quarter. The managed delinquency ratio a year ago was 4.16 percent. The annualized managed net chargeoff ratio for the second quarter was 3.71 percent, essentially unchanged from the year-ago quarter and up modestly from 3.56 percent in the first quarter."</td></tr>
<tr><td>22.</td><td>07/24/2001</td><td>The New York Times article</td><td>The New York Times – July 24, 2001: "It's not tied to hearings or activism or anything else in particular" said Craig Streem, a spokesman for Household . . . "[W]e've been working on [the announced changes] for quite some time. So, it really is a coincidence."</td></tr>
<tr><td>23.</td><td>07/27/2001</td><td>Star Tribune article</td><td>Star Tribune – July 27, 2001: "Megan Hayden, a Household spokeswoman, said that terms of loans are disclosed to all customers, as required by state and federal laws. 'Frankly, you don't stay in business in this industry by taking advantage of your customers,' she said. 'So I take exception to any characterization that we engaged in predatory lending practices.'"</td></tr>
<tr><td>24.</td><td>08/10/2001</td><td>Household 10-Q</td><td>Household 10-Q for 6/30/01 quarter ended: Household reported net income of $439 million for the quarter ended June 30, 2001 and EPS of $0.94:

CREDIT QUALITY
We track delinquency and chargeoff levels on a managed basis and we apply the same credit and portfolio management procedures as on our owned portfolio.
Delinquency
Two-Months-and-Over Contractual Managed Delinquency (as a percent of managed consumer receivables):
<table>
<tr><th></th><th>June 30, 2001</th><th>March 31, 2001</th><th>December 31, 2000</th><th>September 30, 2000</th><th>June 30, 2000</th></tr>
<tr><td>Managed:</td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Real estate secured</td><td>2.63%</td><td>2.61%</td><td>2.63%</td><td>2.77%</td><td>2.72%</td></tr>
<tr><td>Auto finance</td><td>2.09</td><td>1.79</td><td>2.55</td><td>2.19</td><td>1.99</td></tr>
<tr><td>MasterCard/Visa</td><td>3.60</td><td>3.68</td><td>3.49</td><td>3.48</td><td>3.14</td></tr>
<tr><td>Private label</td><td>5.66</td><td>5.50</td><td>5.48</td><td>5.67</td><td>5.77</td></tr>
<tr><td>Other unsecured</td><td>8.43</td><td>8.37</td><td>7.97</td><td>7.72</td><td>7.92</td></tr>
<tr><td>Total managed</td><td>4.27%</td><td>4.25%</td><td>4.20%</td><td>4.21%</td><td>4.16%</td></tr>
<tr><td>Owned</td><td>4.48%</td><td>4.36%</td><td>4.26%</td><td>4.29%</td><td>4.25%</td></tr>
</table>
* * *

"Owned consumer two-months-and-over contractual delinquency as a percent of owned consumer receivables was 4.48 percent at June 30, 2001, compared with 4.36 percent at March 31, 2001 and</td></tr>
</table>

	Date	Document Title	Statement
			4.25 percent at June 30, 2000. The annualized consumer owned chargeoff ratio in the second quarter of 2001 was 3.26 percent, compared with 3.12 percent in the prior quarter and 3.27 percent in the year-ago quarter. Managed consumer two-months-and-over contractual delinquency as a percent of managed consumer receivables was 4.27 percent at June 30, 2001, compared with 4.25 percent at March 31, 2001 and 4.16 percent at June 30, 2000. The annualized consumer managed chargeoff ratio in the second quarter of 2001 was 3.71 percent, compared with 3.56 percent in the prior quarter and 3.74 percent in the year-ago quarter."
25.	10/17/2001	Household Press Release	October 17, 2001 Household Press Release entitled "Household Reports Highest Quarterly Net Income in Its 123-Year History": Household "reported earnings per share of $1.07 rose 14 percent from $.94 the prior year. Net income increased 12 percent, to $504 million, from $451 million in the third quarter of 2000." "Household's performance this year has been outstanding, even as the economy has continued to weaken. . . . The third quarter was no exception. Receivable and revenue growth were strong, and credit performance was within our expectations." "Credit Quality and Loss Reserves At September 30th, the managed delinquency ratio (60+ days) was 4.43 percent, compared to 4.27 percent in the second quarter and 4.21 percent a year ago. The sequential increase was across all products and was well within company expectations. The annualized managed net chargeoff ratio for the third quarter was 3.74 percent, up slightly from 3.71 percent in the second quarter. The managed net chargeoff ratio was 3.47 percent in the prior-year quarter."
26.	10/31/2001	*Associated Press* article	*Associated Press* – October 31, 2001: "Household spokeswoman Megan Hayden denied the company engaged in predatory lending through its Beneficial and Household Finance subsidiaries, even as she pointed to steps the company took this year to end some of its most criticized practices. Hayden said the problem involved not her company, but 'rogue lenders.' Government regulators say predatory lenders often target the poor, racial and ethnic minorities, seniors and single women."

<table>
<tr><th></th><th>Date</th><th>Document Title</th><th>Statement</th></tr>
<tr><td>27.</td><td>11/14/2001</td><td>Household 10-Q</td><td>Household 10-Q for quarter ended 9/30/01: Household reported net income of $503.8 million for the quarter ended June 30, 2001 and EPS of $1.09:

CREDIT QUALITY
We track delinquency and chargeoff levels on a managed basis and we apply the same credit and portfolio management procedures as on our owned portfolio.
Delinquency
Two-Months-and-Over Contractual Managed Delinquency (as a percent of managed consumer receivables):
<table>
<tr><th></th><th>September 30, 2001</th><th>June 30, 2001</th><th>March 31, 2001</th><th>December 30, 2000</th><th>September 30, 2000</th></tr>
<tr><td>Managed:</td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Real estate secured</td><td>2.74%</td><td>2.63%</td><td>2.61%</td><td>2.63%</td><td>2.77%</td></tr>
<tr><td>Auto finance</td><td>2.54</td><td>2.09</td><td>1.79</td><td>2.55</td><td>2.19</td></tr>
<tr><td>MasterCard/Visa</td><td>3.91</td><td>3.60</td><td>3.68</td><td>3.49</td><td>3.48</td></tr>
<tr><td>Private label</td><td>5.88</td><td>5.66</td><td>5.50</td><td>5.48</td><td>5.67</td></tr>
<tr><td>Other unsecured</td><td>8.51</td><td>8.43</td><td>8.37</td><td>7.97</td><td>7.72</td></tr>
<tr><td>Total managed</td><td>4.43%</td><td>4.27%</td><td>4.25%</td><td>4.20%</td><td>4.21%</td></tr>
<tr><td>Owned</td><td>4.58%</td><td>4.48%</td><td>4.36%</td><td>4.26%</td><td>4.29%</td></tr>
</table>
* * *
"Owned consumer two-months-and-over contractual delinquency as a percent of owned consumer receivables was 4.58 percent at September 30, 2001, compared with 4.48 percent at June 30, 2001 and 4.29 percent at September 30, 2000. The annualized total consumer owned chargeoff ratio in the third quarter of 2001 was 3.43 percent, compared with 3.26 percent in the prior quarter and 3.01 percent in the year-ago quarter.

Managed consumer two-months-and-over contractual delinquency as a percent of managed consumer receivables was 4.43 percent at September 30, 2001, compared with 4.27 percent at June 30, 2001 and 4.21 percent at September 31, 2000. The annualized total consumer managed chargeoff ratio in the third quarter of 2001 was 3.74 percent, compared with 3.71 percent in the prior quarter and 3.47 percent in the year-ago quarter."

* * *
"Managed delinquency as a percent of managed consumer receivables increased modestly over both the previous and prior-year quarters. Compared to the previous quarter, all products reported higher delinquencies principally as the result of a weakening economy."</td></tr>
</table>

	Date	Document Title	Statement
28.	12/03/2001	*Business Week* article	*Business Week* – December 3, 2001: HOUSEHOLD IS ACCUSED OF: • Rolling over late loans by adding missed payments to ends of loans, thus masking delinquencies • Delaying recognition of charge-offs to boost earnings • Moving loans from its bank subsidiary to minimize need for reserves • Cutting on balance sheet reserves, though its portfolio is riskier HOUSEHOLD REPLIES: • The practice is an industry norm, and collection rates improve after loans are "re-aged" • Charge-off policy follows industry standards closely • Applying bank regulatory rules would barely increase the amount of charge-offs • Total reserves are at the highest level in company history
29.	12/04/2001	Goldman Sachs Presentation	December 4, 2001 Goldman Sachs Presentation: defendants made false statements regarding Household's accounting practices, including reaging and restructuring. * * * "Charge off policies are appropriate for our target market and result in proper loss recognition" (PFG000158) "All policies have been consistently applied and realistically report results" (PFG000158) "Why are Household's Credit Losses Better" - better credit skills (PFG000152)
30.	01/16/2002	Household Press Release	January 16, 2002 Household Press Release entitled "Household Reports Record Quarterly and Full-Year Net Income": Household "reported fourth quarter earnings per share of $1.17, its fourteenth consecutive record quarter. Fourth quarter earnings per share rose 14 percent from $1.03 the prior year. Net income in the fourth quarter increased 11 percent, to an all-time quarterly record of $549 million. For the full year, Household reported earnings per share of $4.08, representing a 15 percent increase from $3.55 in 2000. Net income for 2001 totaled $1.9 billion, also an all-time high, 13 percent above $1.7 billion earned in 2000." "Household's fourth quarter results were simply outstanding . . . demonstrating the tremendous strength and earnings power of the Household franchise. Receivable and revenue growth exceeded

<table>
<tr><th></th><th>Date</th><th>Document Title</th><th>Statement</th></tr>
<tr><td></td><td></td><td></td><td>our expectations while credit indicators weakened only modestly in a tough economic environment. . . . In 2001, we demonstrated that our business model generates superior results in a weak economy as well as in the strong economic periods of previous years. Exceptional revenue growth of 18 percent more than offset the increases in credit losses during the year."
* * *
"Credit Quality and Loss Reserves
At December 31st, the managed delinquency ratio (60+days) was 4.46 percent, up 3 basis points from 4.43 percent in the third quarter. The managed delinquency ratio was 4.20 percent a year ago. The annualized managed net chargeoff ratio for the fourth quarter was 3.90 percent, up 16 basis points from 3.74 percent in the third quarter. The managed net chargeoff ratio in the year-ago quarter was 3.41 percent."</td></tr>
<tr><td>31.</td><td>02/06/2002</td><td>Copley News Services article</td><td>Copley News Services – February 6, 2002: "You simply cannot stay in business for 125 years by misleading your borrowers . . . . We do the right thing for our borrowers. We make good loans that not only are legal loans, but are beneficial for our customers."</td></tr>
<tr><td>32.</td><td>02/18/2002</td><td>National Mortgage News article</td><td>National Mortgage News – February 18, 2002:

"Our first take on [the allegations of predatory lending raised in the ACORN action] is that it is not a significant issue, not indicative of any widespread problem and certainly not a concern that it will spread elsewhere."</td></tr>
<tr><td>33.</td><td>03/13/2002</td><td>Household FY01 Report on Form 10-K</td><td>Household FY01 Report on Form 10-K filed with the SEC on March 13, 2002 Household reported Net Income of $1.923 billion in 2001, and E.P.S. of $4.13:

Household International, Inc. and Subsidiaries
CREDIT QUALITY STATISTICS – OWNED BASIS
<table>
<tr><th>All dollar amounts are stated in millions.
At December 31, unless otherwise indicated.
Owned Two-Month-and-Over Contractual Delinquency Ratios</th><th>2001</th><th>2000</th><th>1999</th><th>1998</th><th>1997</th></tr>
<tr><td>Real estate secured</td><td>2.63%</td><td>2.58%</td><td>3.10%</td><td>3.95%</td><td>3.66%</td></tr>
<tr><td>Auto finance</td><td>2.92</td><td>2.46</td><td>2.02</td><td>2.90</td><td>1.48</td></tr>
<tr><td>MasterCard/Visa</td><td>5.67</td><td>4.90</td><td>3.59</td><td>5.09</td><td>3.55</td></tr>
<tr><td>Private label</td><td>5.99</td><td>5.60</td><td>6.09</td><td>6.03</td><td>5.60</td></tr>
<tr><td>Personal non-credit card</td><td>9.04</td><td>7.99</td><td>9.06</td><td>8.24</td><td>7.55</td></tr>
<tr><td>Total consumer</td><td>4.53%</td><td>4.26%</td><td>4.82%</td><td>5.31%</td><td>4.87%</td></tr>
</table></td></tr>
</table>

	Date	Document Title	Statement

* * *

Household International, Inc. and Subsidiaries
CREDIT QUALITY STATISTICS – OWNED BASIS

All dollar amounts are stated in millions. At December 31, unless otherwise indicated.	2001	2000	1999	1998	1997
Managed Two-Month-and-Over Contractual Delinquency Ratios					
Real estate secured	2.68%	2.63%	3.27%	3.67%	3.69%
Auto finance	3.16	2.55	2.43	2.29	2.09
MasterCard/Visa	4.10	3.49	2.78	3.75	3.10
Private label	5.48	5.48	5.97	6.20	5.81
Personal non-credit card	8.87	7.97	8.81	7.94	7.81
Total consumer	4.46%	4.20%	4.66%	4.90%	4.64%

* * *

"Management has long recognized its responsibility for conducting the company's affairs in a manner which is responsive to the interest of employees, shareholders, investors and society in general. This responsibility is included in the statement of policy on ethical standards which provides that the company will fully comply with laws, rules and regulations of every community in which it operates and adhere to the highest ethical standards. Officers, employees and agents of the company are expected and directed to manage the business of the company with complete honesty, candor and integrity."

* * *

"Our credit and portfolio management procedures focus on risk-based pricing and effective collection efforts for each loan. We have a process which we believe gives us a reasonable basis for predicting the credit quality of new accounts. This process is based on our experience with numerous marketing, credit and risk management tests. We also believe that our frequent and early contact with delinquent customers, as well as policies designed to manage customer relationships, such as reaging delinquent accounts to current in specific situations, are helpful in maximizing customer collections. As a result, charge-off and delinquency performance has been well within our expectations."

* * *

"We believe our policies are responsive to the specific needs of the customer segment we serve. . . . ***<u>Our policies have been consistently applied and there have been no significant changes to any of</u>***

	Date	Document Title	Statement
			our policies during any of the periods reported. Our loss reserve estimates consider our charge-off policies to ensure appropriate reserves exist for products with longer charge-off lives. We believe our charge-off policies are appropriate and result in proper loss recognition." * * * "Our policies for consumer receivables permit reset of the contractual delinquency statute of an account to current, subject to certain limits, if a delinquency status of an account to current, subject to certain limits, if a predetermined number of consecutive payments has been received and there is evidence that the reason for the delinquency has been cured. Such reaging policies vary by product and are designed to manage customer relationship and maximize collections." (Emphasis added.)

34.	04/09/2002	Household Financial Relations Conference	April 9, 2002 Financial Relations Conference:
			• Credit Quality Trend – Manageable, Modest Increases [chart on HHS 01883530]
			• Credit Policies – Overview – In some cases charge-off policy is longer than bank policy to optimize customer management.
			• Reage Policies – Overview
			  • Reage policies are an inherent part of value proposition for our customers for which they pay above bank prices
			  • Not intended to defer credit loss recognition or to overstate net income
			  • Policies have been consistently applied and are appropriate for each product
			• Credit Policies – Personal Non-Credit Card
			  • Restructures
			    • If an account is ever 90+, lifetime limit of 4 restructures allowed
			
			Defendants issued false or misleading information regarding Household's reaged portfolio in a number of charts included in Exhibit ___ (HHS01883518) – the charts are located at HHS01883560, HHS01883561, HHS01883562, HHS01883564, HHS01883565, HHS01883566, and HHS01883567.

35.	04/17/2002	Household Press Release	April 17, 2002 Household Press Release entitled "Household Reports Record First Quarter Net Income": Household "reported first quarter earnings per share of $1.09, its fifteenth consecutive record quarter. First quarter earnings per share rose 20 percent from $.91 the prior year. Net income in the first quarter increased 18 percent, to a record $511 million."

