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-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

MEMORANDUM OF LAW IN SUPPORT OF THE HOUSEHOLD DEFENDANTS' MOTION TO COMPEL RESPONSES TO HOUSEHOLD DEFENDANTS' SECOND SET OF INTERROGATORIES TO LEAD PLAINTIFFS

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TABLE OF CONTENTS

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Rules

This memorandum is respectfully submitted on behalf of Defendants Household International, Inc., Household Finance Corp., William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar (collectively, "Household" or "Defendants") in support of the Household Defendants' Motion to Compel Responses to Household Defendants' Second Set of Interrogatories To Lead Plaintiffs (the "Interrogatories").[1]

INTRODUCTION

Through this motion, Defendants seek essential, long-withheld information about the basis of Plaintiffs' claims. After four years and well over four million pages of discovery, Plaintiffs still have not fully explained which "illegal predatory lending" practices Household allegedly condoned or, more importantly, how those unspecified "practices" give rise to viable claims of "fraud" by investors. Plaintiffs' refusal to answer Defendants' Second Set of Interrogatories is regrettably consistent with their pattern of obscuring their securities fraud claims against Household with vague and overblown allegations of alleged abuses against customers that provide little insight into what the alleged "fraud" against investors allegedly entailed.[2] In attempt to cut through this fabric of vagueness and ambiguity, the Interrogatories ask Plaintiffs to identify the allegedly "illegal predatory conduct" they say gave rise to securities fraud.

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1 "Interrogatories" refers to Household Defendants' Second Set of Interrogatories to Lead Plaintiffs served on February 13, 2006. (See Affidavit of David R. Owen dated June 29, 2006 ("Owen Aff."), Ex. 7).

2 Defendants also request that any order resulting from this motion also apply to the six interrogatories contained in Household Defendants' Third Set of Interrogatories to Lead Plaintiffs if Defendants should rely upon identical objections of "prematurity" with respect to the third set. On June 23, 2006, the business day before their answer was due, Plaintiffs requested a three-week extension of time on their responses. Defendants agreed to extend the deadline to July 18 provided that Plaintiffs indicate if they intended to again object to and refuse to answer the interrogatories as "premature" as they had done to Defendants' Second Set of Interrogatories. After appearing to accept the offer, Plaintiffs later refused, and instead filed a formal motion seeking the three weeks already offered to them, even to object to the six questions put to them four weeks earlier. Defendants' reasonable wish is to avoid the burden, cost and delay of a second round of motion practice if Plaintiffs should announce near the close of the briefing schedule on the instant motion that they also consider the six pending interrogatories to be premature.

Instead of providing substantive responses, Plaintiffs have taken the position with respect to most of the Interrogatories that they need not provide any explanation of their own allegations until an unspecified later time. This position: (a) contradicts their prior submissions to this Court, and (b) ignores the implications of the Court's November 10, 2005 Order (the "Order")[3] requiring Defendants to respond to similar interrogatories served by Plaintiffs. That Order was entered in connection with Plaintiffs' September 6, 2005 motion to compel responses to their first set of contention interrogatories regarding Defendants' affirmative defenses. Defendants opposed the motion, arguing that responses to contention interrogatories should not be required until discovery was substantially complete. Plaintiffs summarized their position in the following passage:

> The information sought by plaintiffs is essential to understand the basis of the defenses asserted, improve the focus of the parties' discovery, move this case toward trial and equip the Court to more reliably contain discovery excesses. . . . With the fact discovery cut-off only four months away, it is vital that plaintiffs know what factual basis, if any, defendants have for their affirmative defenses.

(Owen Aff., Ex. 2 at 2 (Plaintiffs' Brief[4])). On November 10, 2005, the Court agreed with Plaintiffs and entered an Order requiring responses to all contention interrogatories. (Owen Aff., Ex. 1 at 6). In keeping with the rationale of the Court's Order, Defendants served the Interrogatories that are the subject of this motion. They ask that Plaintiffs: (1) identify the documents and facts that they contend support specific allegations in the Complaint[5] (Nos. 5-8, 16-27) and (2) clarify terms used in the Complaint and in Plaintiffs' discovery requests relating to Defendants' lending practices (Nos. 9-15).

