

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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MICHAEL W. DOBBINS
CLERK, U. S. DISTRICT COURT

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.)	
_____)	

**LEAD PLAINTIFFS' MOTION TO COMPEL THE HOUSEHOLD DEFENDANTS TO
PRODUCE ELECTRONIC EVIDENCE IN NATIVE ELECTRONIC FORMAT**

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Pursuant to Fed. R. Civ. P. 37(a), lead plaintiffs move this Court for an order compelling defendants Household International, Inc. ("Household"), Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer, and J.A. Vozar ("defendants") to produce electronic documents responsive to Plaintiffs' First Request for Production of Documents to Household Defendants ("First Request") served on May 17, 2004, as they are kept in the usual course of business (*i.e.*, native Excel, Lotus Notes, Word etc., files).

I. INTRODUCTION

During the June 1, 2005 status hearing, lead plaintiffs informed the Court that they intended to file a motion to compel electronic discovery. In response, defendants represented to the Court that the parties had only two small disagreements regarding a custodian list and certain search terms related to defendants' search of emails. The parties' disagreements, however, go far beyond that. After six months of outright refusal to produce any documents in their native format (*see* Exhibit 1),¹ defendants further stalled production under the guise of negotiating a mutually acceptable production protocol. However, when the parties appeared to have reached a production protocol on March 10, 2005, after five months of extensive meet and confers, defendants set such unreasonable limitations on any electronic production, in effect refusing such production unless it is done on their terms.² For example, defendants severely limit plaintiffs' list of custodians and search terms and insist that plaintiffs cannot add custodians or search terms after an initial electronic production despite the fact that (1) hard-copy documents responsive to plaintiffs' First Request continue to trickle in three to seven boxes at a time; (2) defendants refuse to provide any source logs for the production thus far;

¹ All exhibits referenced herein are attached to the Declaration of Sylvia Sum in Support of Lead Plaintiffs' Motion to Compel the Household Defendants to Produce Electronic Evidence in Native Electronic Format, filed concurrently herewith.

² In light of the pending mediation, lead plaintiffs refrained from moving to compel defendants at that time.

and (3) defendants refuse to verify if production pursuant to even a single request is complete. Moreover, defendants refuse to produce spreadsheets in electronic format until the custodian list and search term issues are resolved. Thus, the outstanding issues are:

1. defendants' delay tactics regarding production of all electronic evidence, including emails and spreadsheets;
2. defendants' refusal to search the electronic files of 335 custodians (out of 30,000 Household employees) for a list of carefully assembled search terms;³ and
3. defendants' refusal to allow plaintiffs to add custodians or search terms after an initial electronic production.

Plaintiffs' discovery specifically requested that electronic documents be produced in the manner in which they are stored. *See* Ex. 2 at 4, ¶1. Indeed, Fed. R. Civ. P. 34 and existing caselaw mandates that electronic documents be produced as they are "kept in the usual course of business." Fed. R. Civ. P. 34; *Crown Life Ins. Co. v. Craig*, 995 F.2d 1376, 1382-83 (7th Cir. 1993). However, *one year after plaintiffs served the First Request*, and six months away from the discovery cutoff, *not a single electronic document has been produced*.

Defendants' refusal to comply with the Federal Rules of Civil Procedure is improper:

- The electronic evidence requested constitutes core evidence directly bearing upon the issues in this case.
- Electronic evidence in native format contains crucial embedded information and metadata not included in the hard copy, Portable Document Format (PDF) or Tagged Image File Format (TIFF) produced by defendants thus far.
- The electronic evidence produced in non-native format so far is unusable, wastes both parties' time and resources and unreasonably increases the burden on plaintiffs.
- Production costs and issues of authentication and document integrity for electronic discovery are the same or less than hard-copy productions.

³ This custodian list is based on documents produced by March 1, 2005, and lead plaintiffs reserved their right to add custodians based on subsequent productions, if necessary.

Plaintiffs, therefore, request the Court to order defendants to produce on or before July 1, 2005, all electronic documents, databases, data, and email responsive to the First Request in native format as “kept in the usual course of business” with no substantive alterations to the file format, organization, metadata, or other characteristics. Further, because defendants unreasonably delayed production of electronic documents in their native format for more than a year, plaintiffs also request an order requiring defendants to search the electronic files of all custodians listed in Schedule A using the search terms listed in Schedule B, both of which are attached hereto.

II. STATEMENT OF FACTS AND COMPLIANCE WITH LOCAL RULE 37.2

Plaintiffs served the First Request on defendants on May 17, 2004. On June 24, 2004, plaintiffs received a hard drive containing PDF images of documents that Household had previously produced in early 2003 to the United States Securities and Exchange Commission (“SEC”).⁴ It took defendants several additional months to produce documents on CD-ROMS containing TIFF images.⁵ To date, despite numerous requests by plaintiffs, defendants refuse to confirm whether production to plaintiffs of documents already produced to the SEC is complete.

Plaintiffs’ review of these documents demonstrated significant deficiencies – a large amount of these documents could not be reviewed or used in a meaningful manner because they were incomplete, illegible or otherwise deficient. *See* Exs. 4-9 (showing excerpts of deficient documents). Plaintiffs repeatedly informed defendants that electronic documents produced in non-native format were unusable and reiterated the necessity of receiving electronic documents in native format. Exs.

⁴ The SEC issued various subpoenas to defendants relating to investigations of Household for violations of federal securities laws due to Household’s improper reaging and restructuring of delinquent accounts and forced Household to enter into a consent decree, in which it agreed to cease and desist from further violations of the securities laws. *See* Ex. 3.

⁵ Documents in PDF and TIFF are essentially nothing more than Xerox scans of printed copies. Thus, although these documents appeared on an electronic medium, they were not produced in their native format, as they are ordinarily kept in the course of business.