	Date	Document Title	Statement
			"Household turned in a very strong first quarter. . . . In addition to delivering record results this quarter, we strongly added to our capital and reserve levels and further enhanced liquidity. We remain committed to maintaining a strong balance sheet and maximum financial flexibility." "Our credit quality performance was well within our expectations in light of the continued weakness in the economy. . . . We anticipate a very manageable credit environment for the remainder of the year." * * * "Credit Quality and Loss Reserve At March 31st, the *managed basis* delinquency ratio (60+days) was 4.63 percent, up 17 basis points from 4.46 percent at year-end 2001 and up 38 basis points from 4.25 percent a year ago. The annualized *managed basis* net charge-off ratio for the first quarter of 4.09 percent increased 19 basis points from 3.90 percent in the fourth quarter of 2001. . . ." "The *owned basis* delinquency ratio at March 31st was 4.77 percent, compared to 4.53 percent at December 31st and 4.36 percent a year ago. The annualized *owned basis* charge-off ratio for the first quarter was 3.61 percent compared to 3.43 percent in the previous quarter and 3.12 percent a year ago."
36.	04/21/2002	*Bellingham Herald* article	*Bellingham Herald* – April 21, 2002: "It is absolutely against our policy to in any way quote a rate that is different than what the true rate is . . . . I can't underscore that enough."
37.	05/03/2002	*Chicago Tribune* article	*Chicago Tribune* – May 3, 2002: "Household quickly denied that it misleads customers. . . . In response to the latest suit, Household denied that it misleads customers. 'Acorn continues to launch baseless accusations and lawsuits rather than work to enact real solutions to help eliminate predatory lending from the marketplace,' the lender's statement said."
38.	05/10/2002	Household 10-Q	Household 10-Q for quarter ended 3/31/2002. Household reported net income of $511 million, and E.P.S of $1.09 CREDIT QUALITY Delinquency – Owned Basis Two-Months-and-Over Contractual Delinquency (as a percent of consumer receivables): March 31, December 31, March, 31

	Date	Document Title	Statement
			<table><tr><td></td><td>2002</td><td>2001</td><td>2001</td></tr><tr><td>Real estate secured</td><td>2.88%</td><td>2.63%</td><td>2.55%</td></tr><tr><td>Auto finance</td><td>2.04</td><td>2.92</td><td>1.74</td></tr><tr><td>MasterCard/Visa</td><td>6.54</td><td>5.67</td><td>5.02</td></tr><tr><td>Private label</td><td>6.33</td><td>5.99</td><td>5.62</td></tr><tr><td>Personal non-credit card</td><td>9.60</td><td>9.04</td><td>8.79</td></tr><tr><td>Total Owned</td><td>4.77%</td><td>4.53%</td><td>4.36%</td></tr></table>
39.	05/10/2002	*The Record* article	*The Record* – May 10, 2002: "Our position is that the accusations [regarding predatory lending] are baseless . . . . The loans are legal, they are compliant with state and federal laws and our own policies, and in each instance they have benefits for each customer. . . . Hayden says the loan[s] conform[] to the company's 'tangible benefits test."
40.	05/14/2002	*AP Online* article	*AP Online* – May 14, 2002: "All of [Household's] lending policies are in accord with federal and state regulations and requirements . . . ."
41.	05/31/2002	*American Banker* article	*American Banker* – May 31, 2002: "It is our regulators' and the attorney general's job to investigate any complaints brought forth by consumers in their state, and we don't find anything unique or surprising that they are doing their job. . . . [W]e take proper steps to work with the department to uncover the facts and if necessary formulate an appropriate resolution for the borrower." . . . "some customers in Bellingham may have indeed been justified in their confusion about the rate of their loans" and claimed Household "took full and prompt responsibility" and is "satisfied that this situation was localized to the Bellingham branch."
42.	07/02/2002	*The Oregonian*	*The Oregonian* – July 2, 2002: "Household International offices deny any pattern of wrongdoing and say the company is open to changes in its lending practices if they are harmful to consumers. 'We've made mistakes,' said Megan Hayden, spokeswoman for the Prospect Heights, Ill., company. 'Is there a companywide pattern of abuse? Absolutely not.'"
43.	07/17/2002	Household Press Release	July 17, 2002 Household Press Release entitled "Household Reports Record Second Quarter Results on Strong Receivables Growth": Household "reported second quarter earnings per share increased 16 percent to $1.08, from $.93 the prior year. These results mark Household's sixteenth consecutive record quarter. Second quarter net income increased 17 percent, to a record $514 million." * * * "Our results this quarter were fueled by ongoing strong demand for our loan products. . . . Growth this quarter was strong, while we have maintained our conservative underwriting criteria. . . ."

<table>
<tr><th></th><th>Date</th><th>Document Title</th><th>Statement</th></tr>
<tr><td></td><td></td><td></td><td>* * *
"Credit Quality and Loss Reserves
At June 30th, the managed basis delinquency ratio (60+days) was 4.53 percent, down 10 basis points from 4.63 percent at the end of March, led by improvement in the MasterCard/Visa portfolio. The managed basis delinquency ratio was 4.27 percent a year ago. The annualized managed basis net charge-off ratio for the second quarter of 4.26 percent was 17 basis points higher than the first quarter and 55 basis points higher than a year ago."

"The owned basis delinquency ratio at June 30th was 4.61 percent, compared to 4.77 percent at March 31st and 4.48 percent a year ago. The annualized owned basis net charge-off ratio for the second quarter was 3.76 percent compared to 3.61 percent in the previous quarter and 3.26 a year ago."</td></tr>
<tr><td>44.</td><td>08/14/2002</td><td>Household Press Release</td><td>August 14, 2002 Household Press Release entitled "Household International Certifies Accuracy of SEC filings in 2002": "Household's results for the year-to-date have been fueled by strong demand for our loan products throughout our businesses. Our loan underwriting approach continues to be conservative in these times of economic uncertainty, and we remain committed to strong reserve and capital levels."</td></tr>
<tr><td>45.</td><td>08/14/2002</td><td>Household 10-Q</td><td>Household 10-Q for quarter-ended 6/30/2002 issued on 8/14/2002: Household reported net income of $507 million and E.P.S. of $1.08

CREDIT QUALITY
Delinquency – Owned Basis
Two-Months-and-Over Contractual Delinquency (as a percent of consumer receivables):
<table>
<tr><th></th><th>June 30, 2002</th><th>March 31, 2002</th><th>June 30, 2001</th></tr>
<tr><td>Real estate secured</td><td>2.78%</td><td>2.88%</td><td>2.59%</td></tr>
<tr><td>Auto finance</td><td>2.99</td><td>2.04</td><td>2.35</td></tr>
<tr><td>MasterCard/Visa</td><td>6.13</td><td>6.54</td><td>4.80</td></tr>
<tr><td>Private label</td><td>6.19</td><td>6.33</td><td>6.54</td></tr>
<tr><td>Personal non-credit card</td><td>9.12</td><td>9.60</td><td>8.79</td></tr>
<tr><td>Total Owned</td><td>4.61%</td><td>4.77%</td><td>4.48%</td></tr>
</table>
* * *
"Our credit policies for consumer loans permit the reset of the contractual delinquency status of an</td></tr>
</table>

	Date	Document Title	Statement
			account to current, subject to certain limits, if a predetermined number of consecutive payments has been received and there is evidence that the reason for the delinquency has been cured. Such reaging policies vary by product and are designed to manage customer relationship and ensure maximum collections." * * * Household reiterated this false disclosure in its Form 10-K/A for fiscal year 2001, filed with the SEC August 27, 2002.
46.	09/01/2002	*Origination News* article	*Origination News* – September 1, 2002: "'We clearly follow all state and federal laws and regulations,' Household spokeswoman Megan Hayden said."
47.	09/02/2002	*National Mortgage News* article	*National Mortgage News* – September 2, 2002: "A Household spokeswoman said she is not aware of any pending enforcement actions or settlement talks."

Exhibit 5

Appendix A

HOUSEHOLD INTERNATIONAL
ALLEGEDLY FALSE STATEMENTS
THAT ARE INACTIONABLE
AS A MATTER OF LAW

	Date	Document Title	Statement
1.	07/22/1999 *Plaintiffs' use of this false statement is dependent on the Court's ruling on defendants' motion for summary judgment, and other pretrial rulings by the Court.	Household Press Release	July 22, 1999 Household Press Release entitled "Household International Reports Record Second Quarter Results": **Household "reported that second quarter net income rose 31 percent to a record $326.9 million, compared with operating net income of $249.4 million a year ago. Earnings per share increased 37 percent to a record $.67, compared with operating EPS of $.49 a year ago. Cash basis EPS for the quarter rose 28 percent to $.74."** * * * **"Credit quality continued to improve. The managed delinquency ratio (60+days) declined for the third consecutive quarter to 4.72 percent at June 30, compared with 4.81 percent at March 31 and 4.65 percent a year ago. The annualized managed net chargeoff ratio for the second quarter improved to 4.10 percent, lower than 4.37 percent in the first quarter and 4.26 percent in the year-ago quarter."** * * * **"Our results, a second quarter record, highlight the growth and improved profitability of our consumer finance businesses. . . . Business fundamentals are strong and reflect the positive trends we have seen since late last year. Our net interest margin percentage expanded substantially, credit quality improved and costs remained well under control. Receivable growth was strong in the consumer finance business."**
5.	01/19/2000	Household Press Release	January 19, 2000 Household Press Release entitled "Household International Reports Best Quarter and Year in Its History": **"We are very pleased to report another record quarter, the culmination of an absolutely outstanding year for Household. Growth and profitability in the quarter were excellent and exceeded our expectations. Revenues were particularly strong. . . . Our record earnings reflect an outstanding year in our consumer finance business, a dramatic turnaround in our MasterCard/Visa business, and strong results in all of our other businesses. We are**

	Date	Document Title	Statement
			particularly pleased with excellent receivable growth in 1999, particularly in our branches, while fully realizing all of the acquisition synergies of the Beneficial merger."
7.	04/19/2000	Household Press Release	April 19, 2000 Household Press Release entitled "Household International Reports Record First Quarter Results": **This was the strongest first quarter in our company's history, with all of our businesses performing well. Revenue and receivable growth were strong, and credit quality continued to improve."**
9.	07/19/2000	Household Press Release	July 19, 2000 Household Press Release entitled "Household International Reports Record Strongest Second Quarter in Its History": **"Our superb second quarter results were highlighted by outstanding receivables and revenue growth and a significant improvement in credit quality . . . . Our record performance reflects strong sales and marketing results in all of our businesses coupled with our continued focus on risk management and operational efficiency."**
11.	10/18/2000	Household Press Release	October 18, 2000 Household Press Release entitled "Household International Reports Highest Quarterly EPS in Its History; Ninth Consecutive Record Quarter": **"Our strong third quarter results reflect a continuation of outstanding receivables and revenue growth. At the same time, we achieved year-over-year improvements in credit quality."**
12.	11/01/2000	*St. Louis Dispatch* article	Article in *St. Louis Dispatch* on November 1, 2000 **"ACORN cited a loan made in July by another subprime lender, HFC Mortgage Corp. According to loan documents, HFC charged a University City couple 12.5 percent interest on a $76,900 loan. Added in were $5,700 for credit life insurance and an origination fee of $5,200, adding nearly $11,000 to the cost. Mainstream lenders were charging 8 percent in interest on such 15-year loans at the time."** * * *

	Date	Document Title	Statement
			"HFC spokesman Craig Streem said that the loan was 'not a predatory loan by any definition.'" * * * **"Streem says HFC never pressures people to buy credit life insurance."**
13.	11/07/2000	Household Press Release	November 7, 2000 Household Press Release entitled "Household International Responds to Citigroup's Announcement to Change Lending Practices at Associates First Capital: **Household International supports Citigroup's announcement today of its efforts to boost consumer protections at Associates First Capital. Their proposed changes are generally consistent with the stringent policies and procedures that have long been in place at Household International.** **Household's long-standing view has been that unethical lending practices of any type are abhorrent to our company, employees, and most importantly our customers. So-called "predatory lending" practices undermine the integrity of the industry in which we compete."**
15.	01/17/2001	Household Press Release	January 17, 2001 Household Press Release entitled "Household International Reports Highest Full Year and Quarterly EPS in Its History; Tenth Consecutive Record Quarter": **"These strong fourth quarter results cap off a terrific year in which we delivered on all or our earnings and growth goals. . . . Growth and profitability in the quarter were excellent, while credit quality and our balance sheet remained strong. . . . Our record earnings per share reflect strong top-line growth and improved credit quality."**
16.	03/12/2001	Household Press Release	March 12, 2001 Household Press Release entitled "Household International Applauds Federal Reserve Board's Proposed Amendments to Regulation Z": **"'Household's position on predatory lending is perfectly clear,' said Gary Gilmer, president and CEO of HFC and Beneficial. 'Unethical lending practices of any type are abhorrent to our company, our employees, and most importantly, our customers.' . . . The company reaffirmed that it fully complies with all applicable federal and state laws and regulations."**
18.	04/18/2001	Household Press Release	April 18, 2001 Household Press Release entitled "Household International Reports First Quarter Results; 11th Consecutive Record Quarter":

	Date	Document Title	Statement
			"Our outstanding results reflect the sustainability and earnings power of our franchise. Receivables and revenues grew nicely in the quarter. At the same time, credit quality remained stable and we strengthened our balance sheet."
19.	04/20/2001	*Origination News* article	*Origination News* – March 23, 2001: **"Gary Gilmer, president and chief executive of Household's subsidiaries HFC and Beneficial said the company's 'position on predatory lending is perfectly clear. Unethical lending practices of any type are abhorrent to our company, our employees and most importantly our customers.'"**
21.	07/18/2001	Household Press Release	July 18, 2001 Household Press Release entitled "Household International Reports Second Quarter Results; 12th Consecutive Record Quarter": **"We had a terrific quarter – our 12th consecutive quarter of record results. Given the softening economic environment, I am particularly pleased with our ability to consistently deliver strong, quality earnings. Results for the quarter were excellent. . . . We enjoyed strong receivable and revenue growth compared to a year ago, with all of our businesses performing well. In addition, delinquency was stable in the quarter."**
22.	07/24/2001	*The New York Times* article	*The New York Times* – July 24, 2001: **"It's not tied to hearings or activism or anything else in particular" said Craig Streem, a spokesman for Household . . . "[W]e've been working on [the announced changes] for quite some time. So, it really is a coincidence."**
23.	07/27/2001	*Star Tribune* article	*Star Tribune* – July 27, 2001: **"Megan Hayden, a Household spokeswoman, said that terms of loans are disclosed to all customers, as required by state and federal laws. 'Frankly, you don't stay in business in this industry by taking advantage of your customers,' she said. 'So I take exception to any characterization that we engaged in predatory lending practices.'"**
25.	10/17/2001	Household Press Release	October 17, 2001 Household Press Release entitled "Household Reports Highest Quarterly Net Income in Its 123-Year History":

	Date	Document Title	Statement
			"Household's performance this year has been outstanding, even as the economy has continued to weaken. . . . The third quarter was no exception. Receivable and revenue growth were strong, and credit performance was within our expectations."
26.	10/31/2001	*Associated Press* article	*Associated Press* – October 31, 2001: **"Household spokeswoman Megan Hayden denied the company engaged in predatory lending through its Beneficial and Household Finance subsidiaries, even as she pointed to steps the company took this year to end some of its most criticized practices. Hayden said the problem involved not her company, but 'rogue lenders.' Government regulators say predatory lenders often target the poor, racial and ethnic minorities, seniors and single women."**
28.	12/03/2001	*Business Week* article	*Business Week* – December 3, 2001: **HOUSEHOLD IS ACCUSED OF:** **1. Rolling over late loans by adding missed payments to ends of loans, thus masking delinquencies** **3. Delaying recognition of charge-offs to boost earnings** **5. Moving loans from its bank subsidiary to minimize need for reserves** **7. Cutting on balance sheet reserves, though its portfolio is riskier** **HOUSEHOLD REPLIES:** **2. The practice is an industry norm, and collection rates improve after loans are "re-aged"** **4. Charge-off policy follows industry standards closely** **6. Applying bank regulatory rules would barely increase the amount of charge-offs** **8. Total reserves are at the highest level in company history**
30.	01/16/2002	Household Press Release	January 16, 2002 Household Press Release entitled "Household Reports Record Quarterly and Full-Year Net Income": **"Household's fourth quarter results were simply outstanding . . . demonstrating the tremendous strength and earnings power of the Household franchise. Receivable and revenue growth exceeded our expectations while credit indicators weakened only modestly in a tough economic environment. . . . In 2001, we demonstrated that our business model generates**

	Date	Document Title	Statement
			superior results in a weak economy as well as in the strong economic periods of previous years. Exceptional revenue growth of 18 percent more than offset the increases in credit losses during the year."
31.	02/06/2002	*Copley News Services* article	*Copley News Services* – February 6, 2002: **"You simply cannot stay in business for 125 years by misleading your borrowers . . . . We do the right thing for our borrowers. We make good loans that not only are legal loans, but are beneficial for our customers."**
32.	02/18/2002	*National Mortgage News* article	*National Mortgage News* – February 18, 2002: **"Our first take on [the allegations of predatory lending raised in the ACORN action] is that it is not a significant issue, not indicative of any widespread problem and certainly not a concern that it will spread elsewhere."**
35.	04/17/2002	Household Press Release	April 17, 2002 Household Press Release entitled "Household Reports Record First Quarter Net Income": **"Household turned in a very strong first quarter. . . . In addition to delivering record results this quarter, we strongly added to our capital and reserve levels and further enhanced liquidity. We remain committed to maintaining a strong balance sheet and maximum financial flexibility."** **"Our credit quality performance was well within our expectations in light of the continued weakness in the economy. . . . We anticipate a very manageable credit environment for the remainder of the year."**
36.	04/21/2002	*Bellingham Herald* article	*Bellingham Herald* – April 21, 2002: **"It is absolutely against our policy to in any way quote a rate that is different than what the true rate is . . . . I can't underscore that enough."**
37.	05/03/2002	*Chicago Tribune* article	*Chicago Tribune* – May 3, 2002:

	Date	Document Title	Statement
			"Household quickly denied that it misleads customers. . . . In response to the latest suit, Household denied that it misleads customers. 'Acorn continues to launch baseless accusations and lawsuits rather than work to enact real solutions to help eliminate predatory lending from the marketplace,' the lender's statement said."
39.	05/10/2002	*The Record* article	*The Record* – May 10, 2002: **"Our position is that the accusations [regarding predatory lending] are baseless . . . . The loans are legal, they are compliant with state and federal laws and our own policies, and in each instance they have benefits for each customer. . . . Hayden says the loan[s] conform[] to the company's 'tangible benefits test."**
40.	05/14/2002	*AP Online* article	*AP Online* – May 14, 2002: **"All of [Household's] lending policies are in accord with federal and state regulations and requirements . . . ."**
41.	05/31/2002	*American Banker* article	*American Banker* – May 31, 2002: **"It is our regulators' and the attorney general's job to investigate any complaints brought forth by consumers in their state, and we don't find anything unique or surprising that they are doing their job. . . . [W]e take proper steps to work with the department to uncover the facts and if necessary formulate an appropriate resolution for the borrower." . . . "some customers in Bellingham may have indeed been justified in their confusion about the rate of their loans" and claimed Household "took full and prompt responsibility" and is "satisfied that this situation was localized to the Bellingham branch."**
42.	07/02/2002	*The Oregonian*	*The Oregonian* – July 2, 2002: **"Household International offices deny any pattern of wrongdoing and say the company is open to changes in its lending practices if they are harmful to consumers. 'We've made mistakes,' said Megan Hayden, spokeswoman for the Prospect Heights, Ill., company. 'Is there a companywide pattern of abuse? Absolutely not.'"**
46.	09/01/2002	*Origination News* article	*Origination News* – September 1, 2002: **"'We clearly follow all state and federal laws and regulations,' Household spokeswoman**

