UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated,	)	
Plaintiffs,	)	
v.	)	**No. 02 C 5893**
HOUSEHOLD INTERNATIONAL, INC., et al.,	)	**Judge Nan R. Nolan**
Defendants.	)	

ORDER

Plaintiffs have filed this securities fraud class action alleging that Defendants Household International, Inc. and Household Finance Corporation ("Household") engaged in predatory lending practices between July 30, 1999 and October 11, 2002 (the "Class Period").[1] On January 20, 2006, Plaintiffs filed a Motion to Compel Responses to Second Set of Interrogatories, including several requests that seek post-Class Period information. On February 17, 2006, the court granted the motion in part, denied it in part, and entered and continued the question whether Defendants must produce any post-Class Period information. At the court's request, the parties submitted additional briefs on the issue, not only for the interrogatories, but also for 25 additional requests to produce. For the reasons set forth here, Plaintiffs' request for post-Class Period discovery is denied.

BACKGROUND

Plaintiffs filed this lawsuit nearly four years ago on August 19, 2002. During the course of lengthy discovery, Defendants have produced more than four million pages of documents, including post-Class Period documents that relate to any state or federal investigation into Household's

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[1] Plaintiffs originally asserted claims arising from misrepresentations and omissions made between October 23, 1997 and October 11, 2002. On February 28, 2006, the district court dismissed those claims arising from misrepresentations made prior to July 30, 1999. (Memorandum Opinion and Order of 2/28/06, Doc. 434.)

lending practices and policies, reage practices and policies, and the earnings restatement that occurred during the Class Period. Defendants have provided Plaintiffs with all of the documents produced to the Securities and Exchange Commission ("SEC") as part of its investigation into Household's reaging policies, which resulted in Household entering into a Consent Order with the SEC. This consists of some 2.1 million pages, including documents dated after the Class Period. Defendants have also produced thousands of pages of documents relating to the investigations by, and settlement with, state attorneys general (the "AG settlement"), including documents relating to implementation and monitoring of, and communications concerning, changes to Household's policies and/or practices following the settlement.

Despite receiving this voluminous production, Plaintiffs now argue that they require still more documentation regarding post-Class Period information. Plaintiffs first seek further responses to Interrogatory Nos. 5-8 and 10-12. Interrogatory Nos. 5-8(a) ask Defendants to identify by quarter for every business unit within each Household subsidiary: (a) the amount of revenues and net income for both owned and managed real estate secured loans that were derived from (5) finance charges; (6) discount points; (7) sale of single premium credit life insurance; and (8) prepayment of penalties. Interrogatory Nos. 5-8(b) ask Defendants to identify by quarter for every business unit within each Household subsidiary: (b) the number of loans that were derived from (5) finance charges; (6) discount points; (7) sale of single premium credit life insurance; and (8) prepayment of penalties. (Ex. 1 to Baker Decl.)

In Interrogatory No. 10, Plaintiffs ask Defendants to identify by quarter the average revenue and net income for real estate secured loans, exclusive of those loans related to revenue and net income for which EZ Pay or any biweekly payment plan was employed. In Interrogatory No. 11, Plaintiffs ask Defendants to identify by quarter the percentage of both owned and managed real estate secured loans that carried a second loan (secured or unsecured) with an interest rate of 20% or higher. Interrogatory No. 12 requests "[f]or each quarter during the Relevant Period, for

all real estate secured loans that carried a second loan (secured or unsecured) with an interest rate of 20% or higher, state the amounts of the first real estate secured loan and the second loan (secured or unsecured)." (*Id.*)

Plaintiffs have also served Household with three document requests and seek post-Class Period information with respect to (1) Request No. 10 of the First Request for Production; (2) Request Nos. 5, 6, 8, 9, and 32 of the Second Request for Production; and (3) Request Nos. 1-6, 9-13, 21-25, 27, 30, and 31 of the Third Request for Production. First Request No. 10 seeks "[a]ll documents and communications concerning Household's policies and practices relating to loan delinquencies, charge-off and reaging of loans." Second Request Nos. 5 and 6 seek all documents and communications relating to Household's Audit Committee meetings and internal audits of the Consumer Lending, Mortgage Services, Retail Services, Auto Finance, and Credit Card Services business units. Second Request No. 8 seeks all documents and communications relating to or reflecting Household's use of discount points in its real estate loans. Second Request No. 9 seeks all documents all documents and communications relating to "the setting aside of reserves for delinquent or defaulting loans." Second Request No. 32 seeks all documents and communications relating to the Credit Risk Committee. (Ex. A to Class' Statement Regarding Post-Class Period Information.)