10 at 4; 11. Plaintiffs also gave defendants large samples of documents that were simply unusable as produced. *See* Exs. 10 at 4; 12-13. Plaintiffs' entreaties fell on deaf ears. *See* Exs. 2, 11. Instead, defendants unilaterally "under[took] a process by which numerous criteria [were] applied to [certain] relevant documents . . . to make them more 'user friendly.'" *See* Ex. 2. Thus, rather than simply producing the electronic documents in native format as they were kept in the usual course of business, defendants elected, without consulting plaintiffs, to use a complicated, time-consuming and resource-draining 11-step process to manipulate the documents. *Id.* Defendants' stated concern of document integrity and authentication is at complete odds with the procedures they were willing to undertake to manipulate data. When defendants produced one CD-ROM of documents in TIFF to which this "process" had been applied, plaintiffs informed them to stop this kind of production because the documents remained unusable as they were no more than Xerox copies of printed pages.

Defendants then embarked on a five-month course of stalling plaintiffs by engaging in protracted negotiations purportedly designed to reach an acceptable production protocol for electronic documents. *See* Exs. 14-21. After months of negotiations, the parties appeared to have reached agreement on a protocol. *See* Ex. 21. Plaintiffs provided defendants with a search term list carefully assembled after a review of all documents produced up to that point and list of 335 custodians (out of 30,000 employees). Exs. 22-23. Despite several significant concessions by plaintiffs and meet and confers explaining the bases for the search terms, defendants refused to conduct searches unless done on their terms. *See* Exs. 24-28. This dilemma is further compounded by defendants' refusal to confirm if they have completed production pursuant to any single request in the First Request, and further refusal to allow plaintiffs to add custodians or search terms based on further discovery. Additional discovery may lead to the names of important witnesses and yet undiscovered relevant search terms. On the other hand, defendants' piecemeal production and refusal to allow additional custodians or search terms allows defendants to hide important

information and to preclude plaintiffs from discovering them. For over seven months, plaintiffs have in good faith attempted to resolve the electronic production issue. However, the parties have now reached an impasse on this core issue, and plaintiffs seek the Court's order and guidance on electronic production going forward.

III. ARGUMENT

A. **Statutory and Case Law Authorities Mandate that the Household Defendants Produce Electronic Evidence as Kept in the Usual Course of Business**

In ruling on motions to compel discovery, courts adopt a liberal interpretation of the discovery rules and commonly look unfavorably upon significant restrictions placed on the discovery process. *Semien v. Life Ins. Co. of N. Am.*, 03 C 4795, 2004 U.S. Dist. LEXIS 6759, at *3 (N.D. Ill. Apr. 20, 2004). Moreover, it is well established that discovery is permitted as to “any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). Because of defendants' admitted extensive use of technology and automation in all aspects of Household's business and operations and the role played by technology and automation in defendants' fraudulent scheme, electronic evidence reasonably bears on every issue in this case and will be crucial to the accurate evaluation of the issues. ¶¶10, 12, 41, 111-114, 121.⁶

The plain language of Fed. R. Civ. P. 34 contemplates discovery of electronic data in native format. Fed. R. Civ. P. 34(a) (defining “documents” as “including . . . data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form”); *see also Crown Life*, 995 F.2d at 1382-83 (“computer data is included

⁶ All “¶” references herein are to the [Corrected] Amended Consolidated Class Action Complaint for Violation of the Federal Securities Laws (“Complaint”), filed on March 13, 2003.

in Rule 34's description of documents"); *Illinois Tool Works, Inc. v. Metro Mark Prods. Ltd.*, 43 F. Supp. 2d 951, 954 n.2 (N.D. Ill. 1999). Further, given today's technological advances, it is not surprising that "[i]t is now axiomatic that electronically stored information is discoverable under Rule 34." *Bills v. Kennecott Corp.*, 108 F.R.D. 459, 461 (D. Utah 1985); *Anti-Monopoly, Inc. v. Hasbro, Inc.*, No. 94 Civ. 2120 (LMM) (AJP), 1995 U.S. Dist. LEXIS 16355, at *4 (S.D.N.Y. Nov. 3, 1995), *aff'd*, 130 F.3d 1101 (2d Cir. 1997) ("today it is black letter law that computerized data is discoverable if relevant").

Rule 34 also provides that a party who produces documents for inspection shall produce documents as they are "kept in the usual course of business." Fed. R. Civ. P. 34. This language clearly supports the production of documents in native format, rather than hard-copy, TIFF or PDF as the electronic documents are not maintained in those formats in the defendants' usual course of business. Indeed, courts have consistently interpreted the language of Rule 34 to require that electronic documents be produced in original native format. *Crown Life*, 995 F.2d at 1383; *In re Pemstar Sec. Litig.*, Case No. 02-1821 (DWF/SRN) (D. Minn. Apr. 23, 2004) (Ex. 29); *In re Verisign, Inc. Sec. Litig.*, Case No. C 02-2270 JW (PVT) (N.D. Cal. Feb. 6, 2004) (Ex. 30).

B. The Electronic Evidence in Question Constitutes Core Evidence Relevant to Plaintiffs' Allegations

In the current technological environment, electronic discovery is particularly necessary in a securities fraud action. Plaintiffs must prove that defendants published statements when they either knew contradictory information or, given the existence of contradictory information, were at least reckless in making such statements. *See Searls v. Glasser*, 64 F.3d 1061, 1066 (7th Cir. 1995); *see also Florida State Bd. of Admin. v. Green Tree Fin. Corp.*, 270 F.3d 645, 665 (8th Cir. 2001). A "classic fact pattern" giving rise to demonstrating such recklessness constitutes facts evidencing defendants' "*access to information* suggesting that the public statements were materially inaccurate." Ex. 29 at 5 (quoting *Green Tree*, 270 F.3d at 665) (emphasis added). The court in

Pemstar recognized that electronic evidence produced in native format is particularly valuable to plaintiffs in proving scienter by enabling the plaintiffs to show that the defendants had such access. *Id.* at 4-6. In other words, certain information available only in native format may demonstrate a particular defendant's access or ability to access certain information.