	Date	Document Title	Statement
			Megan Hayden said."
47.	09/02/2002	*National Mortgage News* article	*National Mortgage News* – September 2, 2002: **"A Household spokeswoman said she is not aware of any pending enforcement actions or settlement talks."**

Exhibit 6

AE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, on Behalf of Itself and All Others Similarly Situated,	)	
Plaintiff,	)	
v.	)	**02 C 5893 (Consolidated)**
HOUSEHOLD INTERNATIONAL, INC., MERRILL LYNCH, PIERCE, FENNER, & SMITH, INC., GOLDMAN SACHS & CO., INC., ARTHUR ANDERSEN, L.L.P., WILLIAM F. ALDINGER, DAVID A. SCHOENHOLZ, GARY GILMER, J.A. VOZAR, ROBERT J. DARNALL, GARY G. DILLON, JOHN A. EDWARDSON, MARY JOHNSTON EVANS, J. DUDLEY FISHBURN, CYRUS F. FREIDHEIM, LOUIS E. LEVY, GEORGE A. LORCH, JOHN D. NICHOLS, JAMES B. PITBLADO, S. JAY STEWART, and LOUIS W. SULLIVAN,	)	**Judge Ronald A. Guzmán**
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff Lawrence E. Jaffe Pension Plan, on behalf of itself and all others similarly situated, brought this suit alleging violations of 15 U.S.C. § 78(j)(b) ("§ 10(b)" of the Exchange Act of 1934 ("1934 Act")) and 17 C.F.R. § 240.10b-5 ("Rule 10b-5") against Household, Household Officers, identified as Aldinger, Schoenholz, and Gilmer, and Arthur Andersen ("Andersen")[1] in Count I; violation of 15 U.S.C. § 78(t)(a) ("§ 20(a)" of the 1934 Act) by

[1]On January 31, 2006, the Court entered a revised order preliminarily approving settlement of the class claims against Arthur Andersen, L.L.P.

Household, and Household Officers in Count II; violations of 15 U.S.C. §§ 77k, 77l(a)(2), and 77o ("§§ 11, 12(a)(2), and 15" of the Securities Act of 1933 ("1933 Act")) by Household, Household Officers, Household Directors,[2] Andersen, Goldman Sachs & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith, Inc. in Count III,[3] and violations of §§ 11, 15 of the 1933 Act by Household, Household Directors and Andersen in Count IV. On December 3, 2004, the Court certified the class solely as to the § 10(b) claims. Glickenhaus & Co. has been named lead plaintiff.

All defendants except Andersen have moved pursuant to Federal Rule Civil Procedure ("Rule") 12(b)(6) and 12(c) to dismiss as time-barred § 10(b) claims that arose prior to July 30, 1999. For the reasons set forth in this Memorandum Opinion and Order, the Court treats defendants' motion as one for judgment on the pleadings and grants the motion.

FACTS

Because the Court has fully set forth the allegations in a prior opinion in this case, it will not restate the facts in detail here. For a complete factual background, *see Lawrence E. Jaffe Pension Plan*, 2004 WL 574665, at *1-3.

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[2]The Household Directors are identified as Aldinger, Schoenholz, Robert J. Darnall, Gary G. Dillon, John A. Edwardson, Mary Johnston Evans, J. Dudley Fishburn, Cyrus F. Freidheim, Jr., Louis E. Levy, George A. Lorch, John D. Nichols, James B. Pitblado, S. Jay Stewart, and Louis W. Sullivan. HFC is a wholly owned subsidiary of Household and its directors are identified as Aldinger, Schoenholz, Gilmer, and J.A. Vozar.

[3]Goldman Sachs and Merrill Lynch were terminated as parties when the Court granted a motion to dismiss Count III in a previous Memorandum Opinion and Order. *See Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2004 WL 574665, at *18 (N.D. Ill. Mar. 22, 2004).

DISCUSSION

Pursuant to Rule 12(b)(6) and 12(c), defendants have moved to dismiss for failure to state a claim the class' § 10(b) claims that arose more than three years prior to the enactment of the Sarbanes-Oxley Act on July 30, 2002 as time-barred. Because a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6) must be filed prior to any responsive pleading, which have already been filed in this case, the Court treats the motion as one for judgment on the pleadings. *See N. Ind. Gun & Outdoor Shows, Inc. v. City of S. Bend*, 163 F.3d 449, 452 n.3 (7th Cir. 1998); FED. R. CIV. P. 12(b)(6), 12(c). On a motion for judgment on the pleadings, the court accepts "all well-pleaded allegations in the complaint as true and draw[s] all reasonable inferences in favor of the plaintiff." *Forseth v. Vill. of Sussex*, 199 F.3d 363, 368 (7th Cir. 2000). "[T]he motion should not be granted unless it appears beyond doubt that the plaintiff cannot prove any facts that would support his claim for relief." *Thomason v. Nachtrieb*, 888 F.2d 1202, 1204 (7th Cir. 1989).

A statute of repose is an affirmative defense that a defendant is required to plead under Rule 8(c). *Stirchak v. Shiley*, No. 96 C 257, 1996 WL 166958, at *1 (N.D. Ill. Apr. 5, 1996). Usually "complaints do not have to anticipate affirmative defenses to survive . . . ." *United States v. Lewis*, 411 F.3d 838, 842 (7th Cir. 2005). "The exception occurs where . . . the allegations of the complaint itself set forth everything necessary to satisfy the affirmative defense, such as when a complaint plainly reveals that an action is untimely . . . ." *Id.* It is important to note that tolling principles – equitable estoppel and equitable tolling – do not apply to the statute of repose for securities fraud claims because its purpose is to set an outer limit that is unaffected by what plaintiff knows. *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 363 (1991).

On July 30, 2002, Congress enacted the Sarbanes-Oxley Act, which provides that securities claims involving "fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws" may be brought not later than the earlier of two years after the discovery of the facts constituting the violation or five years after the violation. *See* 28 U.S.C. § 1658(b). Further, the Act's limitations period "appl[ies] to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act." *See id.* (comments).

The instant lawsuit was filed on August 19, 2002, *i.e.*, after the enactment of the Sarbanes-Oxley Act. Thus, it would seem, the Sarbanes-Oxley limitations period would apply.

However, all is not that simple. In some cases, applying the Sarbanes-Oxley limitations would resurrect previously time-barred claims, thereby putting defendants at risk of liability where previously they had been out of the woods, so to speak.

In *Foss v. Bear, Stearns Co.*, 394 F.3d 540, 542 (7th Cir. 2005), a post-Sarbanes-Oxley securities fraud action, the Seventh Circuit affirmed the district court's dismissal of the complaint for failure to state a claim and held that the plaintiff's § 10(b) and Rule 10b-5 claim based on a violation that occurred outside of the three-year statute of repose period applicable prior to the enactment of the Sarbanes-Oxley Act[4] was barred because the Act is not retroactive and does not revive expired claims. *Id.* at 541-42. Although plaintiffs rely on *Tello v. Dean Witter Reynolds, Inc.*, 410 F.3d 1275, 1289 (11th Cir. 2005), in which the Eleventh Circuit held that the factual record was too undeveloped to determine whether to make a legal determination

[4]Prior to the enactment of the Sarbanes-Oxley Act, a plaintiff was required to file a securities fraud claim "within one year after the discovery of the facts constituting the violation and within three years after such violation." *Lampf*, 501 U.S. at 359.

as to the retroactivity of Sarbanes-Oxley, this Court is duty-bound to adhere to *Foss*.

Defendants argue that the claim of any member of the class who purchased Household securities prior to July 30, 1999 expired under the three-year statute of repose applicable prior to the Sarbanes-Oxley Act. In other words, defendants assume that the "violation" that triggers the statute of repose is the purchase of Household securities. Plaintiff did not address the issue.

Courts have held that the triggering event for the statute of repose is defendant's misrepresentation or omission in connection with the sale or purchase of a security. *Wafra Leasing Corp. v. Prime Capital Corp.*, 192 F. Supp. 2d 852, 864 (N.D. Ill. 2002); *Antell v. Arthur Andersen LLP*, No. 97 C 3456, 1998 WL 245878 at *5-6 (N.D. Ill. May 4, 1998). *Cf. Beard v. J.I. Case Co.*, 823 F.2d 1095, 1097 n.1 (7th Cir. 1987) ("[A] period of repose bars a suit a fixed number of years after an action by the defendant . . . , even if this period ends before the plaintiff suffers any injury.") *But see Otto v. Variable Annuity Life Ins. Co.*, 816 F. Supp. 458, 461 n.3 (N.D. Ill.1992) ("[A] violation of § 10(b) and Rule 10b-5 is comprised not only of a misrepresentation or omission of material fact, but also includes the purchase or sale of any security.") (citations and quotations omitted). The Court finds persuasive the reasoning of those cases holding that the statute of repose commences when a defendant makes a misrepresentation or omission in connection with the sale or purchase of a security.

Under the three-year statute of repose, claims based on any misrepresentation or omission in connection with the sale or purchase of a security that occurred before July 30, 1999 expired before the Sarbanes-Oxley Act became effective on July 30, 2002. *See* 501 U.S. at 364. These claims expired regardless of the fact that plaintiffs allege they did not have inquiry notice as to these claims until much later. *See Neal v. Honeywell, Inc.*, 33 F.3d 860, 865 (7th Cir. 1994) ("The statute of repose for a federal securities claim may expire before the plaintiff discovers the fraud."), *abrogated on other grounds*, *Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 125 S.Ct. 2444, 2449 (2005); *see also Lampf*, 501 U.S. at 363 (stating that tolling principles do not apply to the three-year statute of repose). Accordingly, the Court grants defendants' motion.

CONCLUSION

For the reasons set forth above, the Court grants defendants' motion for judgment on the pleadings [doc. no. 243-1] which seeks to dismiss part of the Amended Consolidated Class Action Complaint. The Court dismisses with prejudice the § 10(b) claims based on any misrepresentation or omission that occurred before July 30, 1999 in connection with the sale or purchase of a security.

SO ORDERED

ENTERED: 2/28/2006

Ronald A. Guzman

HON. RONALD A. GUZMAN
United States Judge

Exhibit 7

7/18/06
7/18/06
7/18/06

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

LEAD PLAINTIFFS' RESPONSE TO THE HOUSEHOLD DEFENDANTS' MOTION TO COMPEL RESPONSES TO HOUSEHOLD DEFENDANTS' SECOND SET OF INTERROGATORIES

REDACTED VERSION

I. INTRODUCTION

By their motion, defendants seek responses to premature contention interrogatories as well as supplemental responses to interrogatories that lead plaintiffs have already sufficiently answered.

With respect to the contention interrogatories (Nos. 17 and 25-37), defendants have made no showing that immediate responses are justified and instead invoke "the rule of goose versus gander" to support this contention. However, the parties are not in the same position. Defendants have unfettered access and control over the relevant documents and witnesses, while lead plaintiffs' access is limited. Discovery is ongoing, and forcing lead plaintiffs to respond is inefficient as it would only result in multiple revisions as depositions and document production continues. It is for this very reason that courts generally defer responses to contention interrogatories until the end of discovery. November 10, 2005 Order at 4. Because defendants have provided no valid justification for compelling early responses to contention interrogatories, their motion should be denied.

With respect to Interrogatory Nos. 19-24, lead plaintiffs provided adequate responses, particularly given defendants' refusal to clarify them in any way. Lead plaintiffs fully responded by identifying the Household International, Inc. ("Household" or the "Company") lending practices that underlie defendants' fraud. Now, in their motion to compel defendants interpret these vague interrogatories in a manner that they expressly rejected during the parties' meet and confer. The interrogatories do not support this new interpretation. Defendants' gamesmanship should not be rewarded, and their motion should be denied.

II. RELEVANT PROCEDURAL HISTORY

Defendants served the [Fourth] Set of Interrogatories on February 13, 2006 (according to defendants, this is the Second Set; however, this ignores the first two sets which included ten interrogatories. The numbering sequence used in lead plaintiffs' responses and this motion includes the ten interrogatories served on lead plaintiffs on July 30, 2004). On March 15, 2006, lead plaintiffs discussed, the Interrogatory No. 19 is impermissibly compound and lead plaintiffs would have been justified in refusing to respond to either of the questions posed.

More importantly, lead plaintiffs' response provides the necessary guidance as to the activities at issue in this case. Indeed, lead plaintiffs have already provided exactly what defendants purport to seek, the identity of the "conduct [defendants] allegedly lied about to investors."[10] Defs' Mem. at 9. A stand-alone definition of illegal predatory lending would do nothing to further illuminate this issue. This is because, as defendants are aware, predatory lending, like fraud, is a term not susceptible to the concise, inflexible definition that defendants seek to extract from lead plaintiffs. Indeed, defendants themselves have steadfastly refused to provide a definition for the term. In response to lead plaintiffs' interrogatory seeking Household's definition of predatory lending, defendants responded: "the use of the term 'predatory lending' by persons at Household during the Class Period depended on the context. ***A 'predatory' loan is not a legally uniformly defined term and does not have a commonly recognized definition.***" Ex. D at 77-78 (emphasis added). Company witnesses have similarly been unable to define predatory lending. For example, when Carin Rodemoyer,

REDACTED

Thus, despite having constantly assured the market that Household did not engage in predatory practices, defendants have refused to attach a definition to the term.

---

[10] Even before plaintiffs responded to Interrogatory 19, defendants' complaint that lead plaintiffs have not been "specific about the alleged 'fraud' they allege [sic]" was soundly rejected by Judge Guzman. MTD Order at **24-25.

[11] REDACTED

Exhibit 8

EXHIBIT 8

FILED UNDER SEAL PURSUANT TO COURT ORDER

RESTRICTED DOCUMENT PURSUANT TO L.R 26.2

PURSUANT TO THE PROTECTIVE ORDER DATED NOVEMBER 5, 2004 AND THE MINUTE ORDER DATED OCTOBER 10, 2006

Exhibit 9

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

--oOo--

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated,

Plaintiffs,

vs. Lead Case No. 02-C-5893

HOUSEHOLD INTERNATIONAL, INC., et al.,

Defendants.

______________________________/

--oOo--

WEDNESDAY, FEBRUARY 13, 2008

--oOo--

VIDEOTAPED DEPOSITION OF

CATHERINE A. GHIGLIERI

--oOo--

Ref. No. 4690
Reported By: CAROL NYGARD DROBNY, CSR No. 4018
Registered Merit Reporter

74f3407c-9770-4132-9637-c2480ab01f67

Q. How does the regulated entity comply with the disclosure requirements?
Is it by disclosing the required information?
MR. BAKER: Objection. Compound.
THE WITNESS: Disclosing -- I'm sorry.
If you're asking me how a lender goes about complying with Reg Z, for example, there's certain documents they have to give the borrower that have to contain certain information, and the information has to be accurate.
So there are -- several issues. They don't just fill out the form and whatever they slap on there is okay for disclosure. It has to be accurate. So --
BY MR. KAVALER:
Q. But if they -- if they do the two things you mention, if they give them the required information and it is accurate, then they've conformed, complied with the disclosure requirement?
A. Depending on what the requirement is, but if that's all they have to do, then they would comply with it.
Q. Okay. So if they -- if they did that, for example, in that one limited instance you as a regulator would have no -- would have no criticism of them from the perspective of their compliance with that disclosure

based regime; correct?
A. For that particular law?
Q. Right.
A. I guess, I mean, if I'm following what you're saying.
Q. And in that case there's nothing else that they would have to do -- withdrawn.
I think you used the phrase "predatory" earlier in your testimony, one of your answers, "predatory lending."
Do you recall that?
A. No.
Q. Okay. Are you familiar with the phrase "predatory lending"?
A. Yes.
Q. What does "predatory lending" mean?
A. Well, the definition that -- that I've reached after looking at everything that was out there during the class period -- I'll give you the definition that I think covers what was generally known, and that is making a loan to a financially unsophisticated borrower, oftentimes not English-speaking, using deceptive or illegal sales practices and with deceptive or illegal loan terms, and I think that covers what generally was out there during the class period.