Third Request Nos. 1 and 2 seek documents supporting Household's credit loss reserves calculations for both owned and managed receivables. Third Request Nos. 3-5 seek documents reflecting or demonstrating that the loan (portfolio) performance data, loss and delinquency trends, and roll rate models for each business unit at Household were revised or modified "contemporaneous with or subsequent to the SEC's determination that Household's disclosures regarding Household's reaging or restructuring policies were false and misleading." Third Request No. 6 seeks documents supporting "the recorded gain or loss on sale, credit loss reserves under the recourse provisions, servicing revenue and excess spread, as a result of securitization of

receivables." Third Request Nos. 9-13 seek documents that track, analyze, or describe (a) prepayment penalties, (b) sales of single premium credit life insurance, (c) discount points, (d) EZ Pay accounts, and (e) second loans with an interest rate in excess of 20%. Third Request Nos. 21-24 seek monthly reports that track (a) average interest rate for personal home loans, personal equity loans, first loans, and second loans, (b) revenue recognized on origination fees, and total points charge on loans, (c) net interest margin, and (d) average loan to value ratio. (*Id.*)

Third Request No. 25 seeks documents that "assess the financial impact of the multi-state Attorneys General settlement relating to discount points, single premium credit life insurance, and prepayment penalties." Third Request Nos. 27 and 30 seek monthly reports concerning or related to (a) the allocation of insurance revenue and/or profit provided by Insurance Services, and (b) the analyses of the imposition or reversal of finance charges. Finally, Third Request No. 31 seeks documents that track or analyze rewrites or rewritten loans separately from restructures. (*Id.*)

Plaintiffs claim that post-Class Period information responsive to these discovery requests is "pertinent to the Class' claims as it addresses predatory lending practices committed during the Class Period and their impact on Household's financial performance," and is "critically relevant to the Class' allegation that Household's arbitrary reaging and restructuring practices during the Class Period defrauded investors." (Class' Statement, at 3, 4.) According to Plaintiffs, documents created and communications made after entry of the SEC Consent Order and the AG settlement may reveal whether Household in fact implemented the required changes; Household's knowledge of its improper practices and policies; and the financial impact of changing those policies. Plaintiffs believe that this additional information is likely to demonstrate the inadequacy of Household's policies and practices during the Class Period, and confirm that Household's false statements misled investors. (Class' Further Statement.)

DISCUSSION

Plaintiffs insist that *In re Control Data Corp. Sec. Litig.*, No. 3-85-1341, 1987 U.S. Dist. LEXIS 16829 (D. Minn. Dec. 10, 1987) mandates that Defendants provide them with post-Class Period information. (Class' Statement, at 3.) In *Control Data*, a Minnesota district court found "no rule fixing discovery in class-action litigation to the class period," and overruled objections to the production of documents beyond the class period in that case. *Id.* at *8. In reaching this conclusion, the court stated only that "[t]here are numerous instances in securities fraud litigation where post-offering statements, documents, or conduct have been treated as admissible evidence on the issue of scienter, intent, and knowledge." *Id.* at *7 (citing *Michaels v. Michaels*, 767 F.2d 1185 (7th Cir. 1985); *S.E.C. v. Holschuh*, 694 F.2d 130, 143 (7th Cir. 1982); *Quintel Corp., N.V. v. Citibank, N.A.*, 596 F. Supp. 797 (S.D.N.Y. 1984); *State Teachers Retirement Bd. v. Fluor Corp.*, 589 F. Supp. 1268 (S.D.N.Y. 1984)).

The court agrees with the general proposition that post-class period information may be relevant in certain circumstances. None of Plaintiffs' cited cases, however, supports production of post-Class Period information in this case. Several of those cases, for example, were decided at the pleading stage, and did not address a class' request for post-class period information after years of discovery involving the production of more than four million pages of documents. *See, e.g., In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 73 (2d Cir. 2001) (noting at the pleading stage that "post-class period data may be relevant to determining what a defendant knew or should have known during the class period."); *Rothman v. Gregor*, 220 F.3d 81, 92 (2d Cir. 2000) (plaintiffs alleged facts sufficient to support a strong inference of scienter based on a lawsuit filed 13 months after the plaintiffs' class period where it was reasonable to draw an inference favorable to the plaintiffs that "some aspect of it occurred during the [class period]."); *In re TCW/DW N. Am. Gov't Income Trust Sec. Litig.*, 941 F. Supp. 326, 331 n.7 (S.D.N.Y. 1996) (in ruling on a motion to

dismiss, the court used a post-class period prospectus "only as a tool to help explain the consequences of extension risk in the context of this lawsuit, and not as evidence weighing in the favor of either party.")