This is particularly true in this case. Household is a highly sophisticated company that used technology extensively in the regular course of business during the Class Period (October 23, 1997 to October 11, 2002) and still does presently. Plaintiffs allege that defendants routinely used technology to further their fraudulent course of conduct. Defendants took great pride in their advanced use of technology and automation. For example, Household consistently told the market that it had a competitive advantage through an award-winning, sophisticated, centralized technology system known as "Vision." *See* ¶10. Vision purportedly generated sales leads, reduced paperwork and centralized decision making throughout the loan origination process. *See id.*; ¶111; *see also* Ex. 31 at 30, 32-34, 46-47, 58-62, 85-88. Household claimed that Vision allowed it to maximize profits by cross-selling and up-selling products to its customers, monitoring delinquencies and collections, and managing lending risk. ¶¶10, 111; *see also* Ex. 31 at 86-88. Access to the Vision system within Household was widespread. *See* Ex. 31 at 34-35. Even the SEC found that Household manipulated credit quality through the use of technology: Household automatically reaged delinquent accounts to reset them as current in contravention of Household's stated policy and in violation of federal securities laws. *See* Ex. 3, ¶9; Ex. 32. Indeed, email, Housemail, electronic bulletins were the manner in which management communicated with all employees in the over 1,400 branches. *See, e.g.*, Exs. 33-34. Household's extensive use of technology is not disputed by defendants.

Moreover, Household has over 30,000 employees and used electronic mail as the primary method of daily communication. Ex. 35 at 23. Further, as demonstrated by Exs. 36-38, defendants had access to and were able to manage and retrieve a broad array of financial reports using

centralized databases through Household's Lotus Notes system. *See also* Ex. 35 at 41 (resource management reports database is available through Lotus Notes). Moreover, defendants also had access to documents through Lotus Notes, including Word (.doc), Excel (.xls) and PowerPoint (.ppt) documents, that could easily be attached to an email and forwarded to others. Exs. 39-40. In fact, even employee training was partly conducted via Household's intranet. *See* Ex. 31 at 96. Thus, defendants' fraudulent course of conduct at issue in this litigation was integrally connected to its technology with Vision and other electronic aspects of Household's business.

Additionally, defendants' production to date demonstrates that Household made extensive use of Excel spreadsheets and other electronic reports to maintain, manipulate and share financial and other data underlying plaintiffs' claims. Household's reports – including relevant reports such as reage stock reports, risk management reports, delinquency tracking and forecast reports, monthly collection reports, credit risk reports, RE reserve rolls, asset quality reports, restructure volume reports – are all generated, maintained and accessed electronically. Exs. 41-45. Lastly, plaintiffs also allege that defendants improperly accounted for expenses associated with Household's credit card co-branding, affinity and marketing initiatives agreements. ¶¶10, 134-139. Again, these claims involve electronically maintained financial data. The success of defendants' fraudulent scheme was dependent in part on the extensive manipulation of data collected and maintained electronically. Plaintiffs are entitled to review these electronically maintained reports and financial data as defendants saw them. As the *Pemstar* court noted, "***it is appropriate in this case and most useful to the fact finder to view, understand, and step into the shoes of the information source that actually provided the alleged knowledge and access.***" Ex. 29 at 6. Electronic data constitutes a vital part of Household's business and a vital part of the discovery in this case.

C. Production in Native Electronic Format Is Essential to Capture the Metadata, Formulas, Hidden Cells, Links and Other Information

Electronic evidence in native format is a particularly fruitful source of evidence because it often provides data not readily apparent in other formats. First, computer files contain what is known as “metadata.” Metadata consists of information regarding who, what, when, where, why and how the data was created, documented and maintained. Mary Kay Brown and Paul D. Weiner, *Digital Dangers: A Primer on Electronic Evidence in the Wake of Enron*, 74 PA Bar Ass’n Quarterly 1, 3 (2003). Metadata reveals, among other things, when files were created, modified and deleted, and what user name was associated with those tasks. *Id.* Computer files often contain hidden or embedded information. *Id.* Some programs can “undo” a deleted portion of a document or even show all prior versions of a document. *Id.* Even files that have been deleted or overwritten may sometimes be found in spaces on the hard drive of a computer, known as free space and slack space, or can be found on back-up tapes and can be the source of relevant evidence. *Id.* The need for metadata is heightened in this case due to evidence of document destruction by defendants.⁷

Second, with respect to the financial and accounting evidence sought by the plaintiffs, productions in hard-copy, TIFF or PDF omit additional important information beyond metadata. There are often hidden columns on spreadsheets that will not show up on these versions, but will only be revealed electronically. *Digital Dangers*, 74 PA Bar Ass’n Quarterly at 3. These versions will also omit formulas that explain how the numbers in various cells are derived, and the relationship of various cells to one another within the spreadsheet, rendering the spreadsheet

⁷ The evidence obtained to date shows that defendants engaged in a “blitz purge” of incriminating documents. *See* Exs. 46; 47, ¶¶142-151. While the entire scope and extent of Household’s document destruction will never be known, a search of Household’s backup tapes might allow plaintiffs to determine the effect defendants’ willful action had on plaintiffs’ case. *See Wiginton v. CB Richard Ellis*, Case No. 02 C 6832, 2003 U.S. Dist. LEXIS 19128, at **22-26 (N.D. Ill. Oct. 24, 2003). In fact, courts have ruled that Rule 34 requests seeking “deleted” electronic records are permissible. *Thompson v. U.S. Dep’t of Housing & Urban Dev.*, 219 F.R.D. 93, 97 (D. Md. 2003), *aff’d*, 404 F.3d 821 (4th Cir. 2005).

produced in hard copy unusable. This information, however, would be available through production in native format.

Lastly, another key type of electronic evidence is email. In addition to the missing metadata, emails produced in hard-copy, PDF or TIFF do not capture information regarding individuals to whom blind copies of the documents were sent. *Id.* The missing information is important to show access to information at a certain time and, thus, scienter. For instance, because plaintiffs must prove scienter, knowing whether a defendant received a particular piece of information through a blind copy is critical.