Q. Is that a definition that you personally created or did you go and look it up someplace?
A. I created it based on all the information that's out there.
Q. Okay. And when did you create it?
A. When I was thinking about this case in preparation for the deposition.
Q. So it's not a definition that you -- let's start with that you created back when you were a regulator?
A. No.
Q. And it's not a definition that you created for some other purpose prior to being engaged for this assignment in this case?
A. No. I -- I just said when I created it.
Q. Right.
I'm just trying to flesh out so I understand correctly what -- what the parameters of your testimony are.
It's not a definition you looked up someplace in a resource manual?
A. Well, there is no definition of "predatory lending" that -- any one definition, and I discussed that extensively in my report.
It's sort of like trying to come up with the

definition of "fraud."
As soon as you do, somebody will come up with a way to get around it.
So -- but I think what I -- my definition is a good characterization of the information that was out there during the class period.
Q. So, in other words, would you agree with me that you know predatory lending practices when you see them, but trying to come up with any definition is difficult?
A. Well, I think I've -- my report reflects that those were some of the quotes from some of the regulators.
Q. And do you agree with that?
A. It's like I think it was pornography, you know it when you see it. Several of them have said that.
Q. But my question to you is, do you agree with that?
A. That you know it when you see it?
Q. Do you agree that predatory lending practices, you know them when you see them, but trying to come up with a neat definition is difficult?
A. Well, I mean, I think that's a good characterization of why it's difficult to -- to put a box around it. You know, these 25 sales practices are

Exhibit 10

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN,)
on behalf of Itself and All)
Others Similarly Situated,)
Plaintiffs,)
vs.) No. 02 C 5893
HOUSEHOLD INTERNATIONAL, INC.,)
et al.,)
Defendants.) Volume No. 1

The videotape deposition of CRAIG A. STREEM, taken before Richard H. Dagdigian, Illinois CSR No. 084-000035, Notary Public, Cook County, Illinois, pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, at 311 South Wacker Drive, Suite 1800, Conference Room II, Chicago, Illinois, commencing at 9:07 a.m. on the 21st day of February 2007.

Page 2

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ALSO PRESENT:
MR. BRUCE WITTY, Legal Videographer;
MS. SUPARNA JAIN, Legal Assistant,
Lerach Coughlin Stoia Geller Rudman & Robbins.

Page 3

I N D E X

February 21, 2007

STREEM DEPOSITION EXHIBITS

Page 4

INDEX TO EXHIBITS(cont'd)

Page 209

Q Do you know if anyone from your group -- or do you recall anyone from your group editing or commenting on draft HSBC press releases?

MS. BEER: Luke, you are outside. I object to the line of questioning and the use of the document. You are well outside your class period and just wasting everybody's time with this.

MR. BROOKS: It's a good thing I'm done.

MS. BEER: You don't look to be done.

MR. BROOKS: With that document.

(Streem Deposition Exhibit No. 57 was marked as requested.)

MS. BEER: The same objection applies to the document you've just distributed which is dated March of 2003 and is well outside the class period. You are just wasting time.

BY MR. BROOKS:

Q Please take a look at Exhibit 57 which is HHS-E 0036568 through 0036569.0001 through .0002. It's a three-page document -- three-page exhibit.

A Okay.

Q Who was Michael Broadbent?

A I don't recall.

Page 210

Q Do you recall putting together this glossary of terms that's reflected on the page ending 69.0001?

MS. BEER: Objection to form; objection, lack of foundation; objection to the use of documents outside the class period.

A I don't recall that, no.

BY MR. BROOKS:

Q And do you recall who compiled this question and answer that's identified on the final page of the document?

MS. BEER: Objection, form; objection, lack of foundation; objection to questioning outside the class period.

A Excuse me, no, I don't.

MR. BROOKS:

(Streem Deposition Exhibit No. 58 was marked as requested.)

MS. BEER: So in response to my objection, you roll back the clock by three years.

MR. BROOKS: You see, sometimes it does pay off to ramble on through those objections.

BY MR. BROOKS:

Page 211

Q Exhibit 58 is HHS 03238041 through 8044. This is a distribution memo sent by you to senior management with an article attached, correct?

A It would appear to be, yes.

Q And do you recall the article that was from the St. Louis Post Dispatch?

A I do not.

Q There are two statements, a quote and a statement there on the page ending 043.

A Yes.

Q The first one is, "HFC spokesman Craig Streem said the loan was 'not a predatory loan by any definition'".

Do you recall providing that quote?

A I do not.

Q And do you know what loan you were referring to?

A I do not.

Q And the next statement attributed to you reads, "Streem says HFC never pressures people to buy credit life insurance".

Do you recall providing that information?

A I do not.

Q Do you have any information supporting the

Page 212

statement that "HFC never pressures people to buy credit life insurance" as it relates to the relevant time period?

MS. BEER: Do you mean did he take that information with him when he left the company?

Your question is asked in the present tense. That's why I'm questioning it.

I object to the form of the question. It's vague and ambiguous, incomprehensible.

BY MR. BROOKS:

Q You can answer.

A Could you repeat it.

Q Do you know whether during the relevant time period, HFC pressured people to buy credit life insurance?

MS. BEER: Objection. Are you asking for his opinion?

MR. BROOKS: I'm asking if he knows.

A I do not.

BY MR. BROOKS:

Q Okay. And do you deny providing these statements to the author of this article?

A I don't recall having done so.

Q Again, I don't think that's an answer to my

Exhibit 11

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN,)
on behalf of Itself and All)
Others Similarly Situated,)
Plaintiffs,)
vs.) No. 02 C 5893
HOUSEHOLD INTERNATIONAL, INC.,)
et al.,)
Defendants.)

The CONFIDENTIAL videotaped deposition of MEGAN E. HAYDEN-HAKES, taken before Richard H. Dagdigian, Illinois CSR No. 084-000035, Notary Public, Cook County, Illinois, pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, at Suite 300, 205 East Wisconsin Avenue, Milwaukee, Wisconsin commencing at 8:05 a.m. on the 18th day of August 2006.

Page 2

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ALSO PRESENT:
MR. DEAN MARIS, The Videographer;
MS. ABRA C. SIEGEL,
Senior Counsel, HSBC.

Page 3

INDEX

August 18, 2006

THE WITNESS	EXAMINATION BY COUNSEL FOR PLAINTIFFS	DEFENDANTS
MEGAN E. HAYDEN-HAKES (By Mr. Brooks)	3	

HAYDEN-HAKES DEPOSITION EXHIBITS

NUMBER	DESCRIPTION	PAGE
Exhibit 1	E-mail dated 1/9/03 from Megan Hayden to Craig Streem; Re: MBO's And attachments	28
Exhibit 2	Communication dated 5/2/00 from Edelman Public Relations to Household International; Re: Predatory Lending Strategic Recommendations	30
Exhibit 3	Document dated 8/29/00 titled "Predatory Lending Meeting" Re: Key Action Points	36
Exhibit 4	Communication dated 9/13/00 from Nick Kaim and Megan Hayden to Craig Streem; Re: Agreed Upon Predatory Lending Action Steps	42

Page 4

INDEX TO EXHIBITS(cont'd)

NUMBER	DESCRIPTION	PAGE
Exhibit 5	Document dated 10/9/00 titled "Minutes, Responsible Lending Committee"	45
Exhibit 6	E-mail dated 12/20/00 from Megan Hayden to Larry Bangs, and others; Re: New ACORN Posting	48
Exhibit 7	Communication dated 5/9/01 from Edelman Public Relations to Household; Re: Predatory Lending Public Relations Update	49
Exhibit 8	E-mail dated 5/14/01 from Megan Hayden To Gary Gilmer and others; Re: Talking Points for WSJ Meeting	64
Exhibit 9	Document titled "Insert Baby/Bathwater Graphic, with attachments	68
Exhibit 10	Multi-page document titled "General Q&A"	71
Exhibit 11	Document titled "Household International CAB Launch Meeting Agenda"	75

Page 101

A Yes.
Q What are those instances?
A A reporter by the name of Don Thompson at the Associated Press in Sacramento posted a wire story attributing a quote to me that I never said.
Q What was the quote?
A I don't recall.
Q What was the subject of the story?
A I don't remember.
Q Did it relate to predatory lending issues?
A I don't remember.
Q What happened as a result of your contacting Mr. Thompson and his editor?
A He issued an updated story.
Q Do you recall anything about the quote that you gave that was misquoted?
A I don't.
Q Would you have the same process for non-quoted statements that were attributed to you?
MR. OTTO: Objection to form.
A I'm sorry.
BY MR. BROOKS:
Q For example, if there was actual quotes in the article but it said the company spokesperson,

Page 102

Megan Hayden, said X, and actually it said Y, did you follow the same process -- well, did that ever happen?
A You know, I don't recall specifically.
Q Would the process have been any different had that happened -- the process for correcting the error?
A No, the process -- if there would have been anything inaccurate in the story, I would have called and asked for a correction.
Q It wasn't just for quotes, is that correct?
A That's correct.
Q And the only circumstance you can remember is this Don Thompson article, is that right?
A That I can completely remember, yes.
Q Do you have a hazy memory of anything else?
MR. OTTO: Objection.
A No, I don't recall.
BY MR. BROOKS:
Q Did it happen more than once while you were working at Household?
MR. OTTO: Objection.
A Did what happen more than once?
BY MR. BROOKS:

Page 103

Q Was there an inaccuracy in a story that was attributed to you -- an inaccurate statement in a story attributed to you?
A I don't remember.
Q And were there inaccurate facts attributed to you in a story more than once while you were working at Household?
A I don't remember.
Q Do you remember any of the specific types of information that the Rapid Response Team would provide to you on a regular basis?
A Yes.
Q What types of information?
A I recall that they would let me know whether all disclosures were signed properly.
Q Every single time?
A Yes.
Q Was there any other information that they would provide to you specifically every time?
A I don't remember.
Q Do you recall instances where all disclosures were not signed properly -- according to the Rapid Response Team?
A I don't recall such instances.

Page 104

Q Do you recall that in the fall of 2001, Household was sued by the California Department of Corporations?
A I don't recall the timing.
Q Do you recall that they were sued by the Department of Corporations?
A Yes.
Q What do you recall about that lawsuit?
A Specifically I don't recall the -- the details of the suit.
Q Do you recall any of the details of Household's response, media response to that lawsuit?
A Yes, I do.
Q What were those details?
A That the company was committed to responsible lending, was committed to partnering with all of its regulators to make sure that its compliance system was above board.
Q Do you recall that Household ultimately attributed overcharge fees to a computer error?
A I don't remember.
(Hayden-Hakes Deposition Exhibit 18 was marked as requested.)

Page 105

BY MR. BROOKS:
Q The court reporter has handed you Exhibit 18, which is a copy of an October 31st, 2001 article written by Don Thompson that was printed from Factiva(phon.sp.), and the headline of the article is, "California joins national backlash against 'predatory lending'"; and it says, "For weekend use November 3rd through 4th".
At the top of the second page of this document, there is a quote from you -- or a statement attributed to you, do you see that?
A Yes.
Q It says, "Megan Hayden denied the company engaged in predatory lending through its Beneficial and Household subsidiaries, even as she pointed to steps the company took this year to end some of its most criticized practices."
Do you see that?
A I do see that.
Q Do you recall talking to Don Thompson about the California Department of Corporations' suit?
A No, I don't remember talking to him.
Q Is this the article that you called to have corrected?

Page 106

A I don't remember.
Q How many times did you speak to Don Thompson during your time at Household?
A I don't know.
Q What is a lot?
A I don't know what "a lot" means.
Q Was it more than ten times?
A I don't think so.
Q Was it more than five times?
A I don't remember.
Q What was your basis for denying that the company engaged in predatory lending through its Beneficial and Household Finance subsidiaries?
A Well, I don't know that I ever specifically said what's attributed to me right here. I mean, I don't remember nor is it in quotes.
Q Do you have a reason to believe you didn't say this?
A No.
Q So as you sit here today, you have no information regarding your basis for this statement that's attributed to you?
MR. OTTO: Objection.
BY MR. BROOKS:

Page 107

Q This denial.
A I have no basis for believing this is true.
Q For supporting that denial that the company engaged in predatory lending through its Beneficial and Household Finance subsidiaries?
MR. OTTO: I object to the form.
A I -- I would have responded saying the company is committed to responsible lending. That would be my standard media response.
BY MR. BROOKS:
Q What I'm asking you is, do you have any specific facts, or are you aware of any specific facts supporting the statement that the company did not engage in predatory lending through its Beneficial and Household Finance subsidiaries?
A The facts, as I understood it, is the company had controls in place to insure responsible lending. I did not work in a branch.
Q How did you know about these controls?
A Because I was told about them.
Q Who told you?
A I don't know specifically.
Q What were the controls?
A Disclosures would be one that I would --

Page 108

that I would remember.
Q Any other controls in place that you are aware of?
A Specifically, no.
Q Do you recall identifying to Mr. Thompson steps the company took in 2001 to end some of its most criticized practices?
A I don't recall having that conversation.
Q Are you aware of any steps that Household took in 2001 to end some of its most criticized practices?
A I recall in 2001 the company issued what they called its best practices.
Q Did the company, through its best practices, eliminate some of its most criticized practices?
MR. OTTO: I object to the form.
A I believe it pledged to eliminate some practices.
BY MR. BROOKS:
Q Which practices?
A Selling single premium credit insurance.
Q Was that practice highly criticized, to your knowledge?

Exhibit 12

H

Only the Westlaw citation is currently available.

United States District Court, N.D. Illinois, Eastern Division.

In re NEOPHARM, INC. SECURITIES LITIGATION

No. 02 C 2976.

Feb. 7, 2003.

MEMORANDUM OPINION AND ORDER

LEFKOW, J.

***1** Lead plaintiff, Larson Capital Management, brings suit individually and on behalf of a putative class of persons who purchased common stock of defendant, NeoPharm, Inc. ("NeoPharm"), between the dates of October 31, 2001 and April 19, 2002, alleging that NeoPharm, John N. Kapoor ("Kapoor"), James M. Huffey ("Huffey"), and Inram Ahmad ("Ahmad") (collectively "defendants"), violated § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated under 78j(b), by knowingly and/or recklessly making false and misleading statements to plaintiff and others similarly situated regarding NeoPharm's experimental drug Liposome Encapsulated Paclitaxel ("LEP"). Plaintiff [FN1] also maintains that Kappor, Huffey and Ahmad violated § 20(a) of the Securities Exchange Act of 1934, 18 U.S.C. § 78t(a). Defendants have moved to dismiss the Consolidated Amended Class Action Complaint ("Complaint") under Rule 12(b)(6), Fed.R.Civ.P., for failure to state a claim upon which relief can be granted; Rule 9(b), Fed.R.Civ.P., for failure to plead fraud with particularity; and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(b) ("PSLRA"). For the reasons set forth below, the courts grants the motion in part and denies it in part.

> FN1. The word "plaintiff" refers to the lead plaintiff and the putative class.

MOTION TO DISMISS STANDARDS

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) challenges the sufficiency of the complaint for failure to state a claim upon which relief may be granted. *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1080 (7th Cir.1997). Dismissal is appropriate only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of its claim that would entitle it to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Kennedy v. Nat'l Juvenile Det. Ass'n*, 187 F.3d 690, 695 (7th Cir.1999). In ruling on the motion, the court accepts as true all well pleaded facts alleged in the complaint, and it draws all reasonable inferences from those facts in favor of the plaintiff. *Jackson v. E.J Brach Corp.*, 176 F.3d 971, 977 (7th Cir.1999); *Zemke v. City of Chicago*, 100 F.3d 511, 513 (7th Cir.1996).

In addition to the mandates of Rule 12(b)(6), Federal Rule of Civil Procedure9(b) requires "all averments of fraud" to be "stated with particularity," although "[m]alice, intent, knowledge, and other condition of mind of a person may be averred generally.""The rule requires the plaintiff to state the identity of the person who made the misrepresentation, the time, place, and content of the misrepresentation, and the method by which the misrepresentation was communicated to the plaintiff." *Vicom, Inc. v. Harbridge Merch. Servs., Inc.*, 20 F.3d 771, 777 (7th Cir.1994); *see also DiLeo v. Ernst & Young*, 901 F.2d 624, 627 (7th Cir.1990) ("Although states of mind may be pleaded generally [under Rule 9(b)], the 'circumstances' must be pleaded in detail. This means the who, what, when, where, and how: the first paragraph of any newspaper story.")." 'Because only a fraction of financial deteriorations reflects fraud,'... plaintiffs in securities cases must provide enough information about the underlying facts to distinguish their claims from those of disgruntled investors." *Arazie v. Mullane*, 2 F.3d 1456, 1458 (7th Cir.1993), quoting in part

DiLeo, 901 F.2d at 628.

***2** Further, in addition to Rule 9(b), the PSLRA imposes "heightened pleading requirements" to discourage claims of "so-called 'fraud by hindsight." ' *In re Brightpoint, Inc. Sec. Litig.,* No. IP99-0870-C-H/G, 2001 WL 395752, at *3 (S.D. Ind. Mar. 29 2001).Section 78u-4(b) "requires a court to dismiss a complaint that fails to (1) identify each of the allegedly material, misleading statements, (2) state facts that provide a basis for allegations made on information and belief, or (3) state with particularity 'facts giving rise to a strong inference that the defendant acted with the required state of mind." ' *Id.* at *4.

MOTIONS TO STRIKE

Before examining the allegations of the complaint, the court will address plaintiff's motion to strike several exhibits that defendants filed with their motion to dismiss. Plaintiff moves to strike exhibits C, D, F, G, K, and N because these exhibits are not mentioned in plaintiff's Complaint, are not subject to judicial notice, and questions exist about the exhibits' authenticity and/or admissibility.[FN2] Exhibits F, G and N are transcripts of conference calls. The conference calls are mentioned in the Complaint, but the transcripts are not. Exhibits C and K are a press release and scientific study not mentioned in the Complaint. Exhibit D is a press release mentioned in the Complaint.

> FN2. In the alternative, plaintiff asks for a continuance to conduct discovery related to facts surrounding these exhibits. The court denies this motion.