A. *Control Data*

As for *Control Data*, the court made only a general statement that post-class period information has been admitted on the issues of scienter, intent, and knowledge, and the cases it relied on for this proposition do not support post-Class Period production here. The plaintiff in *Michaels v. Michaels* sued his uncles for securities fraud, claiming that they misstated and withheld material information from him when he sold them his stock in the family business. 767 F.2d at 1191. Specifically, the defendants agreed to purchase the plaintiff's stock without informing him that they had an agreement with a consultant, Angus Littlejohn, to contact prospective buyers on behalf of the company. *Id.* at 1194. The defendants bought the plaintiff's stock on January 27, 1976; in July 1976, they sold the company to Azcon Corporation for $13.4 million and lifetime employment contracts. *Id.* A jury awarded the plaintiff $750,000 in damages and the district court denied the defendants' motion for judgment notwithstanding the verdict. *Id.* at 1191-92. The defendants appealed on several grounds, including that the withheld information was immaterial as a matter of law. *Id.* at 1192.

As part of its materiality analysis, the Seventh Circuit noted that the materiality of information is "determined in light of what the defendants knew at the time the plaintiff committed himself to sell the stock, in this case by signing the agreement to sell on January 27, 1976." *Id.* at 1195. The court found that activities occurring after January 27, 1976 were relevant to the issue of materiality "only to the extent that they reflect what [the defendants] knew at the time they signed the stock purchase agreement." *Id.* The court held that a reasonable jury could find that the consultant's agreement to contact prospective buyers on behalf of the company was material in

part due to evidence that the defendants retained Littlejohn as a broker on January 24, 1976, three days before they bought the plaintiff's stock. *Id.* at 1197.

In *S.E.C. v. Holschuh*, Edward E. Holschuh helped incorporate, and served as president of, Pocahontas Coal Reserves ("PCR"). In that capacity, Holschuh and others devised a plan to raise funds to develop PCR's coal properties by having a third-party broker run by Buddy Stanley form and sell interests in limited partnerships which would invest in PCR's coal mining venture on the expectation of receiving highly profitable returns out of reciprocal lease arrangements between PCR and the partnership. *Id.* at 132-33. Between December 21 and 30, 1976, 59 investors bought interests in five partnerships. In February 1977, Holschuh told Stanley that PCR had received certain mining permits allowing it to extract coal from the land, and had submitted several other permit applications. In truth, there were no such permits with respect to two mines, and the permit for a third mine was not granted until December 1977. *Id.* at 135. Holschuh also sent Stanley three handwritten notes in February and March 1977 that failed to disclose the true situation concerning title and ownership of the properties, the actual status of the permits, or the continued and severe depletion of the investors' funds. *Id.* at 135-36.

The SEC commenced an enforcement action in the district court seeking injunctive and other equitable relief against Holschuh and others. The SEC alleged that the defendants had violated the registration and antifraud provisions of the federal securities laws. Following a bench trial, the district court found Holschuh primarily and secondarily liable for both the registration and antifraud violations. *Id.* at 136. On appeal to the Seventh Circuit, Holschuh argued, among other things, that the district court erred in its analysis of the fraud charges by considering deceptions that occurred subsequent to the formation of the partnerships. *Id.* at 143. According to Holschuh, "a violation of the securities laws may not be based on events occurring after a sale has been completed, because such events could not have influenced the decisions of investors and cannot

satisfy the statutory requirement of being 'in connection with the purchase or sale of any security.'" *Id.*

The Seventh Circuit disagreed, noting that the district court's finding of fraud "rested predominantly upon Mr. Holschuh's conduct prior to completion of the sale," and that his later lulling activities did not stand apart from the earlier unlawful conduct. *Id.* In the Seventh Circuit's view, "[t]he court was entitled to consider the lulling activities because they were evidence of a scheme which, viewed as a whole, was sufficiently closely connected to the sale and was relevant to the question of intent." *Id.* at 144. *See also Quintel Corp. v. Citibank, N.A.*, 596 F. Supp. at 804 (in securities fraud case involving purchase of real property, post-closing evidence of the purchaser's performance was relevant to the issue of the defendant bank's negligence in investigating the projected value of the investment and the purchaser's actual result); *State Teachers Retirement Bd. v. Fluor Corp.*, 589 F. Supp. at 1272 (allowing plaintiffs who sold defendant Fluor's stock between March 3 and 6, 1975 to present evidence that co-defendant Manufacturers Hanover Trust Company purchased Fluor stock during the period it had insider information, i.e., between March 3 and April 11, 1975).