Moreover, non-native format productions eliminate access to crucial file attachments that are frequently included in an email. For example, as Exs. 39-40 demonstrate, Household employees frequently attached Word, Excel, and PowerPoint documents to emails. Household employees also created links between related emails and their file attachments. *See* Ex. 36 (the “yellow pad link” to the right of the subject line links Daniel J. Pantelis’ email to another document). Without electronic production of such documents, any embedded links to other documents cannot easily be captured. Even if such attachment were also produced in hard-copy, PDF or TIFF, it is much more efficient to view an email and attachments in native format. *See* Ex. 29 at 6 (finding that it is more efficient to view an email with an Excel file attachment in native format than in TIFF); *see also* *Armstrong v. Executive Office of the President, Office of Admin.*, 1 F.3d 1274, 1277, 1284 (D.D.C. Cir. 1993), *rev’d on other grounds*, 90 F.3d 553 (1996) (the court, in examining federal agencies’ statutory obligations to manage electronic records under the Federal Record Act of 1950, rejected the government’s position that “print-out” versions of any electronic communication satisfies the government’s obligation under the Records Act, noting that “the hard-copy print-outs . . . may omit fundamental pieces of information which are an integral part of the original electronic records, such

as the identity of the sender and/or recipient and the time of receipt"). Here, it is reasonable to ask defendants to produce the emails in electronic form.

In light of the volume of information and the usability available only through production in native format, defendants cannot be allowed to unilaterally decide to deny plaintiffs access to the electronic data in its original format, while it remains readily and fully accessible to the defendants to prepare their defense of the case. Defendants should not be permitted to use such covert tactics to skew the discovery process. *Dunn v. Midwestern Indem.*, 88 F.R.D. 191, 196 (S.D. Ohio 1980) ("[T]he Court is wary of denying plaintiffs' full and adequate discovery of the defendants' computer systems, including access to and information about defendants' computer equipment, raw data, programs, data management systems, and the by-products of their analyses. To deny them this discovery may, in effect, be to deny them their day in Court."); see *Sattar v. Motorola, Inc.*, 138 F.3d 1164, 1171 (7th Cir. 1998) (instructing defendants to re-produce emails in electronic format and provide plaintiffs with compatible equipment to access it).

D. A Sample of Household's Document Production Demonstrates the Importance of Obtaining Electronic Documents in Native Format

To date, defendants have produced hundred of thousands of pages of spreadsheets and other electronic documents in PDF and TIFF that are incomplete, illegible or completely unusable. See Exs. 4-9. Despite defendants' claims that they have produced millions of pages, a large part of their document production is useless. For example, Ex. 48 is an 81,735-page long report that is absolutely useless as produced because it is a listing of account numbers (only an excerpt produced).

Defendants' production done in TIFF requires plaintiffs to open every single page of each spreadsheet individually – sometimes hundreds of pages. Moreover, even if this were done, plaintiffs would still be unable to evaluate the information because of the inability to move from cell to cell and review formulas embedded within the cells. In order to even begin to understand spreadsheets that cover more than one page, the documents must essentially be printed and then

taped together – a task inconceivable given the number and the size of the spreadsheets. By making only hard-copy, PDF or TIFF versions of electronic evidence available to plaintiffs, defendants are deliberately creating a situation whereby plaintiffs are not able to fully review or analyze the evidence in the format that defendants used. This directly controverts the scope and purpose of the Federal Rules of Civil Procedure, in particularly Rule 1, which provides in part that the rules “are to be construed and administered to secure the just, speedy, and inexpensive determination of every action.” Fed. R. Civ. P. 1. Indeed, “producing print-outs of computer data is so unnecessary that it might be considered an abusive tactic.” Kenneth J. Withers, *Computer-Based Discovery in Federal Civil Litigation*, 2000 Fed. Cts. L. Rev. 2 (Federal Magistrate Judges Association 2000).

E. The Burden of Production on Defendants Is No Greater than with Hard-Copy Productions

In stark contrast to the extreme expense involved in the actual production of hardcopies (*i.e.*, photocopying and/or scanning hundreds of boxes of documents), production of documents in electronic format is less expensive, as documents could be downloaded onto hard drives, CDs or other storage media. Thus, having defendants’ electronic evidence in native electronic format would certainly significantly reduce the unnecessary costs and delays in prosecuting this case. Numerous courts have required that the party responding to discovery produce electronic data in a form that allows the requesting party to use and analyze the data in the most inexpensive and reliable manner. *See, e.g., Adams v. Dan River Mills, Inc.*, 54 F.R.D. 220 (W.D. Va. 1972) (ordering documents be produced in appropriate computerized form as the most inexpensive and reliable method to evaluate data); *National Union Elec. Corp. v. Matsushita Elec. Indus. Co.*, 494 F. Supp. 1257 (E.D. Pa. 1980) (ordering the responding party to reproduce data in computer readable format that had already been produced in hard-copy format based on requesting party’s contention that it could not effectively analyze the data until it could be read by their computer); *In re Air Crash Disaster at Detroit Metro. Airport*, 130 F.R.D. 634 (E.D. Mich. 1989) (ordering defendants to produce electronic data in

appropriate computerized form to reduce unnecessary costs and delays that would accrue if plaintiffs were to manually perform the analysis of the data); *Storch v. IPCO Safety Prods.*, Civil Action No. 96 7592, 1997 U.S. Dist. LEXIS 10118, at *6 (E.D. Pa. July 16, 1997) (party sought sales data in computer disk format to analyze data without incurring thousands of dollars in data encoding fees; court found that “in this age of high-technology where much of our information is transmitted by computer and computer disks, it is not unreasonable for the defendant to produce the information on computer disk for the plaintiff”).

Regardless of the form of defendants’ electronic evidence to be produced, defendants will presumably conduct the same review for privilege and relevance. Further, volume is deemed not to be an appropriate objection to production. *See Medtronic Sofamor Danek, Inc. v. Michelson*, No. 01-2373-MIV, 2003 U.S. Dist. LEXIS 14447, at **15-16 (W.D. Tenn. May 13, 2003) (despite large volume of electronic documents, the court ordered electronic production, recognizing that “electronic data files reasonably could lead to the discovery of admissible evidence that is not available from hard copy”). Moreover, defendants here can hardly claim cost or technology are hurdles given that they were prepared to manipulate each electronic document and then convert it into TIFF. *See Ex. 2.*

Defendants have also raised concerns about the integrity of the electronic documents if produced in native format. These concerns are unjustified. As with hard-copy productions, defendants will have copies of the electronic production to ensure the integrity of the documents. Indeed, defendants’ arguments that plaintiffs’ counsel might alter documents support production of electronic evidence in native format. It is also the only way that plaintiffs can be certain that no one else, including defendants, has altered the documents. Moreover, production in original electronic source format will provide plaintiffs the same access that defendants have.