A. Exhibits F, G, and N

Plaintiff argues that exhibits F, G and N cannot be considered on this motion because the transcripts are not subject to judicial notice and are not cited anywhere in the Complaint. Moreover, plaintiff asserts that accuracy issues exist regarding the transcripts, as it is unknown who transcribed the conference calls, what medium they were transcribed from and the source of the conference call recording. Plaintiff admits that it references the conference calls themselves in the Complaint, but argues that the transcripts of the conferences calls are not cited or referenced. Defendants argue that reference to the conference calls in the Complaint is sufficient and the court may consider the transcripts on this motion to dismiss.

In *Cooper v. Pickett,* 137 F.3d 616 (9th Cir.1998), the court considered whether conference call transcripts could be considered on a motion to dismiss. The court concluded,

In the complaint, plaintiffs make allegations about the conference calls, but do not expressly mention or refer to the transcripts, or even identify their existence. In fact, the transcripts themselves apparently did not exist at the time plaintiffs filed their complaint; they first appeared as exhibits to [defendants] motion to dismiss, and they are accompanied by a declaration describing their transcription from tapes. Further, plaintiffs disputed the authenticity and accuracy of the transcripts in the district court, and objected to their use; they repeat those objections here. The transcripts therefore cannot be considered in ruling on the motion to dismiss.

***3** *Id.* at 623; *see also, In re Scholastic Sec. Litig.,* No. 97 Civ. 2447(JFK), 1998 WL 560052, at *2 (S.D.N.Y. Sept. 1, 1998) ("The problem, however, is that the Complaint makes no reference to a transcript of this phone call or even identifies its existence."). The court agrees with the reasoning in *Cooper,* in that the transcripts are not within the allegations of the Complaint and thus must be disregarded on a motion to dismiss.

Moreover, the transcripts are not subject to judicial notice, as they are not "historical documents, documents contained in public record, [or] reports, decisions, and regulations of administrative bodies...." *Abrams v. Van Kampen Funds, Inc.,* No. 01

C 7538, 2002 WL 1160171, *2 (N.D.Ill. May 30, 2002). For these reasons, the court will not consider the transcripts when examining the motion to dismiss.

B. Exhibits C, D, and K

Exhibits C and K are both not explicitly mentioned in the Complaint, thus, the court will not consider either on the motion to dismiss. As for exhibit D, plaintiff argues that this October 30, 2001 abstract of LEP data for six patients with solid tumors entails autheticity issues, as the exhibit neither states when this study was presented in connection with a conference nor establishes that it was actually published on October 30, 2001. Defendants respond that the abstract is explicitly referred to in the Complaint. Because the abstract does appear to be explicitly referred to, the court will deny the motion to strike exhibit D.

ALLEGATIONS OF THE COMPLAINT

Plaintiff's Complaint alleges the following facts, which are taken as true for purposes of this motion: NeoPharm is a biopharmaceutical company engaged in the research, development, and commercialization of drugs for the treatment of various forms of cancer. Kapoor is NeoPharm's Chairman of the Board of Directors and the largest single shareholder, owning directly or indirectly more than 37% of NeoPharm's outstanding common stock. Hussey is NeoPharm's President, Chief Executive Officer, and Director. Ahmad is NecPharm's Vice President of Research and Development and Chief Scientific Officer._____________ Prior to the start of the class period, NeoPharm publicly represented that LEP was a potentially revolutionary method of administering the anti-cancer drug paclitaxel. Paclitaxel is marketed by Bristol-Myers Squibb Company under the trade name "Taxol®" and is used to treat a number of cancers, including breast, ovarian and lung cancer. Despite paclitaxel's wide use and its anti-tumor characteristics, its effectiveness has been limited both by side effects, such as nausea, vomiting, hair loss and nerve and muscle pain, and by a long infusion time. Because of the chemical characteristics of paclitaxel, it cannot be introduced into the body unless it is first formulated in a toxic mixture of castor oil and ethanol, which requires premedication of the patient. LEP delivery consists of encapsulating paclitaxel in a liposome.[FN3] NeoPharm represented that LEP does not require administration with castor oil and ethanol, thus reducing the need for premedication. NeoPharm also publicly stated that because LEP is purportedly stable, it is easy to store, prepare and administer.

FN3. Liposomes are "microscopic spheres composed of lipid (or fat) membranes."(Def. Mot to Dismiss. Ex. A. at 5.).

*4 On February 19, 1999, NeoPharm entered into a world wide collaborative relationship with Pharmacia to develop and commercialize two products, one of which was LEP (the "Pharmacia Agreement"). Under the Pharmacia Agreement, Pharmacia obtained exclusive rights to develop and market LEP throughout the world, and assumed responsibility for, and the costs associated with, the clinical development and regulatory filings for LEP.

LEP was NeoPharm's lead product in development and was the only NeoPharm compound to have entered Phase II clinical trials. The continuing success of LEP clinical trials was critical for NeoPharm because prior attempts by others to utilize a liposome as a drug delivery vehicle had failed, and many of NeoPharm's products in development were designed around this liposome encapsulation system.

A. Alleged False and/or Misleading Statements Prior to the Class Period.

On November 14, 2000, in a press release disseminated through *Business Wire,* NeoPharm announced its financial results for the quarter ended September 30, 2000. Commenting on the results, Hussey stated: "We also made significant progress in both our preclinical and clinical programs and have begun to expand our infrastructure to support our [LEP] development. We plan on placing a number of compounds in our liposomal system in the coming months."

Also on November 14, 2000, NeoPharm filed a Form 10-Q with the Securities and Exchange Commission ("SEC") for the quarter ended September 30, 2000. In the Form 10-Q, NeoPharm represented that the LEP technology could potentially overcome limitations of paclitaxel and that the Phase I/II clinical trial had been completed, with some degree of success. The Form 10-Q also noted that Pharmacia was initiating large scale multi-center, multinational Phase II/III clinical trials.

On March 29, 2001, in a press release disseminated through *Business Wire,* NeoPharm announced its results for the quarter and year ended December 31, 2000. Commenting on the results, Hussey stated: "The year 2000 was a breakthrough year for NeoPharm ... our partner, Pharmacia, initiated Phase II/III clinical trials for Liposome Encapsulated Paclitaxel ("LEP"), for which we received a $3 million milestone payment."On May 9, 2001, in a press release disseminated through *Business Wire,* NeoPharm "confirmed ... that the clinical development program for LEP is continuing in key oncology indications."

Plaintiff alleges that these statements, all before the class period, were still alive at the start of the Class Period. Plaintiff maintains that defendants did not correct these "positive" statements even though by October 31, 2001, defendants knew that the statements had become false and misleading. Plaintiff alleges that these statements were no longer true because NeoPharm was aware that: (1) Pharmacia was not studying the same LEP formulation, so that its study results would not be applicable to NeoPharm's LEP approval; (2) during the phase II testing of LEP, Pharmacia had failed to reproduce the required test article (i.e. the original NeoPharm phase I formulation), thereby undermining the validity of all clinical testing under the development date; (3) NeoPharm's reportedly successful prior phase I clinical trials of LEP were inapplicable to the current form of LEP as they related to a different formulation of LEP and not to the same LEP formulation being currently developed; (4) LEP as currently developed was not efficacious in reducing the size of tumors or halting growth; (5) NeoPharm had to scrap the current LEP formulation, which was not efficacious in reducing the size of tumors or halting their growth, in order to reformulate LEP in an effort to make it work properly; and (6) any reformulated LEP would need to undergo renewed Phase I clinical trials, such that the development status of LEP was now returned to preclinical levels and the prior proof of concept that LEP could pass phase I trials was no longer valid as to the current LEP.

B. Alleged False and/or Misleading Statements from October 31, 2001 to December 19, 2001.

***5** On October 31, 2001, defendants caused NeoPharm to issue a press release through *Business Wire* containing false and misleading statements regarding the purported success of LEP test results:

NeoPharm today announced that clinical data for liposome encapsulated paclitaxel (LEP) were presented at the AACR-NCI-EORTC meeting in Miami, Florida on Tuesday. In the study, LEP is administered weekly for six weeks using an intravenous infusion.... LEP is being developed by Pharmacia Corporation under a licensing agreement with NeoPharm.

"In the Pharmacia study involving weekly dosing of LEP, an extended terminal half-life was observed," said Imran Ahmad, Chief Scientific Officer of NeoPharm. "This is a significant improvement because more paclitaxel appears to [be] available to attack tumors over the six week administration schedule."

On December 19, 2001, UBS Warburg issued a report on NeoPharm after its analyst, Andrew Gitkin ("Gitkin"), had discussions with defendants, which was based on and repeated information defendants provided to Gitkin. This report initiated coverage of NeoPharm with a "Buy Rating," noting:

Our Buy ratings is based upon strong expected sales [of NeoPharm's] lead product, liposomal encapsulated paclitaxel (LEP), for the treatment of breast and non-small cell lung cancer (NSCLS). We expect the company's collaborative partner, Pharmacia, to commence Phase II/III trials for LEP in early 2002.

Also on December 19, 2001, FAC/Equities initiated coverage of NeoPharm with a "Buy Rating" based on the information defendants provided, including their pre-Class Period positive statements regarding now-inapplicable test results for LEP:

Neo-Pharm's most advanced product is liposome-encapsulated paclitaxel (LEP), a liposomal version of Taxol, a $1.6-billion anticancer drug. Pharmacia, the licensee, is testing LEP in Phase II studies. In Phase I/II, LEP showed antitumor activity, a prolonged half-life, but no peripheral neuropathy or muscle pain, and low rates of alopecia and nausea. By contrast, Taxol is associated with high rates of these side effects: neuropathy (60%), muscle pain (60%), alopecia (87%), and nausea and vomiting (52%). A pivotal Phase II/III trial in metastatic breast cancer is expected to start during the first half of 2002.

Plaintiff alleges that these statements were false or misleading because at the time these representations were made to the public, defendants knowingly or recklessly failed to disclose adverse material information which made these false and misleading representations. Plaintiff alleges that defendants failed to disclose that (1) Pharmacia's Phase II trials of LEP had failed to show any beneficial results as both NeoPharm and Pharmacia subsequently admitted at the end of the Class Period; (2) NeoPharm was well aware of the lack of success Pharmacia was having with LEP Phase II clinical trials, because those clinical trials had commenced at least by October 2000 and defendants were kept updated as to the results of those trials as required by the Pharmacia agreement; (3) defendants had repeatedly received quarterly reports from Pharmacia indicating that the Phase II clinical trials of LEP had been unsuccessful; (4) contrary to defendants' October 31, 2001 public statements that Pharmacia's test results showed LEP had an extended half-life that was a significant improvement because it meant more of the drug paclitaxel was available to attack tumors in patients, the test results had actually shown an alarmingly broad range for terminal half-life, from exceedingly low to extremely high values, actually representing a gross lack of uniformity in the amount of paclitaxel available to attack tumors in patients and, moreover, the wide range of terminal half-life data indicated that the LEP used in the study was unstable and needed reformulation; (5) the LEP test results which NeoPharm publicly referred to on October 31, 2001 indicated that ongoing LEP testing was contrary to FDA guidelines which stated that if the drug is either unstable or not reproducible, then the validity of any clinical testing would be undermined because one would not know what was really being used in patients, and, moreover, the studies could pose significant risks to participants; (6) the Phase II test results which defendants referred to on October 31, 2001 actually contradicted early Phase I studies of LEP, because the latter studies showed toxicity in patients at 90 and 120 dosage levels, where previous Phase I dose escalation studies reportedly showed no similar toxicities in patients below the 175 dosage level, which was a further indication that LEP as currently formulated and developed did not have the benefits defendants were ascribing to it, that LEP was failing the Phase II clinical trials, and that LEP was a substantially different formulation than that which had undergone prior Phase II testing, necessitating not only another reformulation in an effort to fix it, but also renewed Phase I trials of any reformulated materials; (7) because the current formulation of LEP was not efficacious in reducing the size of tumors or halting their growth, NeoPharm would need to scrap the current formulation and attempt to reformulate LEP in an effort to have it perform properly; (8) as with any new formulation of a potential new drug of which clinical efficacy is highly uncertain, the reformulated LEP would be required to undergo new Phase I dose escalation studies; and (9) NeoPharm would need to reinitiate Phase I clinical trials for any reformulated LEP, such that the current development status of LEP had returned to the earliest stage of clinical development and the prior proof of concept that LEP could pass Phase I trials was no longer applicable.

***6** Plaintiff also alleges that while in possession of the above publicly undisclosed inside information, defendant Hussey took advantage of his insider position and sold shares of NeoPharm at artificially inflated prices. Plaintiff alleges that Hussey improperly exercised options at $4.75 per share on November 13, 2001, and sold 71,000 shares at prices between $14.25 and $14.84 per share on November 13 and 14, 2001, for proceeds of approximately $1,033,000.

C. Alleged False and/or Misleading Statements From January 11, 2002 to February 11, 2002.

On January 11, 2002, after discussions with NeoPharm's senior management, stock analyst Gitkin of UBS Warburg issued an analyst report downgrading NeoPharm's stock from a buy to hold, explaining:

We are downgrading [NeoPharm] to a Hold from a Buy based on increasing concern regarding the timeline for Phase III development for the company's lead product LEP.

Recall that the Phase III program was expected to commence in 4Q01. We believe that the perceived delay in initiating a Phase III trial introduces some degree of uncertainty as to Pharmacia's ability to move forward with the product rapidly. Discussion with senior management did not serve to allay these concerns.

As a result, we believe that a Hold rating is most appropriate to reflect our increased concern. At present we prefer to take a wait and see approach until we gain further clarity into Pharmacia's development plans for the LEP. While we continue to believe that this product has a good likelihood of reaching the market, we are concerned that a delay in its time to market could adversely impact its market potential.

Two business days later, on January 15, 2002, defendants caused NeoPharm to issue through *Business Wire* a materially false and misleading press release that concealed both the serious nature of the problems they were having with LEP and their deteriorating relationship with Pharmacia, while downplaying the potential delays in LEP Phase III trials:

NeoPharm, Inc. announced today that it met with senior officials of Pharmacia on Monday, January 13, 2002 regarding the LEP (Liposomal Encapsulated Paclitaxel) development program. Following that meeting, Pharmacia officials expressed the following points to NeoPharm officials regarding the licensing agreement with NeoPharm:

1) Pharmacia remains fully committed to the development of LEP.

2) Pharmacia is interested in exploring the possibility of licensing other products in the NeoPharm portfolio.

Pharmacia, under a licensing agreement with NeoPharm, currently has all responsibility for development of LEP. As a result, NeoPharm is unable to confirm the clinical development timetable for LEP at this time.

On February 11, 2002, Hussey spoke at a conference in New York, where he again represented that LEP had shown successful results during clinical trials, including a lack of toxicity in test subjects.

Hussey also allegedly downplayed and concealed the true nature of the still publicly undisclosed problems delaying the start of LEP Phase III clinical trials, noting only that it could take 60 days to fix a change that Pharmacia had made in LEP and that NeoPharm was working on this issue.

***7** Plaintiff alleges that these statements were false and misleading because they failed to disclose the true conditions regarding both the status of LEP development and the on-going dispute with Pharmacia over who was responsible for the failure of the LEP development project, including (1) defendants were concealing that Phase II testing of LEP had been a failure and had shown no medical benefits, which testing indicated that the then-current formulation of LEP was not a successful or useful product that could or would be brought to the market; (2) modifications made to LEP were such that new Phase I trials were necessary, thereby not only delaying the start of Phase III clinical trials but setting the entire project back to square one with additional and substantial risk and uncertainty that LEP would never be reformulated in a way that would pass Phase I trial, much less be able to proceed to Phase III trials; (3) before LEP could even begin the necessary new Phase I trials it needed to be substantially reformed for it to have a chance of being a successful medical compound, such that the then-current LEP was at least two generations removed from the LEP that had shown success in the prior Phase I trials, and defendants were essentially back to the drawing board in an effort to create an LEP product that could successfully complete even a Phase I trial; (4) NeoPharm's relationship with Pharmacia had deteriorated so that NeoPharm was evaluating whether to take legal action against Pharmacia in connection with their licensing agreement for the development of LEP; and (5) NeoPharm was in the process of taking LEP back from Pharmacia in an effort to reformulate the compound in a way that might make it efficacious, and, therefore, contrary to their public statements, defendants did not control the timeline for LEP development.

D. Alleged False and/or Misleading Statements From March 18, 2002 to April 11, 2002.

On March 18, 2002, NeoPharm issued another press release reiterating that LEP was currently in development at Pharmacia, and that good results from Phase I testing of LEP were recently presented at an oncology meeting in Florida. Also on March 18, 2002, NeoPharm held an analysts teleconference where NeoPharm representatives reported to investors that they were working with Pharmacia to expand the number and type of drugs that Pharmacia was licensed to develop for NeoPharm.

On March 21, 2002, UBS Warburg issued an analyst report, based on information provided by the defendants, reflecting that the market was cautiously optimistic about the status of the LEP clinical trials based upon both what NeoPharm was saying, as well as upon what it was not saying:

Although there was no news in regards to the timing of Phase III trials for LEP, the company's lead product that is being developed by Pharmacia, we continue [to] expect to gain further clarity on this issue by mid-2002. Such clarity could be a potential catalyst for the stock as it would provide insight as to when the product could be commercialized.

***8** Moreover, on April 11, 2002, NeoPharm filed its Form 10-K for the year ending December 31, 2001 with the SEC, which was signed by defendants Kapoor and Hussey on April 10, 2002, and which contained materially false and misleading statements regarding the purported success of clinical testing of LEP.

Plaintiff alleges that these statements were false and/or misleading because defendants failed to disclose (1) that Pharmacia had changed the formulation of LEP in a manner not acceptable to NeoPharm; (2) that Phase I trials were inapplicable to the current LEP formulation; (3) that NeoPharm was considering pursuing legal action against Pharmacia over who was responsible for the failed LEP clinical trials; (4) and that defendants knew the reported results of prior preclinical trials had no applicability to LEP because of Pharmacia reformulation.

