

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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

**REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION IN  
LIMINE TO PRECLUDE EVIDENCE RE: DEFENDANTS' TRUTH ON THE MARKET  
DEFENSE AND DEFENDANTS' STOCK TRADING PURSUANT TO FED. R. CIV. P. 37**

*(Exhibits filed under seal pursuant to court order)*

*Restricted Document Pursuant to L.R. 26.2 Filed Under Seal  
Pursuant to Protective Order Dated November 5, 2004 and the  
Minute Order Dated October 10, 2006 (Docket 704)*

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February 13, 2009

**[PLAINTIFFS' MOTION IN LIMINE NO. 1]**

Defendants relegate the real issue of plaintiffs' motion *in limine* to footnote 4 of their opposition but do not ever properly address the issue in that footnote. The issue is whether defendants failed to disclose the securitization documents as part of their affirmative defenses in response to a specific interrogatory. Defendants only identified Household's 10-Ks as disclosing the nature of Household's business operations. Defendants failed to mention the securitization documents as part of their truth on the market affirmative defense. (*See* Ex. B to plaintiffs' motion *in limine* No. 1 at 15-16.) Defendants did not raise the securitization documents as part of their truth on the market defense until after fact discovery.

"A contention interrogatory may, under the rules, ask for the material or facts that support a party's contentions in a case" and "[a]nswers to such interrogatories are useful because they, amongst other things, aid the propounding party in 'pinning down' a party's position and determining the proof required to rebut the party's position." *Bell v. Woodward Governor Co.*, No. 03 C 50190, 2005 U.S. Dist. LEXIS 19602, at \*5-\*6 (N.D. Ill. Sept. 8, 2005). "The guidepost on the proper scope of contention interrogatories is to allow parties to prepare for trial by narrowing the scope of the issues and minimizing the possibility of surprise at trial." *Id.* Defendants' failure to disclose the securitization documents as part of their affirmative defense warrants their exclusion under Fed. R. Civ. P. 37(6)(2)(B).

Furthermore, the securitization documents do not provide a defense to plaintiffs' claims. As defendants own documents admit, the securitization documents only pertained to a limited amount (20%) of Household loans and had a limited distribution that did not include equity investors. *See* HHS02893535 and HHS03236863, attached as Exs. A and B, respectively, hereto.

The securitization documents also failed to disclose Household's predatory lending practices and improper reaging. A few examples of information not disclosed in the securitization documents include:

1. Household's "packing" of insurance to over 70% of its customers;
2. Household's "effective rate" scheme to mislead and overcharge customers on interest rates;
3. Household's improper "reaging" of its delinquent loans to current in order to manipulate its 2+ and charge-off numbers. The securitization documents also failed to disclose the extent of its automatic restructuring on almost *all* of its loans, and the fact that Household automatically reaged its loans more than every six months and did not require one payment at 95%; and
4. defendants' scheme, engineered with the assistance of Andrew Kahr, to improperly use AMPTA to get around prepayment penalty restrictions.

To the extent defendants are arguing that their failure to identify the securitization documents in their interrogatory responses did not cause prejudice, the Court should summarily reject defendants' motion *in limine* to exclude the allegedly false and misleading statements that were not identified by plaintiffs in discovery. The case law defendants cite in their opposition to plaintiffs' motion *in limine* No. 1 contradicts the position defendants are taking in their motion *in limine*. Defendants are arguing that their references to the securitization documents in a few depositions and the reference in the Consolidated Amended Complaint ("CAC") to the fact of the securitizations was sufficient to put plaintiffs on notice that the securitization documents would be part of their truth on the market defense. If so, plaintiffs' reference to Household's "2+" and charge-off numbers in their interrogatory response, the CAC, Household's SEC filings, Household's quarterly press releases, numerous depositions, and both parties' expert reports clearly put defendants on notice that these were false and misleading statements and part of plaintiffs' case.

In sum, the securitization documents should be excluded because defendants failed to disclose them in their contention interrogatories and failed to produce all of them during discovery.

DATED: February 13, 2009

Respectfully submitted,

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DECLARATION OF SERVICE BY ELECTRONIC MAIL AND BY U.S. MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Diego, State of California, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway Suite 1900, San Diego, California 92101.

2. That on February 13, 2009, declarant served by electronic mail and by U.S. Mail to the parties the **REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION *IN LIMINE* TO PRECLUDE EVIDENCE RE: DEFENDANTS' TRUTH ON THE MARKET DEFENSE AND DEFENDANTS' STOCK TRADING PURSUANT TO FED. R. CIV. P. 37.**

The parties' e-mail addresses are as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of February, 2009, at San Diego, California.

/s/ Teresa Holindrake  
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TERESA HOLINDRAKE