With respect to the Bates-labeling, confidentiality and privilege issues, these collateral document management matters are no more than red herrings. In fact, these issues were addressed before defendants erected another roadblock to production. *See* Ex. 21. All electronic documents will have a unique electronic file identifier which will substitute for the Bates-labeling and provide sufficient information for identification purposes. Defendants can designate portions of their electronic evidence confidential by referencing to the unique identifier of the electronic documents. As to privilege, in *Medtronic*, the court expressly set forth a protocol for reviewing for privilege in an electronic production. 2003 U.S. Dist. LEXIS 14447, at **29-41. In sum, these issues should in no manner prohibit defendants from promptly producing electronic documents in native format.

F. Defendants Should Be Required to Search the Electronic Files of the Custodian Using the Search Terms Provided by Plaintiffs

Plaintiffs reviewed all or substantially all documents produced by March 1, 2005 (over two million pages), and on the basis of such review, prepared a list of 335 custodians (out of 30,000 Household employees) whose electronic files they seek to be searched, as well as a list of carefully selected relevant search terms. Yet, after one year of refusing or stalling production of electronic documents, defendants seek to unreasonably limit the custodians and search terms claiming overbreadth and unnecessary expense and burden. This stall technique should not be countenanced.

In fact, the court in *In re Verisign, Inc. Sec. Litig.*, Case No. C 02-2270 JW (PVT) (N.D. Cal. Mar. 4, 2004) (Ex. 49), after previously ordering defendants to produce electronic documents and to meet and confer about the production process, issued a second order in response to defendants' stalling tactics, recognizing the pressing need for the information to be produced so that plaintiffs have adequate time to evaluate the documents and use them for depositions. The court ordered defendants to provide a copy of all responsive electronic data in the original format, as it was kept in the usual course of business, and, "***[t]o the extent there is insufficient time to remove all irrelevant and privileged material, it will remain in the copy produced,***" subject to privileged documents

retaining their privileged status. *Id.* at 2 (emphasis added). Subsequently, the defendants in clear violation of the March 4, 2004 order, removed numerous documents from the electronic files without making a proper determination as to privilege. The court thereupon issued a third order reiterating that, if there was insufficient time for defendants to review all documents, all documents should be produced. *In re Verisign, Inc. Sec. Litig.*, Case No. C 02-2270 JW (PVT) (N.D. Cal. May 27, 2004) (Ex. 50 at 2). The court noted that this procedure was appropriate in light of defendants' "unreasonable delay in producing documents responsive to Plaintiffs' [] Document Requests, and the resulting need for an accelerated production." *Id.*

As in *Verisign*, in light of the facts that the First Request was served over one year ago and that not a single electronic document has been produced, despite obvious relevancy and importance, defendants should not be allowed to further delay production of crucial documents.


IV. CONCLUSION

For the reasons set forth above, plaintiffs respectfully request an order compelling defendants to produce all relevant, responsive electronic evidence in native format by July 1, 2005. The Court should further order defendants to conduct a search of all electronic files of all custodians listed in Schedule A using the search terms listed in Schedule B.

DATED: June 6, 2005

Respectfully submitted,

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SCHEDULE A
Custodian List

1. Abanero, Jose T.
2. Adams, Gary M.
3. Adams, Lisa L.
4. Aita, Marcelo A.
5. Aldinger, William F.
6. Allcock, Robin L.
7. Allen, Cris
8. Ancona, Edgar D.
9. Anderson, Aaron E.
10. Anderson, Dan W.
11. Andreuzzi, Paul
12. Apostol, George M.
13. Armstrong, Michelle
14. Ashley, Scott R.
15. Aspiras, JayWalter P.
16. Azia, Arif
17. Bales, Ronald K.
18. Barnes, Elizabeth (Liz)
19. Basilotto, Stephen C.
20. Batka, Jeffrey P.
21. Biester, Michael R.
22. Black, Donna L.
aka Black-Schelonka, Donna L.
aka Schelonka, Donna L.
23. Blenke, John W.
24. Bobola, Megan
25. Boris, Larry P.
26. Bosson, Janine
27. Bovington, Jason
28. Bowman, Kenneth P.
29. Boyd, Nancy L.
30. Bransford, Jeffery S.
31. Brashier, Sandra
32. Brooke, Noelle

33. Brown, Ron
34. Brugato, Jeffrey A.
35. Buxbaum, Cathy
36. Carlson, Patricia A.
or Carlson, Pat
or Carlson, P A.
37. Cartier, Renee
38. Castelein, Craig L.
39. Caulfield, Ramon
40. Chacon, Yvonne
41. Chadwick, Paisha
42. Chan, Joseph K.
43. Chase-Gura, Lynda A.
44. Chester, Pamela
45. Chow, Dan S.
46. Christian, Pamela H.
47. Clarke, Lidney B.
48. Cleland, Mike
49. Clements, Jim A.
50. Cliff, D G.
51. Cofield, Ramon
52. Coleman, Onya
53. Colip, Chuck A.
54. Condon, Tim R.
55. Condon, Tim R.
56. Connaughton, James F.
57. Connell, Lawrence
58. Contino, Rick
59. Coppenrath, Joan
60. Corriher, David
61. Cota, Gina
62. Cozza, Patrick A.
63. Cruz, John
64. Cunningham, Curt
65. Curse, Jeff
66. Cusenza, Rocco A.
67. Custis, Robert M.

68. Czerw, Carol
69. Dahlin, Thomas C.
70. Daskalakis, Christine
71. Davis, John R.
72. DeLuca, Michael
73. Derickson, Sandra (Sandy) L.
74. Detelich, Thomas M.
75. Dibble, Parkes C.
76. Dominski, Thomas S
77. Dougherty, Michael A.
78. Dunlap, Rafe B.
79. Eckert, Barbara L.
80. Eckholdt, Per or
Ekholdt, Per
81. Eklund, Jonas
82. Emerson, Traci
83. Esposito, Gary R.
84. Evans, Sandra
85. Fabiano, Rocco J.
86. Farrell, Diana S.
87. Fatina, David J.
88. Folia, Marianna
89. Ford, Shawn
90. Foster, Bruce A.
91. Francis, Jim
92. Frantz, Jacob
93. Friedrich, Douglas A.
94. Fullen, Bernard
95. Gale, Lori
96. Gang, Kenneth K.
97. Garcia, Anabelle
98. Garcia, Jorge
99. Gardner, Davin L.
100. Gargul, Elisa M.
101. Garland, Scott
102. Genco, Lucille
103. Gibbs, Anthony R.