E. Alleged False and/or Misleading Statements At the End of the Class Period

On April 19, 2002, NeoPharm issued a press release acknowledging the nature of the problems NeoPharm was having with clinical trials of LEP, with the development of LEP and with Pharmacia's conduct in connection with LEP, such that NeoPharm was pursuing legal action against Pharmacia over these issues. Moreover, defendants also admitted that they had been aware of these problems for months.

On April 22, 2002, defendants held an analysts teleconference where they responded to questions regarding their prior surprise announcement that NeoPharm was arbitrating its dispute with Pharmacia over LEP development. During this teleconference, defendants acknowledged that LEP was defective, that it needed to be reformulated and that at least three months earlier NeoPharm had taken LEP back into its own laboratory in an effort to reformulate it. Hussey also admitted at this teleconference that the months-long effort to reformulate and fix LEP would also necessitate renewed preclinical trials of any new LEP compound.

On April 23, 2002, NeoPharm issued another press release in which it confirmed that the Phase II clinical trials of LEP were not successful and that LEP's failure to properly perform was the topic of months-long discussions with Pharmacia. This press release also acknowledged that as currently formulated, the defective LEP was substantially different from the LEP that had been licensed to Pharmacia, such that it was in need for significant reformulation.

Plaintiff alleges that these statements illustrate that defendants' prior public statements were false and misleading because defendants failed to disclose (1) that LEP had been substantially reformulated as a result of Pharmacia's development work so that it was no longer the same compound that had been licensed to Pharmacia or the same compound that had passed earlier Phase I clinical trials; (2) that clinical testing of the current LEP formulation showed no medical benefits; (3) that LEP would need further development and reformulation if it was ever to work properly; and (4) that any newly formulated LEP would require additional Phase I testing, thereby essentially returning the entire LEP development project back to square one.

DISCUSSION

***9** Section 10(b) of the Securities Exchange Act of 1934 provides,

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange ... [t]o use or employ, in connection with the purchase or sale of any security ... [,] any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange] Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Pursuant to this section, the SEC promulgated Rule 10b-5, which makes it unlawful for any person
(a) To employ any device, scheme, or artifice to defraud, (b) [t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or (c) [t]o engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5.

To establish liability under section 10(b) and Rule

10b-5, a plaintiff must prove that "(1) the defendant made a false statement or omission (2) of material fact (3) with scienter (4) in connection with the purchase or sale of securities (5) upon which the plaintiff justifiably relied (6) and that the false statement proximately caused the plaintiff's damages." *Caremark, Inc. v. Coram HealthCare Corp.*, 113 F.3d 645, 648 (7th Cir.1997); *Searls v. Glasser,* 64 F.3d 1061, 1066-67 (1995). In their motion to dismiss, defendants argue that (a) there is no duty to update statements made before the Class Period; (b) plaintiff has failed to properly plead the existence of a materially false statement or omission with respect to the statements made during the Class Period; (c) plaintiff has not pled particularized facts giving rise to a strong inference of scienter; (d) plaintiff has failed to properly plead each individual defendants' liability; and (e) plaintiff has failed to plead control person liability under § 20(a).

A. Statements Prior to the Class Period

Defendants maintain that any statements made before the Class Period are not actionable, as NeoPharm has no duty to update statements that had previously been made. *See* *In re Silicon Graphics, Inc. Sec. Litig.*, 970 F.Supp. 746, 759 (N.D.Calif.1997) ("[O]nly statements made after the alleged fraud began-that is, during the class period-are actionable."). The Seventh Circuit has defined two types of duties in situations of this nature: the duty to correct a statement and the duty to update a statement. "The former applies when a company makes a historical statement that, at the time made, the company believed to be true, but as revealed by subsequently discovered information actually was not." *Anderson v. Abbott Labs.*, 140 F.Supp.2d 894, 904 (N.D.Ill.2001), citing *Stransky v. Cummins Engine Co.*, 51 F.3d 1329, 1331 (7th Cir.1995). A duty to update arises when "a company makes a forward looking statement-a projection-that because of subsequent events becomes untrue."*Id.*, citing *Stransky*, 51 F.3d at 1332. The Seventh Circuit recognizes the duty to correct, but has rejected the duty to update. *Stransky*, 51 F.3d at 1331-32;*see also,* *In re HealthCare Compare Corp. Sec. Liting.*, 75 F.3d 276, 282 (7th Cir.1996); *Anderson*, 140 F.Supp.2d at 904; *Fry v. UAL Corp.*, 895 F.Supp. 1018, 1046 n. 26 (N.D.Ill.1995).

***10** NeoPharm's pre-Class Period statements fall into the duty to update category and are not actionable. Nothing subsequent to the pre-Class period statements illustrates that the statements were false when they were made. Instead, these statements are more closely aligned with forward-looking projections that, because of subsequent events, latter became untrue. Moreover, plaintiff, in the Complaint, alleges these pre-class statements "were no longer true" because of a series of events that happened during the class period. No allegation is made that these subsequent events rendered these statements untrue when made. As such, NeoPharm had no duty to correct these statements and claims based on these statements are dismissed.

B. False Statements or Omissions of Material Fact

Defendants argue that plaintiff has failed to properly plead the existence of materially false statements necessary for a suit under Section 10(b) or Rule 10b-5. A material misrepresentation is found where a defendant "either made a false statement of material fact or failed to make a statement of material fact thereby rendering the statements which were in fact made misleading." *Searls*, 64 F.3d at 1065. A statement is material if it would be viewed by "a reasonable investor as significantly altering the total mix of available informat on." *In re Newell Rubbermaid Inc. Sec. Litig.*, No. 99 C 6853, 2000 WL 1705279, at *14 (N.D.Ill. Nov. 14, 2000), citing *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) and *Parnes v. Gateway 2000, Inc.*, 122 F.3d 539, 546 (8th Cir.1998). Furthermore, the heightened pleading standard imposed under the PSLRA requires that a plaintiff "specify" the reasons a defendant's statement is false. 15 U.S.C. § 78u-4(b)(1)(B).

Defendants point to nine separate sets of statements as not adequately pled as false and misleading: (1) October 31 Press Release; (2) FAC Equities analyst report; (3) WBS Warburg Report; (4) January 11, 2002 analyst report (5) January 15, 2002 press release (6) February 11, 2002 investor conference; (7) March 18 press release; (8) March 21 analyst report and (9) Forum 10-K (Fiscal Year 2001). The court will break these statements into two categories: those taking place before January 15, 2002 and those after that date.

1. Pre-January 15, 2002 statements

Prior to January 15, plaintiff attributes three separate statements to one or more defendants: (1) the October 31 press release; (2) the December 21, 2001 WBS Warburg report; (3) the December 19, 2001 FAC/Equities report. Defendants argue that plaintiff has not adequately pled why each of these statements is false as they are required under the PSLRA. Plaintiff responds that the allegations are not that these statements are untrue but they are materially misleading. Specifically, plaintiff alleges that defendants had knowledge when all of the above statements were made that LEP had failed to show clinical benefits in recent testing and would need to be reformulated, that changes had been made to LEP which rendered any prior clinical test results inapplicable and necessitated renewed pre-clinical testing, and that defendants were embroiled in dispute with Pharmacia regarding the development of LEP.

***11** While "[m]ere silence about even material information is not fraudulent absent a duty to speak," *Stransky,* 51 F.3d at 1331, plaintiff alleges that defendants' silence about the Phase II trials violated a duty to disclose because defendants made public statements relating to the Phase I trials. Putting aside the issue of scienter for the moment, if NeoPharm had knowledge that the Phase II trials were failing to such a great degree that the Phase I results would be affected, and that they were, for practical matters, back to the drawing board with respect to LEP development, then the pre-January 12 statements may very well have been misleading to investors. *E.g., In re Westell Techs., Inc., Sec. Litig.,* No. 00 C 6735, 2001 WL 1313785, at *8 (N.D.Ill. Oct. 26, 2001) (concluding that if defendants knew that sales to a top buyer were to drop precipitously, it was reasonable to infer that the optimism of the defendant with respect to statements made regarding that buyer were misleading).

"[T]he disclosure required by the securities law is measured not by literal truth, but by the ability of the material to accurately inform rather than mislead prospective buyers." *Lindelow v. Hill,* No. 00 C 3727, 2001 WL 830956, at *3 (N.D.Ill. July 20, 2001). While the statements defendants' made may technically have been correct, if the allegations plaintiff makes are true-that defendants were aware of the problems with LEP when these statements were made-a reasonable jury could find them misleading.

With respect to the October 31 statement, defendants argue that this statement is technically correct, insofar as it refers to Phase I studies which actually did have the results listed. As mentioned above, however, while this statement may have been technically correct, plaintiff argues that it is misleading because defendants had knowledge that the Phase II tests were a failure at this point. If defendants knew that the Phase II tests had failed when they were touting the performance of the Phase I tests, a finder of fact could find the statements materially false.

Defendants, however, contend that plaintiff has not sufficiently pled that defendants had knowledge of the Phase II trials when the October 31 statement was made. The courts disagrees, as plaintiff has sufficiently pled enough facts illustrating strong circumstantial evidence that defendants knew the results of the Phase II trials at the beginning of the Class Period. The Complaint alleges that the Phase II testing had been underway since at least November 2000. Moreover, throughout the year of Phase II testing that occurred before the Class Period, Pharmacia was required to keep NeoPharm updated with "sufficient information so as to allow NeoPharm to be adequately informed as to the strategic development" of LEP. Additionally, this information as to whether NeoPharm was aware of the Phase II test results at the beginning of the Class Period was likely only in the control of the defendants, and plaintiff has pled sufficient facts to illustrate an inference that defendants were aware. *In re Newell Rubbermaid*, 2000 WL 1705279, at *14 ("It is well established in this Circuit that a party may be excused from Rule 9(b)'s requirement of pleading with particularity if the information that he is required to plead rests exclusively within the defendants' control or is otherwise unavailable to him."). As such, plaintiff has properly pled that the October 31 press release was misleading.

***12** While the same general analysis would apply to the December 19 Warburg report and FAC/Equities report, the court sees other problems that defendants have appropriately raised with these reports. Since these reports are analyst reports, plaintiff must plead specific facts demonstrating that defendants "adopted the statements or were entangled with them,"*e.g., In re Cypress Semiconductor Sec. Litig.*, 891 F.Supp. 1369, 1377 (N.D.Cal.1995), *Westell*, 2001 WL 1313785, at *2, *4 (reports both acknowledged discussion with "the Company's management" or discussions with "Westell's management"), or "have put their imprimatur, express or implied, on the projections." *In re Syntex Corp. Sec. Litig.*, 95 F.3d 922, 934 (9th Cir.1995). An examination of the statements provides no insight as to how the defendants were involved, entangled or otherwise placed their imprimatur on these statements. The only allegations in the Complaint are that these reports were based on information that defendant had provided to both Gitkin, who authored the UBS Warburg report, and FAC/Equities. These conclusional allegations that defendants provided the information, with no further facts, are insufficient under the heightened pleading standard. Instead, plaintiff needs facts illustrating that defendants provided the basis for the information. *Cf. Westell*, 2001 WL 1313785, at *2 (stock analyst expressly noted that after conversations with "the Company's Management," he had learned about a new supply order). As such, the court concludes that any claims based on these analyst reports prior to January 12 should be dismissed without prejudice.

2. Post-January 11, 2002 statements

Plaintiff attributes six statements to defendants on or after January 11, 2002:(1) a January 11, 2002 analyst report; (2) a January 15 NeoPharm press release; (3) statements made at a February 11, 2002 investor conference; (4) a March 18 press release; (5) a March 21 analyst report; and (6) a Forum 10-K filed with the SEC for the year ending December 21, 2001. Defendants attempt to persuade the court that these statements should be treated differently based on this court's opinion in *Westell*, 2001 WL 1313785. Defendants argue that on January 11, investors were warned that a potential delay in Phase III clinical trials of LEP possibly could exist, as a report issued by UBS Warburg stated that NeoPharm was downgraded from a buy to a hold because of "increasing concern regarding the timeline for Phase III development for the company's lead product LEP."

Moreover, defendants point out that on February 11, 2002, Hussey spoke at a conference where he stated:

We're meeting hopefully shortly with Pharmacia to talk about the new timing. We are assisting them. They had made a change in the product which they had felt was not a big deal. It ended up being for them a big deal. They have brought us in now to fix it. We're hopeful we'll be able to fix that in a rapid fashion and I think in the next 60 days we'll have a better idea of timing.

***13** The basis for defendants' argument is that a reasonable investor who relied before January 12 on defendants representations concerning LEP should have understood that the January 12 and

February 11 disclosures were ominous news. *See Westell,* 2001 WL 1313785, at *8;*see also, Zoghlin v. Renaissance WorldWide, Inc.*, No. 99 C 1965, 1999 WL 1004624, at *8 (N.D.Ill. Nov. 4, 1999) ("Sophisticated investors, such as [plaintiff], are expected to 'understand the limits of a projection.'In short, *'caveat emptor'* applies equally, if not more, in the securities market."[citation omitted.]). Plaintiff, however, alleges that despite any disclosures, defendants fraudulently downplayed the significance of the LEP delay by not disclosing the serious extent and nature of the problems plaguing LEP. The court agrees with plaintiff, as the facts here are distinguishable from *Westell.*In *Westell,* the defendants disclosed the ominous news but attempted to downplay its significance in the form of comfort statements assuring investors. This court concluded that "[c]omfort statements made in reaction to acknowledged problems are cold comfort which a reasonable investor would assess skeptically." *Westell,* 2001 WL 1313785, at *8. Moreover, in *Westell,* the problems defendants were having were "public knowledge and, therefore, part of the total mix of information available to the investor who wished to assess the effect on Westell."*Id.* The same cannot be said here, as plaintiffs allege that the full extent of the problems with LEP was known by defendants but were not public knowledge and the failure to disclose the news regarding Phase II testing when discussing LEP was materially misleading. The court agrees, as a reasonable trier of fact could find that the news defendants allegedly withheld was misleading and that the extent of the public knowledge at the time was not sufficient to give a reasonable investor notice of the problems with any testing For these reasons, the court rejects defendants' argument that claims based on these post-January 11 statements should be dismissed because of any publicly available information.

Having found generally that the allegations concerning the statements after January 11 are sufficient based on what information was publicly disclosed, the court next considers whether these statements are adequately pled as false or misleading. Using the same general analysis applied above, it concludes that the post-January 11 statements are adequately pled because plaintiff alleges in press releases and investor conferences NeoPharm did not fully inform investors as to the problems in its LEP formulation. Although NeoPharm did make statements saying that any timetable was delayed, plaintiff alleges that more was known and was not told. As with the pre-January 11 statements, if defendants were aware of the problems with LEP and failed to disclose them when discussing LEP, a reasonable trier of fact may find that the statements were misleading.[FN4] As such, the statements after January 11 are properly pled as misleading and will not be dismissed on this motion.

FN4. The January 11 Warburg report is an analyst report, but contrary to the flaw the court found in the analyst reports prior to January 11, this analyst report specifically mentions discussions with senior management. Moreover, the court concludes that a reasonable trier of fact could find it sufficiently misleading as the report states uncertainty as to the Phase III development, which concerns were not allayed by discussions with NeoPharm's senior management. If NeoPharm had knowledge of the problems with the development of LEP development but did not come forth with such information, the statement may be found to be false or misleading. With respect to the March 21 analyst report, it gives no basis for how defendants were entangled with the statements. It is, therefore, dismissed without prejudice.

C. Scienter

***14** "Scienter 'may be established either (a) by alleging facts to show that defendants had both motive and opportunity to commit fraud, or (b) by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness." *Westell,* 2001 WL 1313785, at *10, quoting *Rehm v. Eagle Fin. Corp.,* 954 F.Supp. 1246, 1253 (N.D.Ill.1997), citing *Shields v. Citytrust Bancorp, Inc.,* 25 F.3d 1124, 1128 (2d Cir.1994)."Reckless conduct is, at the least, conduct which is highly unreasonable and which represents an extreme departure from the standards of ordinary care ... to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it." *Rehm,* 954 F.Supp. at 1255, citing *Rolf v. Blyth, Eastman Dillon & Co.,* 570 F.2d 38, 47 (2d Cir.1978).

Plaintiff relies on part (b) of the above scienter test, arguing that the allegations "clearly demonstrate that defendants made their false statements while in possession of non-public information that directly contradicted their statements, thereby showing they knew, or were grossly reckless in not knowing, that their public statements were false and misleading at the time they were made."(Pl. Resp. at 3-4.) *See, e.g., Aldridge v. A.T. Cross Corp.,* 284 F.3d 72, 83 (1st Cir.2002) ("However, the fact that the defendants published statements when they knew facts suggesting the statements were inaccurate or misleadingly incomplete is classic evidence of scienter."); *Florida State Bd. of Admin. v. Green Tree Fin. Corp.,* 270 F.3d 645, 665 (8th Cir.2001); *Novak v. Kasaks,* 216 F.3d 300, 308 (2d Cir.2000).

Defendants, not disputing that knowingly publishing inaccurate or misleading statements may suffice for scienter, instead argue that the plaintiff has not pled particularized facts demonstrating that defendants knew and concealed the results of Pharmacia's Phase II trials. According to defendants, plaintiff does not allege when Pharmacia completed any Phase II studies or specify when Pharmacia informed NeoPharm about the status, completion or analysis of any Phase II studies. As mentioned above, however, the court believes that plaintiff has sufficiently pled facts illustrating strong circumstantial evidence that defendants knew the results of the Phase II testing at the beginning of the Class Period. As such, the court concludes that plaintiff has pled enough to show scienter for purposes of this motion.