In their initial responses, served on March 15, 2006, Plaintiffs outright refused to respond to any of the interrogatories until after the completion of discovery. By letter of April 7, 2006, Defendants challenged these objections in light of this Court's November 10, 2005 Order. However, Plaintiffs took the position that they should not be guided by this Court's Order because it did not ap-

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3 "Order" refers to the Court's November 10, 2005 Order of Magistrate Judge Nan R. Nolan. (Owen Aff., Ex. 1).

4 "Plaintiffs' Brief" refers to Lead Plaintiffs' Memorandum in Support of Motion to Compel Responses to First Set of Interrogatories From Household Defendants filed on September 6, 2005. (Owen Aff., Ex. 2)

5 "Complaint" refers to the [Corrected] Amended Consolidated Class Action Complaint.

ply to them. (Owen Aff., Ex. 9 at 22 (Tr: April 27, 2006)). During the May 11, 2006 status conference, Plaintiffs partially reversed course and said they would choose a few interrogatories and respond to those. On May 25, 2006, Plaintiffs served supplemental "Responses"[6] to only a handful of interrogatories (5-6, 8-14), refusing to answer the remainder (7, 15-28) and continuing to maintain that the Court's November 10, 2005 Order is irrelevant to them. (Owen Aff., Ex. 10 at 6:6-9 (Tr: June 15, 2006)). Six of these supplemental "responses" (9-14), discussed in point B, *infra*, were themselves non-responsive or unacceptably evasive.

Plaintiffs' transparent attempt to evade the mutual obligations of discovery for their own tactical advantage should not be countenanced. Nine months ago Plaintiffs urged the Court to compel responses to their own contention interrogatories, proclaiming, "[w]ith less than four months left before fact discovery ends, ***discovery is near an end.***" (Owen Aff., Ex. 4 at 5 (Plaintiffs' Reply[7] (emphasis in original))). They argued that in order to refine further discovery, advance the case to trial, and better equip the Court to deal with discovery disputes, it was essential for them to understand the details of Defendants' pleading. Basic principles of mutuality and fairness require that Defendants be given the same right. Unlike Defendants, who are still trying to understand how supposedly "predatory" lending practices translate into a claim of securities fraud, Plaintiffs were required to have a good faith basis for asserting such a claim when they filed their prolix Complaint. After four years and some four million pages of discovery, the time for Plaintiffs to explain their claims and otherwise submit to reciprocal discovery has certainly arrived.

ARGUMENT

This Court is expressly authorized to take steps to manage the litigation before it in an efficient and expeditious manner. *Carnegie* v. *Household International, Inc.*, 376 F.3d 656, 662 (7th

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6 "Responses" refers to Lead Plaintiffs' Supplemental Responses and Objections to Household's [Fourth] Set of Interrogatories to Lead Plaintiffs served on May 25, 2006. (Owen Aff., Ex. 8). This motion does not take issue with Plaintiffs' revised responses to Interrogatories No. 5, 6, 8.

7 "Plaintiffs' Reply" refers to Lead Plaintiffs' Reply in Support of Motion to Compel Responses to First Set of Interrogatories From Household Defendants filed on September 27, 2005. (Owen Aff., Ex. 4)

Cir. 2004), *cert. denied,* 543 U.S. 1051 (2005). As this Court previously reaffirmed, the scope of this authority includes the timing and substance of answers to contention interrogatories. (*See* Owen Aff., Ex. 1 at 6 (November 10, 2005 Order)).

A. Plaintiffs Should be Required to Provide the Factual Basis for Their Claims (Interrogatories No. 7, 15-27)[8]

Under Rule 33(b), contention interrogatories must be answered fully and "include all the information within the responding party's knowledge and control." *Bell* v. *Woodward Governor Co.*, No. 03 C 50190, 2005 U.S. Dist. LEXIS 19602, at *4 (N.D. Ill. Sept. 8, 2005). "The appropriate timing for contention interrogatories depends on the facts of the case and, ultimately, it is within the court's discretion to determine when contention interrogatories should be answered." (Owen Aff., Ex. 1 at 4 (November 10, 2005 Order, *citing Ziemack* v. *Centel Corp.*, No 92 C 3551, 1995 WL 729295, at *2 (N.D. Ill. Dec. 7, 1995)). The Court has already made that determination in this case. In its November 10, 2005 Order, the Court held that responses to contention interrogatories should not be delayed until the completion of all fact discovery. (*See Id.* at 6).[9]