104. Gibson, Gregory A.
105. Gillan-Myer, Maure
106. Gilmer, Gary D.
107. Goldstein, Eric
108. Gordon, Gerard
109. Guglomo, Sasha
110. Guy, Michelle L.
111. Hamilton, John R.
112. Hammersley, Bruce
113. Handy, Catherine C.
114. Hansgen, Beth
115. Harman, Gary S.
116. Harmon, Thomas J.
117. Harris, Greg H.
118. Harvey, Ken
119. Hawkins, Darryl
120. Hayden, Megan E.
121. Haynes, Bob
122. Helm, Ewa
123. Helmer, Charles (Chuck) J.
124. Herman, Matt
125. Hicks, Stephen L.
126. Hill, Adrian
127. Hinson, Thomas L.
128. Hoff, Joseph W.
129. Hopkins, James N.
130. Hueman, Dennis J.
131. Ibrahim, Ashraf R.
132. Inman, Rick
133. Innis, Joe
134. Jainette, Peter
135. Jebson, Alan
136. Johnston, Andy
137. Johnston, Mary B.
138. Jones, Brad
139. Jones, Terrell
140. Joseph, Madline

141. Kaminski, Jadwiga
142. Kasarda, Andrew G.
143. Kauffman, James B.
144. Kelly, Colin P.
145. Kelly, Joe J.
146. Khan, Arif M.
147. Kjoller, Gary
148. Klein, Kenneth
149. Klesse, Dick
150. Knox, Deana C.
151. Kong, Xiang
152. Krupowicz, Phil L.
153. Lawrence, Jim
154. Lee, Jimmy S.
155. Lenz, Lionel P.
156. Leopold, Mark F.
157. Leski, Anita L.
158. Leyba, Mark
159. Lin, Linda
160. Little, David B.
161. Littrell, Wayne
162. Loots, Joseph G.
163. Lubiana, Walter
164. Lynn, Stacey D.
aka Lynn-Cravotta, Stacey
165. MacAlpine, Sharon A.
166. Madison, Kathryn
167. Makowski, Paul A.
168. Malchev, Hristo T.
169. Malik, Paul
170. Marcus, Michael E.
171. Markell, Elaine H.
172. Marks, Mike
173. Markwat, William A.
174. Marsh, David G.
175. Martinez, Richard J.
176. Matthews, Michael

177. Mauk, Tom M.
178. McCracken, Robert W.
179. McDonald, Steve L.
180. McEvoy, Kent D.
181. McGinnis, Iris C.
182. McKay, Chris J.
183. McKinney, Christopher
184. McPhee, Bert
185. Mehta, Bobby N.
186. Melcer, David
187. Menezes, Walter G.
188. Mielitz, Doug
189. Miles, Grant F.
190. Millick, Lois
191. Minarik, Porsia
192. Mirabella, Timothy R.
193. Mizialko, Cliff S.
194. Mocerino, Susan R.
195. Monaco, Paula E.
196. Mondoro, John
197. Moriarty, Anne M.
198. Morris, Dennis D.
199. Morris, Loren J.
200. Morrison, Kathleen A.
201. Mowry, Scott S.
202. Myers, Amy
203. Naikine, Oleg N.
204. Nardi, Frank L.
205. Nauman, David J.
206. Nelson, Kimberly
207. Nicholson, Maria A.
208. Nicola, Jeff
209. Noel, Elizabeth K.
210. Noll, Marcus
211. Nugent, Janice
212. O'Brien, David M.
213. O'Brien, John J.

- 214. O'Han, Robert
- 215. O'Neill, Christopher
- 216. Ochoa, Louis
- 217. Oguntokun, Femi
- 218. Orbanosky, Brandon
- 219. Orman, Rudy A.
- 220. Owens, Merle L.
- 221. Panarsese, Joseph
- 222. Pantelis, Daniel J.
- 223. Payne, Lauren
- 224. Peart, Steve J.
- 225. Pedraja, Gloria V.
- 226. Pendergast, John C.
- 227. Peoples, Willie C.
- 228. Perillo, Tom M.
- 229. Pesicka, Robert J.
- 230. Peters, Craig S.
- 231. Peters, Rich
- 232. Phan, Cong T.
- 233. Pickrell, Denise
- 234. Pinto, Mike
- 235. Pready, Alex
- 236. Price, Terry
- 237. Priester, James
- 238. Qu, Yingbin
- 239. Quiriconi, Kathy R.
- 240. Rafferty, Mike M.
- 241. Raisbeck, Jean
- 242. Reault, Eric
- 243. Redmon, Gina
- 244. Reeves, Mike A.
- 245. Reid, Dan
- 246. Requa, Marcus
- 247. Reuter, Rick A.
- 248. Rhinehart, Scott K.
- 249. Rindler, John L.
- 250. Robarge, Geraldine

- 251. Robertson, Candis
- 252. Robin, Kenneth H.
- 253. Rockaway, Sean
- 254. Rodgers, Carolyn S.
- 255. Rodriguez, Belkys
- 256. Rodriguez, Robert A.
- 257. Rogers, Bill R.
- 258. Rogers, Conne F.
- 259. Rogers, Derek
- 260. Rossi, Michael A.
- 261. Rossi, Ron
- 262. Rubino, Paul G.
- 263. Rugar, Anthony
- 264. Rutland Drury, Melissa
- 265. Rybak, Walt
- 266. Salas, Kathy
- 267. Scherbaum, Brian J.
- 268. Schneider, Tom G.
- 269. Schoenholz, David A.
- 270. Schriever, Sharon
- 271. Schrum, Edward J.
- 272. Seaton, Victor
- 273. Sekany, Bob
- 274. Sesterhenn, Pete E.
- 275. Shrum, John
- 276. Siddique, Tariq S.
- 277. Sizemore, Michael
- 278. Skonning, Michael L.
- 279. Smith, Connie A.
- 280. Smith, Steven H.
- 281. Snyder, Chris A.
- 282. Sodeika, Lisa M.
- 283. Soria, Socorow
- 284. Sproule, Mark
- 285. Sprude, Margaret A.
- 286. Stanley, Tom
- 287. Starke, Nancy L.