B. Analysis

The court finds the facts of these cases distinguishable from those presented here. Unlike the plaintiff in *Holschuh*, Plaintiffs do not allege that Household engaged in post-Class Period efforts to conceal fraud. Nor does this case involve allegations of insider trading or negligence as in *State Teachers Retirement Bd.* and *Quintel*. In addition, Household has already produced documents dated after the Class Period that relate to state or federal investigations into Household's lending practices and policies, reaging practices and policies, and the earnings restatement that occurred during the Class Period. *Compare Michaels*, 767 F.2d at 1197

(consulting activities occurring after stock purchase were material where the defendants retained the consultant during the class period).

More importantly, the Class Period in this case spans more than three years from July 1999 to October 2002, and Defendants have already produced millions of documents to Plaintiffs. That production includes documents dating from the original October 1997 Class Period start date – which are arguably no longer relevant now that the district court has shortened the Class Period by nearly two years – as well as some documents dating back as far as 1994. The class period in *Control Data*, conversely, was only one year, and there was no suggestion that the plaintiffs had received anywhere close to the number of documents at issue here. *See also State Teachers Retirement Bd.* 589 F. Supp. at 1272 (class period was four days and court allowed post-class period production extending only an additional month); *In re Seagate Tech. II Securities Litig.*, No. C-89-2493(A)-VRW, 1993 U.S. Dist. LEXIS 18065 (N.D. Cal. June 15, 1993) (declining to limit third-party subpoenas for documents relating to the valuation of the defendant's securities where the class period spanned less than six months between April 13 and October 7, 1988, and the subpoenas sought documents covering only an approximately five-month period after the end of the class period).

This court has broad discretion in matters relating to discovery and may limit its scope if "the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues." FED. R. CIV. P. 26(b)(2). *See also Patterson v. Avery Dennison Corp.*, 281 F.3d 676, 681 (7th Cir. 2002). The court has carefully reviewed the parties' submissions and finds that, considering all of the above factors, the burden imposed on Household in repeating its already extensive document search and production to locate post-Class Period documents outweighs any likely benefit to Plaintiffs.

In reaching this conclusion, the court again notes that Plaintiffs have already received more than four million pages of documents to date; Household has already produced post-Class Period documents that relate to events occurring during the Class Period; and this case has been pending for nearly four years without any end in sight. Plaintiffs' requests, moreover, appear to be based in large measure on the theory that lower post-Class Period revenues resulting from a change in Household's lending practices would demonstrate that the higher revenues achieved during the Class Period had to be the result of fraudulent practices. As the Supreme Court recently cautioned, however, such a change in revenues or price

> may reflect, not the earlier misrepresentation, but changed economic circumstances, changed investor expectations, new industry-specific or firm-specific facts, conditions, or other events, which taken separately or together account for some or all of that lower price [or decreased revenues].

Dura Pharmaceuticals, Inc. v. Broudo, 544 U.S. 336, 343 (2005).

Plaintiffs have not satisfied the court that post-Class Period information responsive to their seven interrogatories and 25 document requests will serve to advance this case or otherwise assist Plaintiffs in any meaningful way. Whatever marginal probative value the information may have simply does not justify the immense burden of production. In addition, given the parties' demonstrated inability to cooperate with each other in a professional manner or to resolve the most minor of disputes without the need for court intervention, the court suspects that extending the scope of discovery at this late stage will serve only to create further unnecessary delay and to impose further strain on the court's limited resources. *See, e.g., Montgomery v. Davis*, 362 F.3d 956, 957 (7th Cir. 2004) ("A part of the Court's responsibility is to see that [its limited] resources are allocated in a way that promotes the interests of justice.") Plaintiffs' motion for post-Class Period discovery is denied.

CONCLUSION

For the reasons stated above, Plaintiffs' Motion to Compel Second Set of Interrogatories with respect to post-Class Period information [Doc. 379], and request for any other post-Class Period discovery, is denied.

ENTER:

Dated: June 15, 2006

NAN R. NOLAN
United States Magistrate Judge