D. Individual Defendants' Liability

Plaintiff contends that all the individual defendants' are liable for the false public statements alleged in the Complaint under the group pleading doctrine. The group pleading doctrine allows plaintiffs "to rely on the presumption that certain statements of a company, such as financial reports, prospectuses, registration statements, and press releases, are the collective work of those high-level individuals with direct involvement in the everyday business of the company." *Sutton v. Bernard,* No. 00 C 6676, 2001 WL 897593, at *5 n. 5 (N.D.Ill. Aug. 9, 2001). Without question NeoPharm issued press releases and financial reports during the Class Period. The issue, however, is whether the group pleading doctrine has survived the PSLRA. The Seventh Circuit has yet to rule on this issue and the courts in this district have been split.*Compare Danis v. USN Communications,* Inc., 73 F.Supp.2d 923, 936-39 (N.D.Ill.1999) with *Chu v. Sabratek Corp.,* 100 F.Supp.2d 827, 835-37 (N.D.Ill.2000).

***15** In *Westell,* this court sided with Judge Shadur's opinion in *Dardick v. Zimmerman,* 149 F.Supp.2d 986, 987 (N.D.Ill.2001), where the court found the "proper course" is to examine each individual's liability based on each "defendant's own conduct (or, where applicable, on respondeat superior principles)."*Id.*Plaintiff alleges that all of the defendants had knowledge of the failures of the LEP development and what was to be published in the press releases and public reports. Furthermore, plaintiff alleges that defendants participated in a continuous course of conduct to misrepresent the results of NeoPharm's operations. The court believes this sufficient pleading as to each defendants' liability. It alleges that each defendant was aware of the information, had the opportunity to prevent the issuance of such information but did not so, and that NeoPharm's operations contained materially false information. As such, each defendants individual liability is sufficiently pled.[FN5]

FN5. Defendants also argue that the only "group published" document was the Form 10-K filed in April 2002, which Ahmad did not sign. This ignores, however, the press releases from October 31 (which, while containing statements from Huffey, was a press release by NeoPharm), January 15 and March 18. Moreover, defendants argue that because Kapoor was an outside director, plaintiff is required to allege that the director participated in the day-to-day corporate activities or had a special relationship with the corporation. *In re GlenFed, Inc. Sec. Litig.,* 60 F.3d 591, 593 (9th Cir.1995); *Polar Int'l Brokerage Corp. v. Reeve,* 108 F.Supp.2d 225, 237-31. (S.D.N.Y.2000) ("the group pleading doctrine is extremely limited in scope. Courts in the Second Circuit and else where have construed the doctrine as applying only to clearly cognizable corporate insiders with active daily roles in the relevant companies or transactions."); *In re The Baan Co. Sec. Litig.,* 103 F.Supp.2d 1, 18 (D.D.C.2000) ("An outside director is not necessarily involved in the day-to-day business of running a company."). Plaintiff's Complaint does not allege facts showing that Kapoor participated in the day-to-day activities or otherwise involved himself with the publishing of the group documents. Thus, the court will dismiss the claims against Kapoor without prejudice.

E. Control Person Liability Under Section 20(a)

Section 20(a) of the Securities Exchange Act of 1934 states:

Every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

15 U.S.C. § 78t(a).

Section 20(a) control person liability attaches if a defendant "exercised control over the operations of the person in general and ... possessed the power or ability to control the specific transaction or activity upon which the primary violation was predicated, whether or not that power was exercised." *Harrison v. Dean Witter Reynolds, Inc.,* 974 F.2d 873 881 (7th Cir.1992); *see also, Lindelow,* 2001 WL 830956, at *9 (holding that individual defendants were subject to "control person" liability because "of their status as top-ranking off cials whose high level positions necessarily involve general oversight and direction."). Defendants only argue that § 20(a) liability is inappropriate because plaintiff has failed to adequately plead the underlying § 10(b) claims. Since the court finds the underlying § 10(b) claims adequately pled, the court does not agree that the § 20(a) claims should also be dismissed.

CONCLUSION

For the reasons stated above, defendants' motion to dismiss is granted in part and denied in part [# 35]. Claims based on the pre-class statements are dismissed with prejudice. Those based on the analyst reports published prior to January 12 and the March 21 analyst report are dismissed without prejudice. Kapoor is dismissed from the action without prejudice. All other claims remain. Plaintiff's motion to strike is granted and denied in part as stated above [# 39]. A status hearing is set for February 18, 2003. In the meantime, the parties are directed to meet in a sincere effort to resolve this case and, if that is not possible, present a proposed scheduling order.

N.D.Ill.,2003.
In re Neopharm, Inc. Securities Litigation
Not Reported in F.Supp.2d, 2003 WL 262369

(N.D.Ill.)

END OF DOCUMENT

Exhibit 13

C

United States District Court, E.D. Pennsylvania.
In re ATI TECHNOLOGIES INC. SECURITIES LITIGATION.
Class Action No. 05-4414.

Aug. 8, 2007.

Deborah R. Gross, Robert P. Frutkin, Law Offices Bernard M. Gross, PC, Philadelphia, PA, Laura Andracchio, Lauren G. Kerkhoff, Trig Randall Smith, Lerach Coughlin Stoia Geller Rudman & Robbins, LLP, San Diego, CA, for Plaintiff.
Daniel Segal, John S. Summers, Hangley Aronchick Segal & Pudlin, Philadelphia, PA, Stuart J. Baskin, Brian H. Polovoy, Shearman & Sterling, New York, NY, for Defendant.

MEMORANDUM

O'NEILL, J.
***1** In an Order dated June 29, 2006, I consolidated four class actions filed in this Court and any other similar actions filed in or transferred into this District against defendants ATI Technologies Inc., Kwok Yuen Ho, David Orton, Patrick Crowley and Terry Nickerson for alleged violations of the securities laws regarding the sale of securities by individual defendants and disclosures of the company's financial information. Plaintiffs, purchasers of ATI securities on the NASDAQ and Toronto Stock Exchange ("TSX") during the period from October 7, 2004 through June 23, 2005, filed a consolidated class action complaint on September 8, 2006.

Before me now are defendants' motion to dismiss the consolidated class action complaint, plaintiffs' response, and defendants' reply thereto.

FACTS

Defendant ATI designs, manufactures and supplies graphics, video and multimedia products for desktop and notebook personal computers, digital televisions, cellular telephones and video game consoles. Individual defendants Ho, Orton, Crowley and Nickerson are, respectively, the Chairman of ATI's Board of Directors, ATI's President and Chief Executive Officer, ATI's Chief Financial Officer and ATI's former Chief Executive Officer.

In their consolidated class action complaint, plaintiffs allege that this case arises out of a series of material misrepresentations made by defendants throughout the class period about one of defendant ATI's products, a three-dimensional graphics visual processor unit ("VPU") [FN1] known as R520. According to plaintiffs, defendants represented to analysts, investors and the market that it would release R520 by June 2005 to keep pace with its "only real competitor" in the global personal computer market, Nvidia Corporation. Nvidia Corporation intended to introduce a counterpart product to R520, the GEFORCE 7800 SLI in the same time frame.

> FN1. VPUs are semiconductor chips that increase the speed and improve the quality of images displayed on computer monitors and also enhance screen resolution and color definition.

The Private Securities Litigation Reform Act ("PSLRA") requires plaintiffs in securities fraud actions to "specify each statement alleged to have been misleading" and "the reason or reasons why the statement is misleading."15 U.S.C. § 78u-4(b)(1). Plaintiffs specify in their consolidated amended class action complaint sixteen allegedly misleading statements made by defendants or other parties during the class period:

(1) In its Form 6-K/Quarterly Report for the fourth quarter of fiscal year 2004, filed with the SEC on October 7, 2004, ATI stated:

Our corporate strategy continues to produce returns, said David Orton, ATI's Chief Executive Officer. Our PCI Express desktop product line-up is the most competitive product family on the market, resulting in tremendous customer acceptance. In addition, the growth rate of our digital consumer business continues to outpace the market, based on ATI's innovative products for all use in cell phones and digital televisions.

....

We expect our leadership in graphics and multimedia technologies for both digital consumer products and PCI Express-based PCs to continue driving growth for ATI in fiscal 2005. As a result, ATI currently expects revenue for the first quarter of fiscal 2005 to be in the range of $600 to $640 million. Gross margin, as a percentage of revenues, is expected to be between 33 and 34%.

***2** (2) On October 7, 2004, during a conference call with analysts and investors, defendant Ho stated:

Our annual results were equally as strong .... Net income for the year is up nearly 6 times from fiscal 2003. [This] performance illustrates that our strategy is working and working well. And our strategy begins with technology leadership. We continue to lead our industry in products and technology. We [leverage] this leadership into growth opportunities by anticipating and meeting critical industry [inflection] points.

(3) On October 7, 2004, during that same conference call, defendant Orton stated:

At ATI innovation and technology leadership are at the core of our strategy and the key to our vision and future success. And this quarter is a perfect proof point for this strategy. We hit a critical inflection point with the [PCI Express] transition.

(4) On October 29, 2004, Goldman Sachs reported:

INCREMENTALLY POSITIVE NEWS ON DESKTOP DISCRETE ROADMAP. [ATI] revealed that it planes to launch its next generation architecture, the R5xx series, in 1H 2005. This is an incremental positive vs. our expectations, as until now, [ATI] was ambiguous on whether it would launch in 1H or 2H 2005 .... [T]he company has already taped out the new chips on 90nm at TSMC, potentially giving it a cost advantage in H205.

(5) On November 8, 2004, Deutsche Bank Securities analysts Ben Lynch and Christopher Avery stated:

Over the past 2 [years] ATI has outgrown [Nvidia] by +90% cumulatively .... However, a strong product and execution for [Nvidia's] NV5X architecture, or a correspondingly weak R5xx offering from ATI, could reverse this at least for discrete GFX processors (75% of ATI's revenues, including boards).

(6) On November 10, 2004, Rick Hegberg, ATI's Executive Vice-President of Worldwide Sales, stated:

So as you have seen over the last several quarters, we have been very successful in growing our revenue; and we anticipate continuing that in fiscal 2005 .... [W]e believe we are going to be able to deliver some stronger earnings to shareholders.

So the key thing that we really focus on is what we call our dashboard [i.e., senior management internal report]. These are the key metrics that really drive our day-to-day business. So first is products and technologies. We are very rigorous in schedules in terms of how we roll products out, hitting scheduled dates because, in the PC space, it's very, very critical to ramp a product when processors ramp. So we are very conscious of specific schedules ... [i]t is very critical in this industry to hit schedules.

....

The second thing we look at is the market and the customers. In the PC space, there is very limited [sic] customers. So it is critical as we bring these new products out we have to deliver on design wins.... If you go back a year ago, when we rolled out our PCI Express products, we said we wanted to have a significant market share with that, which meant we had [to] be very successful in winning design wins which we were.

***3** ....

The third piece or metric is our financial dashboard and that is, obviously, meeting and exceeding our revenue objectives, meeting and exceeding our margin objectives, and meeting and exceeding our EPS objectives. It is ingrained in the Company right now, that we will exceed and meet or exceed these objectives that we do now put out there.

(7) Around November 19, 2004, defendants represented to the market during a series of ATI investor meetings that the "next-generation" R520 test chips had hit their "milestones" to date and that the new VPU would be due for commercial release by no later than the end of June 2005.

(8) On November 19, 2004, Deutsche Bank analysts stated: "Next architecture remains competitive: In [the first half of calendar 2005], both [Nvidia] and ATI release their next gen architectures, NV5X and [R520]."

(9) On November 30, 2004, Goldman Sachs stated that the "next key [pricing] catalyst" for ATI's stock would be the rollout of the R520 VPU ahead of Nvidia's competing offering, the GEFORCE 7800 SLI.

(10) In its Form 6-K/Quarterly Report for fiscal year 2004, filed with the SEC on December 20, 2004, ATI stated:

Our record year ... is the result of momentum that comes from executing on a strategy that is anchored by our commitment to product and technology leadership.

....

Our record year ... is evidence we are on course to maintain our leadership.

....

Our record year ... is just the beginning ... because this revolution that thrives on innovation and because innovation-timed to meet the needs of our customers and consumers-is our strength.

....

[Our FY04 financial] results are more than just a record of ATI's past-they are a glimpse into our future, as the full impact of our growth initiatives and strategic investments continue to accrive in fiscal 2005 and beyond.

....

Our PCI express solutions are the most popular and robust in the PC industry.

(11) In its Form 6-K/Quarterly Report for the first quarter of fiscal year 2005, filed with the SEC on December 20, 2004, ATI stated:

We continue to demonstrate our technology and industry leadership through innovation, execution and customer focus, said David Orton, ATI's Chief Executive Officer. This has translated into the sustained financial and operational performance we have seen over the last several quarters. Looking ahead, we believe we will continue to grow our business by helping consumers to create, connect and communicate in new ways-whether it's bringing 3D and camera features to mobile phones or high definition content to home PCs.

....

[W]e expect our leadership in graphics and multimedia technologies to continue to drive growth for ATI.... We expect gross margin in the second quarter to be approximately the same as the first quarter of fiscal 2005 as improved PC margins should offset seasonal weakness of our consumer products and game console businesses ....

***4** (12) On December 21, 2004, during a conference call with analysts and investors, defendant Orton stated:

Success in our business depends on product and technology leadership ... that has enabled us to hit these key inflection points [and] has translated into both top line and bottom line results.

....

In the past 12 months we hit key inflection points such as the 130 nanometer [ ] transition back last winter, the move to 110 nanometer and the critical move to PCI Express and we are fast approaching the transition to 90 nanometer ... so stay tuned to ATI ....

(13) Later in that same conference call, Orton had this exchange with Dennis Fong, an analyst from Dlouhy Merchant group:

Fong: [Y]ou talked about a prototype expense moving from this quarter to the next quarter and is that going to impact any type of product rollouts in terms of meeting certain design win[s] ... or anything like that?

Orton: No....

(14) In its Form 6-K/Quarterly Report for the second quarter of fiscal year 2005, filed with the SEC on March 24, 2005, ATI stated:

With the best solutions for visual applications in the PC and digital consumer markets, we're excited about our prospects for the rest of 2005 and beyond.... Gross margin percentage [for Q3 FY05] is expected to remain approximately the same [i.e., 34.2%] as the second quarter operating expenses, excluding stock-based compensation costs, are expected to increase by about 5% sequentially [to about $138 million] as we continue to invest in research and development to create a foundation for long-term growth. Looking into the fourth quarter, we expect ... the PC business to be better than seasonal due to growth in integrated and new products.

(15) On March 24, 2005, on a conference call for analysts and investors, Orton stated, "Over the next few months, we expect to launch our next generation VPUs based on the new 90nm technology. So stay tuned and watch the next major leap in digital realism come to reality."

(16) During that same conference call, Orton also had the following exchange with Goldman Sachs analyst Andrew Root:

Root: Hi thanks very much. Dave, can you give us a quick update on the R520 transition-any visibility you can provide on how important it's going to be to growing above seasonal in the August quarter?

Orton: Not a lot more than I gave in the [opening] comments. As you know we are driving hard on next generation platforms. And one of the code names out there that we tend to use in public is the R520 ... And so what I'd just say, there is-stay tuned for over the next few quarters or the next few months and we'll give you a lot more insight into that, okay?

Plaintiffs contend that as a result of defendants' misrepresentations about R520, ATI's securities traded at artificially inflated levels on the NASDAQ and TSX during the class period, reaching highs of approximately $20.39 per share (United States) on the NASDAQ and $24.82 (Canadian) on the TSX. During that time, the individual defendants collectively sold over 2.3 common shares of their ATI holdings, realizing over $45 million in proceeds. The complaint alleges that, as the individuals holding the most senior positions at ATI with the responsibility of directing and managing

ATI's business and financial reporting, the individual defendants knew or recklessly disregarded non-public facts concerning the failings of R520 which in turn rendered their statements during the class period misleading. Specifically, plaintiffs allege that the above statements numbered 1-16 were materially false or misleading because of the following adverse facts:

***5** (1) Defendants knew or recklessly disregarded that R520 had severe product development and design problems by June 2004, when none of ATI's key original equipment manufacturer customers agreed to advance-purchase R520 upon receiving engineering samples in Spring 2004 due to problems with clock speed, voltage and system compatibility. By December 2004, ATI was forced to begin a series of five "re-spins" [FN2] of R520. Plaintiffs contend that the first re-spin of R520 made it impossible for ATI to introduce R520 commercially by June 2005, and each re-spin further delayed introduction. The clock speed, voltage and system compatibility problems remained unresolved through the end of the class period.

FN2. A "re-spin" is a process by which design flaws are investigated. Companies will send additional test chips to silicon foundries in Asia. According to plaintiffs, a single re-spin of a 3D graphics VPU can delay commercial introduction by months and increase engineering costs by as much as 20%.

(2) Defendants knew or recklessly disregarded that ATI would lose significant market share to Nvidia and already was losing most of the high-end PC design wins to Nvidia in 2004 and 2005 because R520 could not be commercially introduced by June 2005.

(3) Defendants knew or recklessly disregarded that due to the required re-spins ATI's operating expenses materially increased far more than 5% sequentially during the third quarter of fiscal year 2005, putting downward pressure on its earnings.

(4) Defendants knew or recklessly disregarded that there was no basis in fact for defendants' representations that ATI would launch R520 by June 2005, that its growth would continue to accrue into fiscal year 2005, or that its gross margins would be approximately 34% for the third quarter of fiscal year 2005.