- 288. Starke, Robert (Bob) E.
- 289. Stender, Thomas
- 290. Sthrome, Russ
- 291. Stockdale, Dave K.
- 292. Stroom, Craig A.
- 293. Strybel, Jennifer A.
- 294. Sullivan, Marilou E.
- 295. Summers, Sarah
- 296. Szpara, Mary
- 297. Taxer, Devra R.
- 298. Teng, Tom Q
- 299. Thiemann, Daniel E.
- 300. Thurman, Shawn
- 301. Titus, Tim J.
- 302. Tomasula, Steve
- 303. Tomlinson, Sasha
- 304. Tsihlis, Sam
- 305. Turner, Steve
- 306. Tuyorada, Rebecca
- 307. Tyra, David W.
- 308. Uphoff, John F.
- 309. Urbance, Dave W.
- 310. Vail, Matt
- 311. Vertolli, Sero A.
- 312. Vires, Michael A.
- 313. Viswanathan, Mahesh
- 314. Vozar, Joe A.
- 315. Waghmare, Tushar M.
- 316. Walloga, Michael L.
- 317. Watson, Gail
- 318. Weaver, Ken
- 319. Weinstein, Bill
- 320. Wheeler, Michael S.
- 321. Wheelock, Jeanette
- 322. Wilson, Bernie
- 323. Wilson, George O.
- 324. Wilson, Peter S.

SCHEDULE B
List of Search Terms

9/11
10-K
10-Q
2+ °
4 star
4*star
8-K
AA
abuse (and all other iterate forms of this term)
acceleration (and all other iterate forms of this term)
account executive
accounting principle board
accrual (and all other iterate forms of this term)
accusation (and all other iterate forms of this term)
ACORN
adjustment (and all other iterate forms of this term)
advocates for responsible lending
AE
affinity
AFL-CIO
AG
aging
aicpa
Aldinger
allegation (and all other iterate forms of this term)
allowance (and all other iterate forms of this term)
amortization (and all other iterate forms of this term)
Andersen
apb
appraisal (and all other iterate forms of this term)
appropriate
arbitration (and all other iterate forms of this term)
Archibald
Arizona
arrears (and all other iterate forms of this term)
Association of Community Organizations for Reform Now
attorney general
attorneys general
attrition
audit (and all other iterate forms of this term)
auto reage
automatic (and all other iterate forms of this term)
automator
back door (and all other iterate forms of this term)
backdate (and all other iterate forms of this term)
back-end (and all other iterate forms of this term)
Banc One
bank like (and all other iterate forms of this term)
bankruptcy (and all other iterate forms of this term)
baracuda
Barron's
Bellingham

Belz
Beneficial
Bernie
Bernstein
best practices
bi monthly (and all other iterate forms of this term)
Bianucci
Bill
biweekly (and all other iterate forms of this term)
bk
blended rate
board of directors
boarding
Bob
Bobby
BOD
bonus (and all other iterate forms of this term)
Borchert
Bowden
branch audit
branch managers
branch visit tracking system
Brennan
Brett
bucket (and all other iterate forms of this term)
budget (and all other iterate forms of this term)
Bullard
buy down (and all other iterate forms of this term)
bvts
Cahill
California
call center (and all other iterate forms of this term)
Callahan
ccs
cfo
chairman
champion challenger
chance (and all other iterate forms of this term)
change (and all other iterate forms of this term)
chapter 13
chapter 7
charge off (and all other iterate forms of this term)
Cheronis
Christopher
Chrizpiao
Chuck
CII or C-II (and all other iterate forms of this term)
clean desk policy
Cliff
closed ended (and all other iterate forms of this term)
co-brand (and all other iterate forms of this term)
collection (and all other iterate forms of this term)
collector (and all other iterate forms of this term)
comparable
comparable rate

comparative rate
compensation (and all other iterate forms of this term)
complaint
comply (and all other iterate forms of this term)
comprehensive audit
concern (and all other iterate forms of this term)
confusion (and all other iterate forms of this term)
Connaughton
consent decree
consumer
control (and all other iterate forms of this term)
Cory
counter
credit
Cross
cts
Cunningham
customer service
Dan
DAS
Dave
David
Davis
Decision One
deed in lieu
defer
delay codes
delinquency (and all other iterate forms of this term)
Dennis
Denver
Department of Financial Institutions
destruction (and all other iterate forms of this term)
Detelich
DFI
DGM
DIL
DIP
directive
discharge (and all other iterate forms of this term)
disclosure (and all other iterate forms of this term)
discount points
discrepancy (and all other iterate forms of this term)
DMP
dod
Don
Doug
Douglas
Drury
earnings per share (and all other iterate forms of this term)
Edward
effective interest rate
eitf
Elden
eligible
engagement (and all other iterate forms of this term)

equity
equivalent interest rate
erisa lawsuit (and all other iterate forms of this term)
estimates (and all other iterate forms of this term)
examination (and all other iterate forms of this term)
exceptions (and all other iterate forms of this term)
expense (and all other iterate forms of this term)
extension (and all other iterate forms of this term)
EZ Pay
FARM
fascon
FDIC
federal financial institutions examination council
fee (and all other iterate forms of this term)
Feeney
FFIEC
fico (and all other iterate forms of this term)
financial relations conference
financial statements
Fitch
flag
Florida
flush
Forbes
forebearance (and all other iterate forms of this term)
forecast (and all other iterate forms of this term)
foreclosure (and all other iterate forms of this term)
four star
fraud (and all other iterate forms of this term)
Friedrich
front-end (and all other iterate forms of this term)
GAAP
GAAS
Garwall
Gary
generally accepted accounting principles
generally accepted auditing standards
gfe
Gilmer
gm
Goldman
good faith estimate
Gorrell
Grant
Greg
Gregoire
Gunderson
Hayden
headline (and all other iterate forms of this term)
headquarters (and all other iterate forms of this term)
Hedges
hfc
hfs
Hicks
Hills