Plaintiffs assert that, unlike Defendants, they should be allowed to disregard contention interrogatories until discovery is complete. (Owen Aff., Ex. 9 at 21 (Tr: April 27, 2005); Owen Aff., Ex. 10 at 6:19-22 (Tr: June 15, 2006)). Putting aside that more than eight months of further discovery have taken place since Plaintiffs took the position that the approaching close of discovery required immediate responses, Plaintiffs' current position is indefensible in light of the express rationale of the Court's November 10, 2005 Order, and their own arguments as to the value of contention

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8 Plaintiffs have renumbered Defendants' interrogatories by increasing the number by ten (e.g. interrogatory no. 15 has been renumbered by Plaintiffs as interrogatory no. 25). Reference herein will always be to Defendants' original numbering unless otherwise stated.

9 Significantly, the Court noted that "[i]nterrogatories seeking the identification of witnesses and documents, on the other hand, are not contention interrogatories" and, therefore, responses should not be postponed. (Owen Aff., Ex. 1 at 3-4 (quotations and citations omitted)). Thus, Plaintiffs continuing refusal to identify documents in response to interrogatories No. 7, 16-27 contradicts the Court's November 10 Order on this basis as well.

interrogatories in narrowing issues, providing needed information to deter discovery excesses and accelerating the ultimate disposition of the case. (Owen Aff., Ex. 2 at 2 (Plaintiffs' Brief)).

The case law surveyed in the Order provides ample support for requiring Plaintiffs to comply with the mutual obligations of discovery. (Owen Aff., Ex. 1 at 5). Indeed, in *Rusty Jones, Inc.* v. *Beatrice Co.*, the court granted defendant's motion to compel answers to contention interrogatories before the end of discovery on this very basis, noting (as here) that the defendant had already answered plaintiff's contention interrogatories. No. 89 C 7381, 1990 WL 139145, at *2 (N.D. Ill. Sept. 14, 1990). *See also McCormick-Morgan, Inc.* v. *Teledyne Industries, Inc.*, 134 F.R.D. 275, 287-288 (N.D. Cal. 1991) (holding that plaintiff must answer defendant's contention interrogatories and, conversely, defendant must answer any sensible contention interrogatories which plaintiff decides to serve). Despite Plaintiffs' assertion to the contrary, discovery is still a two-way street. *Hickman* v. *Taylor*, 329 U.S. 495, 507 n.8 (1947) ("[D]iscovery is mutual—that while a party may have to disclose his case, he can at the same time tie his opponent down to a definite position.") (citation and internal quotation marks omitted).[10]

Every interrogatory that Plaintiffs have refused to answer relates to Plaintiffs' own allegations as set forth in the Complaint.[11] Plaintiffs are required to have a good faith factual basis to pursue their claims under Fed. R. Civ. P. 11. As such, Defendants are entitled to know the factual basis, *vel non*, upon which Plaintiffs predicate their claim. *See, e.g.*, *Rusty Jones*, 1990 WL 139145, at *2 ("[Plaintiff] certainly investigated the case before filing their complaint in order to have some factual basis upon which to base its allegations, in compliance with Fed. R. Civ. P. 11. Therefore, the

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10 It also bears noting that Plaintiffs have selectively invoked portions of the November 10, 2006 Order as a further means to evade their discovery obligations. While claiming that the Court's Order does not apply to them, Plaintiffs simultaneously object to the Interrogatories "on the grounds that its requirement that Lead Plaintiffs identify 'all' documents is contrary to the Court's November 10, 2005 Order." (Owen Aff., Ex. 8 at 11 (Responses)).

11 For example, interrogatories No. 16-27 request documents and/or facts supporting Plaintiffs' claims regarding the illegality and pervasiveness of the fraudulent activity they allege in the Complaint. Likewise, interrogatories No. 10-14 simply request clarification of definitions of terms used by Plaintiffs in their Complaint and interrogatories. No matter how much discovery is conducted, only Plaintiffs will ever know what they meant by the terms they used in their pleadings.

court finds [plaintiff] does have sufficient information with which to answer [defendant's] contention interrogatories."); *Calobrace* v. *American National Can Co.*, No. 93 C 0999, 1995 U.S. Dist. LEXIS 1371, at *3-4 (N.D. Ill. Feb. 3, 1995) (Guzman, J.) (ordering plaintiffs to respond to defendants' contention interrogatories because "[t]hese interrogatories ask simple straightforward questions as to the particulars behind [plaintiffs'] claim").