(5) Defendants, due to their positions within ATI, had access to material non-public information concerning ATI's day-to-day business and thus has the ability and opportunity to correct or prevent the issuance of misleading press releases and representations.

On June 6, 2005, defendants issued a press release announcing ATI had missed its financial projections for the third quarter of fiscal year 2005. On June 7, 2005, ATI's shares closed at $13 per share. On June 22, 2005, Nvidia formally announced the introduction of its GEFORCE 7800 SLI. The next day, on June 23, 2005, defendants issued a press release announcing that ATI had experienced a $445,000 loss in the third quarter of the fiscal year of 2005. During a conference call held on that day, defendant Orton disclosed that ATI would not be able to deliver R520 on schedule:

> We have led the industry with the X800 series of products and are now poised to do this again with the R520 series. Yes we've taken a hit on schedule, we are now back on track, so stay tuned as we get prepared to take the definition of performance leadership to a whole new level.... So in the case of the 520 we have seen some delays.... So from a standpoint of Q4 revenues, there's, and the overall caution around the 520, there's no impact from customer ramps. It's basically, it's a complex product that we had originally targeted to launch in the early summer and now we're targeting late summer, and so the push out of that in the quarter from a revenue standpoint is a significant part of the revenue adjustment down for

Q4

*6 On June 23, 2005, ATI's stock closed at $11.29 per share.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss all or part of an action for "failure to state a claim upon which relief can be granted."Fed.R.Civ.P. 12(b)(6). Typically, "a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations," though plaintiffs' obligation to state the grounds of entitlement to relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly,* ---U.S. ----, ---- - ----, 127 S.Ct. 1955, 1964-65, 167 L.Ed.2d 929 (2007)."Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the allegations in the complaint are true (even if doubtful in fact)."*Id.*(citations omitted). A well-pleaded complaint may proceed even if it appears "that recovery is very remote and unlikely." *Scheuer v. Rhodes,* 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974).

Because it sounds in fraud, however, a private cause of action under the securities laws "requires more than mere reference to the conventional standard applicable to motions under Rule 12(b)(6)." *In re Rockefeller Center Props., Inc. Sec. Litig.,* 311 F.3d 198, 215 (3d Cir.2002). The PSLRA, 15 U.S.C. §§ 78u-4 *et seq.,* and Federal Rule of Civil Procedure 9(b) impose a heightened pleading standard for complaints in securities fraud actions. *See In re Advanta Corp. Sec. Litig.,* 180 F.3d 525, 531 (3d Cir.1999); *In re Burlington Coat Factory Sec. Litig.,* 114 F.3d 1410, 1417 (3d Cir.1997).Rule 9(b) requires that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity,"Fed.R.Civ.P. 9(b), and "[t]his particularity requirement has been rigorously applied in securities fraud cases." *In re Burlington,* 114 F.3d at 1417. The heightened pleading standard "requires, at a minimum, that plaintiffs support their allegations of securities fraud with all of the essential background that would accompany the first paragraph of any newspaper story-that is, the who, what, when, where and how of the events at issue." *In re Rockefeller,* 311 F.3d at 217 (quotations and citations omitted).

DISCUSSION

I. Plaintiffs' Section 10(b) and Rule 10b-5 Claim

In their consolidated amended class action complaint, plaintiffs allege that defendants violated the securities laws by making a series of material misrepresentations throughout the relevant class period regarding their product R520, a semi-conductor chip. Section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5 together create "liability for false and misleading statements or omissions of material fact that affect trading on the secondary market." *In re Burlington,* 114 F.3d at 1417. Section 10(b) provides, in pertinent part:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange-
>
> *7 ....
>
> (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered ... any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

15 U.S.C. § 78j. Promulgated thereunder, Rule 10b-5 makes it unlawful:

> for any person, directly or indirectly, by the use

of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5.

To state a claim under § 10(b) and Rule 10b-5, plaintiffs must allege that defendants: (1) made a specific misstatement or omission of material fact; (2) with scienter, i.e., a wrongful state of mind; (3) in connection with the purchase or sale of a security; (4) upon which plaintiffs reasonably relied; and (5) that plaintiffs' reliance was the proximate cause of (6) economic loss. *In re ATI Techs. Sec. Litig.,* 216 F.Supp.2d 418, 427 (E.D.Pa.2002); *see also Dura Pharm. v. Broudo,* 544 U.S. 336, 341-42, 125 S.Ct. 1627, 161 L.Ed.2d 577 (2005) (separating a private securities action into six basic elements: (1) a material misrepresentation (or omission); (2) scienter; (3) a connection with the purchase or sale of a security; (4) reliance; (5) economic loss; and (6) loss causation).

In their motion to dismiss, defendants argue that plaintiffs' complaint fails to identify any actionable statement by defendants concerning R520, fails to allege scienter, and fails to allege a causal connection between the alleged material misrepresentations and plaintiffs' damages.

A. Actionable Statement

To state a valid securities fraud claim under Rule 10b-5, a plaintiff must first establish that defendant "made a materially false or misleading statement or omitted to state a material fact necessary to make a statement not misleading." *In re Burlington Coat Factory Sec. Litig.,* 114 F.3d at 1417;*see also In re Rockefeller,* 311 F.3d at 211 (asserting that Rule 10b-5 "explicitly require[s] a well-pleaded allegation that the purported misrepresentations or omissions at issue were material"). A fact is "material" only where "there [is] a substantial likelihood that [it] would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available" to the public. *TSC Indus. v. Northway, Inc.,* 426 U.S. 438, 449, 96 S.Ct. 2126, 48 L.Ed.2d 757 (1976)."[A]ccurate report[ing] of past successes does not contain an implicit representation that the trend is going to continue" and therefore does not constitute a material misrepresentation. *In re Burlington,* 114 F.3d at 1432;*see also In re Advanta,* 180 F.3d at 538-39 (holding that accurate reports of earnings and past financial successes are not material misrepresentations). Further, "[m]aterial representations must be contrasted with statements of subjective analysis or extrapolations, such as opinions, motives and intentions, or general statements of optimism, which " 'constitute no more than "puffery" and are understood by reasonable investors as such.' " *EP Medsystems, Inc. v. EchoCath, Inc.,* 235 F.3d 865, 872 (3d Cir.2000), *quoting In re Advanta,* 180 F.3d at 538 (Such statements, even if arguably misleading, do not give rise to a federal securities claim because they are not material ....").

***8** "[N]on-disclosure of material information will not give rise to liability under Rule 10b-5 unless the defendant had an affirmative duty to disclose that information," such as "when there is insider trading, a statute requiring disclosure, or an inaccurate, incomplete or misleading prior disclosure." *Oran v. Stafford,* 226 F.3d 275, 285-86 (3d Cir.2000)."There is a duty to disclose information when disclosure is necessary to make defendants' other statements, whether mandatory or volunteered, not misleading." *In re Aetna, Inc. Sec. Litig.*, 34 F.Supp.2d 935, 948 (E.D.Pa.1999). However, with respect to a company's duties vis-a-vis statements of third parties such as analysts, a company cannot be held liable for a third party's statements unless it expressly adopts or endorses that statement. "Though securities laws require [a company] to speak truthfully to investors; they do not require [it] to police statements made by third parties for inaccuracies, even if the third party attributes the statement to [it]." *Raab v. Gen. Physics Corp.*, 4 F.3d 286, 289 (4th Cir.1993); *see also Elkind v. Liggett & Myers, Inc.*, 635 F.2d 156, 163 (2d Cir.1980) (finding no liability absent allegations that company "sufficiently entangled itself with the analysts' forecasts to render those predictions 'attributable to it' "). Liability only attaches when "the company expressly adopted or endorsed the analyst's report." *In re Burlington*, 114 F.3d at 1428. The Court of Appeals reasoned that "[w]hen a high-ranking corporate officer explicitly expresses agreement with an outside forecast, that is close, if not the same, to the officer's making the forecast." *Id.* at 1429 (finding "no reason why adopting an analyst's forecast by reference should insulate an officer from liability where making the same forecast would not").

As stated above, the PSLRA imposes a heightened pleading standard for complaints in securities fraud actions. In addition, the PSLRA established a safe harbor for "forward-looking statements." [FN3] 15 U.S.C. § 78u-5(c). Under the safe harbor provision, forward-looking statements are immunized if and to the extent that:

> FN3. The term "forward-looking statement" means:
>
> (A) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;
>
> (B) a statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;
>
> (C) a statement of future economic performance, including any such statement contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;
>
> (D) any statement of the assumptions underlying or relating to any statement described in subparagraph (A), (B), or (C);
>
> (E) any report issued by an outside reviewer retained by an issuer, to the extent that the report assesses a forward-looking statement made by the issuer; or
>
> (F) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.
>
> 15 U.S.C. § 78u-5(i)(1).

(A) the forward-looking statement is-

(i) identified as a forward-looking statement, and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement; or

(ii) immaterial; or

(B) the plaintiff fails to prove that the forward-looking statement-

(i) if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or

(ii) if made by a business entity, was-

(I) made by or with the approval of an executive officer of that entity; and

(II) made or approved by such officer with actual knowledge by that officer that the statement was false or misleading.

15 U.S.C. § 78u-5(c)(1)."[A] defendant will be immune from liability if any one of [this provision's] criteria is met." *In re ATI,* 216 F.Supp.2d at 429.

***9** As stated above, plaintiffs specify in their consolidated amended class action complaint sixteen allegedly misleading statements made by defendants or other parties during the class period. I will discuss each of these statements in turn.

1. Statement 1-Form 6-K dated October 7, 2004

Statement 1 is not actionable. The first quoted paragraph is merely a reporting of past trends and has nothing to do with the development of R520. The second quoted paragraph merely notes ATI's general expectations regarding its future earnings, i.e., it is a statement of extrapolation and opinion which constitutes no more than "puffery" and thus is not material. Further, this statement contains no reference to R520 or any expected release date for R520.

2. Statements 2 and 3-conference call on October 7, 2004

Statements 2 and 3 are not actionable. With respect to Statement 2, plaintiffs offer nothing to suggest that the initial sentence-a statement of past performance-is inaccurate, and accurate reporting of past successes does not contain an implicit representation that the trend is going to continue. The remainder of Statement 2 is a vague and general statement of optimism and therefore does not constitute a material misrepresentation. Further, like Statement 1, Statement 2 contains no reference to R520 or any expected release date for R520.

Statement 3, like Statements 1 and 2, contains only a vague statement of puffery and contains no reference to R520 or any expected release date for R520. Though Orton vaguely stated, "We hit a critical inflection point with the [PCI Express] transition," there is nothing here to indicate that this general statement would lead investors or the public to understand specifically that R520 would be released in June 2005.

3. Statements 4, 5, 8 and 9-Goldman Sachs and Deutsche Bank reports

Statements 4, 5, 8 and 9 are not actionable. Nowhere does the complaint plead with any specificity that ATI or any individual defendant adopted or endorsed any statement made by Goldman Sachs or Deutsche Bank contained in the complaint. Though the complaint asserts that the Goldman Sachs report of October 29, 2004 was issued after presentations at ATI's "Analyst Day" and that the Deutsche Bank report of November 19, 2004 was based on an investor meeting, the complaint fails to state who allegedly supplied this information to the analysts, how it was supplied, or how ATI could have controlled the content of the statement. Because no adoption or endorsement is alleged and the securities laws do not require ATI "to police statements made by third parties for inaccuracies," I find that any alleged inaccuracies in the analysts' reports are not actionable.

4. Statement 6-statement of Rick Hegberg on November 10, 2004

Statement 6 is not actionable. This statement describes ATI's expectations, motives and intentions, and it is at most a general statement of optimism which constitutes no more than puffery.

5. Statement 7-defendants' representations around November 19, 2004

***10** Statement 7 is not actionable. Plaintiffs allege that defendants made representations to the market during a series of ATI investor meetings "around November 19, 2004" that R520 test chips had hit their milestones and would be due for commercial release no later than June 2005. However, this allegation clearly does not satisfy the presently applicable heightened pleading standard, which requires that plaintiffs support their allegations with all of the essential background that would accompany the first paragraph of any newspaper story. With respect to this alleged representations, the specifics of who, when, where and how are entirely absent from the complaint.

6. Statements 10 and 11-Form 6-K dated December 20, 2004

Statements 10 and 11 are not actionable. Like Statement 1, these statements report past trends and make no specific mention of the development of R520. To the extent that these statements look to the future, e.g., provide ATI's general expectations regarding its future earnings and ATI's place in the industry, they are statements of extrapolation and general statements of optimism which constitute no more than "puffery" and thus are not material.

7. Statements 12 and 13-conference call on December 21, 2004

Statements 12 and 13 are not actionable. Again, these statements report past events, and reporting of past events does not contain an implicit representation that any trend is going to continue. During the conference call, Orton stated that ATI was fast-approaching a transition to 90 nanometer and new lower power technologies and that investors should "stay tuned;" this statement, Statement 12, makes no specific mention of the development of R520 and certainly does not indicate that R520 would be ready for commercial introduction by June 2005.

Plaintiffs' complaint seeks to treat Statement 13 as a express denial that R520 was going to be late to market. I disagree. The question concerns the shifting of a prototype expense unidentified by the complaint from one quarter to another, and Orton simply responds that this will not impact product roll-outs. This statement makes no mention of R520. Further, the complaint does not ever indicate where defendants represented when R520 would be released. Therefore plaintiffs cannot demonstrate product roll-out was impacted in any way by the shifting of a prototype expense.

8. Statement 14-Form 6-K dated March 24, 2005

Statement 14 is not actionable. The quoted paragraph is merely a statement of extrapolation of data from the previous quarter and general optimism about the rest of the fiscal year. Thus it constitutes no more than "puffery" and is not material. Further, as with statements from other Form 6-Ks cited by the complaint, this statement contains no reference to R520 or any expected release date for R520.

9. Statements 15 and 16-conference call on March 24, 2005

Statements 15 and 16 are not actionable. In Statement 15, Orton notes, "Over the next few months, we expect to launch our next generation VPUs based on the 90nm technology. So stay tuned and watch the next major leap in digital realism come to reality."Regardless of what specific product Orton is discussing, this quoted language is a statement of motives and intentions and thus is distinguishable from a material representation under the holding of the Court of Appeals in *EP Medsystems.*Orton states nothing more than an expectation that a product will be launched at some point over the "next few months." Plaintiffs cannot rely on this vague statement to plead sufficiently that defendants represented that R520 would be introduced specifically by June 2005.

***11** Though Statement 16 is the only alleged statement in the complaint in which defendants specifically address R520, Orton merely advises listeners to "stay tuned over the next few quarters or the next few months" to gain more insight on the R520 transition. Therefore Statement 16 contains no material information whatsoever; it simply implores listeners to "stay tuned."

For the foregoing reasons, I find that plaintiffs have not pleaded adequately that defendants made an actionable specific misstatement or omission of material fact. The foundation of plaintiffs' consolidated amended class action complaint is the allegation that "[d]efendants repeatedly told investors that ATI would introduce R520 for commercial release by June 2005," but the complaint fails to identify any such statement attributable to defendants. Because plaintiffs fail to satisfy the first element of their cause of action under § 10(b) and Rule 10b-5, I will dismiss plaintiffs' § 10(b) and Rule 10b-5 claim.

B. Scienter and Loss Causation

Because I find that plaintiffs fail to satisfy the first element of their cause of action under § 10(b) and Rule 10b-5, I will dismiss plaintiffs' § 10(b) and Rule 10b-5 claims for failure to state a claim. Therefore I need not address the remaining bases for defendants' motion to dismiss.

II. Plaintiffs' Section 20(a) Claims

Section 20(a) of the Exchange Act provides:

> Every person who, directly or indirectly, controls any person liable under [Section 10(b)] shall also be liable jointly and severally with and to the same extent as such controlled person to any person whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

15 U.S.C. § 78t(a). Under Section 20(a), plaintiffs "must prove that one person controlled another person or entity and that the controlled person or entity committed a primary violation of the securities laws." *In re Suprema Specialties, Inc. Sec. Litig.*, 438 F.3d 256, 284 (3d Cir.2006). The Court of Appeals has "observed that [t]he text of the statute plainly requires the plaintiff to prove not only that one person controlled another person, but also that the controlled person is liable under the Act. If no controlled person is liable, there can be no controlling person liability." *Id.* at 285,*quoting Shapiro v. UJB Fin. Corp.*, 964 F.2d 272, 279 (3d Cir.1992) ("[D]ismissal of the § 10(b) claim against [defendant corporation] made it impossibel to hold the individual defendants liable under § 20(a).") (quotation marks and citation omitted).

In their consolidated amended class action complaint, plaintiffs allege that the individual defendants were "controlling persons" under the meaning of § 20(a) as they had direct and supervisory involvement with the day-to-day operations of ATI. Because plaintiffs fail to plead adequately a § 10(b) claim, no defendants can be held liable under § 20(a). I therefore will dismiss plaintiffs' § 20(a) claims.

***12** An appropriate Order follows.

ORDER

AND NOW, this 8th day of August 2007, upon consideration of defendants' motion to dismiss, plaintiffs' response, and defendants' reply thereto, and for the reasons stated in the accompanying memorandum, it is hereby ORDERED that defendants' motion to dismiss is GRANTED. Plaintiffs' consolidated amended class action complaint is DISMISSED.

E.D.Pa.,2007.
In re ATI Technologies Inc. Securities Litigation
Not Reported in F.Supp.2d, 2007 WL 2301151 (E.D.Pa.), Fed. Sec. L. Rep. P 94,469

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