HIP
hip pocket
hoepa
Hoey
Hoff
holp
home owners loan proposal
Household Initiated Payment
Howard
HSBC
Hueman
Huey
Huggins
ICP
illegal
impact
incentive (and all other iterate forms of this term)
incentivize
injunction (and all other iterate forms of this term)
insurance (and all other iterate forms of this term)
integrity
interest
interest short
inventory
investigation (and all other iterate forms of this term)
investors
Iowa
James
Janeway
Jeff
Jennifer
Jim
John
Johnson
Karla
Keckman
Keller
Ken
Kessler
KPMG
Kuipers
Kustenda
Kwidzinski
Larry
lawsuit
lead generation
Lechtenberg
legacy
legendary performers
lender (and all other iterate forms of this term)
Levy
life (and all other iterate forms of this term)
Lisa
litigation
Littler

loan (and all other iterate forms of this term)
loss mitigation
Lou
LTV
Luisi
Luna
maintenance
Makowski
mancode (and all other iterate forms of this term)
manipulation (and all other iterate forms of this term)
manual
Margaret
margin
Markell
market (and all other iterate forms of this term)
mastercard
MBO
McClayton
McCormick
McDonald
McGrane
Megan
Mehta
Melissa
Merrill
methodology
Mike
mischaracterization (and all other iterate forms of this term)
misrepresentation (and all other iterate forms of this term)
Mizialko
modification (and all other iterate forms of this term)
Monique
Moody's
Moravy
Mortgage Services
mortgageserv
multi state (and all other iterate forms of this term)
multiple
Musil
natural disaster (and all other iterate forms of this term)
near-prime (and all other iterate forms of this term)
net interest margin
net realizable value
New York
Nick
nim
nomura (and all other iterate forms of this term)
non sufficient funds (and all other iterate forms of this term)
North Carolina
nrv
nsf
numbers (and all other iterate forms of this term)
OCC
open ended (and all other iterate forms of this term)
origination cost

OTS
overappraised (and all other iterate forms of this term)
Overstreet
Pantelis
paperless
Parlette
Patrick
Paul
pay down (and all other iterate forms of this term)
pay right rewards
payment (and all other iterate forms of this term)
penalty (and all other iterate forms of this term)
percentage
personal home owners loan
Peteren
Peters
PHL
piggyback (and all other iterate forms of this term)
Plack
POC
points
policy
pool
portfolio
Potter
PPP
practice (and all other iterate forms of this term)
predatory
prepayment (and all other iterate forms of this term)
PriceWaterhouse Coopers (and all other iterate forms of this term)
private label
privilege period
profit (and all other iterate forms of this term)
prohibited sales practices
projection (and all other iterate forms of this term)
PWC
qac (and all other iterate forms of this term)
quarterly reports
rapid response team
rating (and all other iterate forms of this term)
re age (and all other iterate forms of this term)
re write (and all other iterate forms of this term)
Real estate owned
real estate settlement procedures act
receivables
recidivism
reconciliation (and all other iterate forms of this term)
refinance (and all other iterate forms of this term)
regional managers
regulation x
regulation z
Renaissance
REO
report (and all other iterate forms of this term)

repurchase (and all other iterate forms of this term)
re-reage
rescission
reserve (and all other iterate forms of this term)
reset (and all other iterate forms of this term)
respa
restatement (and all other iterate forms of this term)
restructure (and all other iterate forms of this term)
retention (and all other iterate forms of this term)
retribution (and all other iterate forms of this term)
Revenue
revision (and all other iterate forms of this term)
reward (and all other iterate forms of this term)
rewrites (and all other iterate forms of this term)
Rhainnon
Richards
Rick
right rewards
risk
Robin
Rod
rogue
roll rates (and all other iterate forms of this term)
Ron
Ruiz
run rates (and all other iterate forms of this term)
Rutland
Rybak
S&P (and all other iterate forms of this term)
Sam
Sarbanes Oxley (and all other iterate forms of this term)
scam
scapegoat
scheme
Schneider
Schoenholz
Schwager
Scott
script (and all other iterate forms of this term)
scrum
SEC
securitization (and all other iterate forms of this term)
security (and all other iterate forms of this term)
self serving (and all other iterate forms of this term)
senior credit risk update meeting
senior management
settlement (and all other iterate forms of this term)
sfas
Sharon
Shrarovsky
shred (and all other iterate forms of this term)
Shrum
simple interest
skip a pay (and all other iterate forms of this term)
Smith

Snyder
Sodeika
Sonenthol
special
spike (and all other iterate forms of this term)
Sprude
Stacey
statement of financial accounting standard
static
Steve
Steven
Stevens
Stewart
stoc
stock
Streem
structure (and all other iterate forms of this term)
subpoena (and all other iterate forms of this term)
subprime (and all other iterate forms of this term)
T chart (and all other iterate forms of this term)
t presentation (and all other iterate forms of this term)
t sale (and all other iterate forms of this term)
tangible benefits
Tanya
target (and all other iterate forms of this term)
t-chart (and all other iterate forms of this term)
TDR
Terese
Terry
Texas
Therese
Thomas
til
tila
Tom
tracking (and all other iterate forms of this term)
trainer (and all other iterate forms of this term)
Transamerica
trend (and all other iterate forms of this term)
Troubled Debt Restructure
truth in lending (and all other iterate forms of this term)
turnover (and all other iterate forms of this term)
unauthorized (and all other iterate forms of this term)
uncollectable
underwriting (and all other iterate forms of this term)
Union Privilege
unlawful
up front (and all other iterate forms of this term)
up selling (and all other iterate forms of this term)
Uphoff
vintage (and all other iterate forms of this term)
Visa
Vision
void (and all other iterate forms of this term)
volume

Vozar
Walsh
Walt
Washington
Wehrenberg
wfa
whistleblower
white knight
William
Wilmer Cutler (and all other iterate forms of this term)
work papers (and all other iterate forms of this term)
Worwa
write-down (and all other iterate forms of this term)
wtc
Zaljco
zero