The late stage of this litigation and the substantial discovery conducted to date also favor an order requiring immediate responses to these Interrogatories. "When one party poses contention interrogatories after considerable discovery, and the opposing party refuses to answer the interrogatories, courts routinely compel the resisting party to answer the interrogatories." *Calobrace*, 1995 U.S. Dist. LEXIS 1371, at *3 (Guzman, J.). Almost four years have passed since Plaintiffs first asserted their allegations and well over four million pages of documents have been produced by Defendants and their outside auditors. Defendants have completed document production in response to Plaintiffs' first and second document demands and are completing their response to Plaintiffs' third, which is substantially duplicative. Although some documents are still forthcoming, document discovery is all but complete.[12] Plaintiffs have also taken over twenty depositions—far more than the Federal Rules of Civil Procedure contemplate in the ordinary case. *See* Fed. R. Civ. P. 31(a)(2)(A). Given the wealth of discovery already assembled, and the information Plaintiffs were required to have in hand before starting and continuing this lawsuit, Plaintiffs have no valid reason to resist providing answers about the support for the allegations of their Complaint. *See Ziemack*, 1995 WL 729295, at *2 (granting defendant's motion to compel responses to contention interrogatories, stating that "[a]lthough discovery has not yet ended, a significant amount of discovery has already taken place in this three and one half year old case"). *See also Bell,* 2005 U.S. Dist. LEXIS 19602, at *4 (granting in part defendants motion to compel responses to contention interrogatories, stating interrogatories must be answered fully and "include all the information within the responding party's

12 On June 15, 2006, the Court denied Plaintiffs' motion to compel additional post-Class Period discovery. The original close of fact discovery—January 12, 2006—was extended by the Court to May 12, 2006. While the Court signaled its intention to extend it again, the date has not formally been extended.

knowledge and control"); *Thomas & Betts Corp.* v. *Panduit Corp.*, No. 93 C 4017, 1996 U.S. Dist. LEXIS 4494, at *8 (N.D. Ill. Apr. 8, 1996) (holding that because discovery had been ongoing for two years and despite the fact that discovery was not "significantly complete[]", "[plaintiffs] must answer any contention interrogatories at issue here with whatever information is currently available" so as to "narrow[] the issues and find[] out exactly what [plaintiff] actually contends").[13]

Plaintiffs have already avoided answering these Interrogatories for over four months, and by forcing Defendants to seek the Court's assistance (on an issue previously addressed by the Court) they have bought themselves an even longer reprieve. Without relief from the Court, Defendants will not be able to effectively move this case toward summary judgment, prepare for their own depositions when the stay on that procedure is lifted, or assist the Court in dealing with disputes regarding Plaintiffs' ever-expansive discovery demands. *See Edward Lowe Industries, Inc.* v. *Oil-Dri Corp. of America*, No. 94 C 7568, 1995 WL 399712, at *3 (N.D. Ill. July 7, 1995) ("However, contention interrogatories may be proper even early in discovery when there is good reason to believe that answers . . . will contribute meaningfully to clarifying issues in the case, narrowing the scope of the dispute, or setting up early settlement discussion.").

As Plaintiffs themselves argued, responses to contention interrogatories are particularly appropriate in this case because of the "complexity of the case, the subtlety of the theories, as well as the dearth of information regarding the claim provided in the pleading." (Owen Aff., Ex. 2 at 6 (Plaintiffs' Brief, *citing In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328, 336 (N.D. Cal. 1985)). Plaintiffs explained:

> This securities class action suit is a complex case involving a myriad of issues, including numerous public disclosures relating to Household's financial statements necessary under federal securities laws, lending practices, accounting treatment, loan reaging, and investigations by governmental agencies over a five-year class period.

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13 Plaintiffs contend that they should not have to answer the interrogatories until every last responsive document is produced—claiming that "although the number 5 million sounds like a lot, and it is a lot for us to deal with, it does not necessarily translate into obtaining all responsive documents." (Owen Aff., Ex. 10 at 17:19-22 (Tr: June 15, 2006)). Plaintiffs' claim that the millions of pages already produced are insufficient to begin answering interrogatories is absurd.

(*Id.*). Plaintiffs previously urged this Court that "it is vital that plaintiffs know what factual basis, if any, defendants have for their affirmative defenses." (*Id.* at 2). Plaintiffs cannot now seriously contend that Defendants are not entitled to know the factual underpinnings of Plaintiffs' claims. Defendants have responded to Plaintiffs' interrogatories and have set forth the factual basis of their affirmative defenses. Since Plaintiffs have refused to conform their own conduct to the standard set by the Court, Plaintiffs should be compelled to do so.

B. Plaintiffs' Responses to Interrogatories No. 9-14 Relating To "Predatory Lending" Are Evasive and Inadequate[14]

Plaintiffs' voluminous Complaint is replete with vague and unspecified claims that Defendants engaged in a "widespread practice" of "illegal predatory lending." The Complaint, however, offers very little assistance on the intended meaning of these terms. For example, it fails to indicate: (a) how Plaintiffs define the phrase "illegal predatory lending," and (b) which of Defendants' products or services Plaintiffs contend are included in the "widespread" abusive practices they allege.

The Interrogatories reflect an effort to better understand Plaintiffs' position on these two crucial points, among others. For example, Interrogatory No. 9 asked Plaintiffs to "Define 'illegal predatory lending' as they had used the phrase used in their Complaint . . . ." (Owen Aff., Ex. 7 at 2). The five Interrogatories that followed (No. 10-14) sought guidance on the second question (*i.e.*, which products and sales were allegedly included within that definition). (*Id.* at 2-3).

Plaintiffs' responses to these queries were less than illuminating, to say the least. Rather than clarifying the Plaintiffs' definition of its own term "illegal predatory lending" in any meaningful way, Plaintiffs' "response" to No. 9 simply parroted back vague, meaningless and/or inflammatory language from the Complaint, and added nonspecific references to lengthy documents that provide virtually no insight into Plaintiffs' theories. (*See* Owen Aff., Ex. 8 at 24-26).

Plaintiffs' responses to Interrogatories No. 10-14 were even worse. Those five interrogatories had asked Plaintiffs to indicate (without regard to the definition itself) whether five par-

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14 This motion does not take issue with Plaintiffs' revised responses to Interrogatories No. 5, 6, and 8.

ticular products or services about which Plaintiffs had inquired in their interrogatories were included within the phrase "illegal predatory lending" as used by Plaintiffs in their Complaint. Plaintiffs effectively refused to say. Instead they just circled back to the meaningless definition provided in response to Interrogatory No. 9. (*See Id.* at 26-30). As a result, Defendants are now in no better position to determine what is included in Plaintiffs' alleged "fraudulent scheme" of "illegal predatory lending" than they were prior to receiving the alleged Responses.

"If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions." Fed. R. Civ. P. 37(a)(2)(A). It is well established that evasive, vague or incomplete responses to an interrogatory are treated as a failure to respond. *Jones* v. *Syntex Laboratories, Inc.*, No. 99 C 3113, 2001 U.S. Dist. LEXIS 17926, at *4, 6 (N.D. Ill. Oct. 24, 2001) (Nolan, M.J.); Fed. R. Civ. P. 37(a)(3). Parties are required to respond to interrogatories that request clarification of terms used in a plaintiff's complaint. *See, e.g., Indiana Manufactured Housing Ass'n* v. *Pierce*, No. S86-698, 1987 U.S. Dist. LEXIS 15233, at *29-30 (N.D. Ind. Apr. 28, 1987) (ordering plaintiff to define terms used in plaintiff's complaint and stating "[s]tipulation to the meaning of technical terms might well expedite this litigation; this discovery might pave the way for such a stipulation").

It is axiomatic that a plaintiff's failure to be specific about the alleged "fraud" they allege deprives a defendant of a fair opportunity to challenge such allegations. That is precisely the problem here. Plaintiffs have failed to clearly define "illegal predatory lending." Because Defendants have not been told which supposedly illegal conduct they allegedly lied about to investors, Defendants cannot adequately prepare defenses on essential elements such as actual falsity, materiality, scienter and loss causation. Plaintiffs must be compelled to provide a definition of "illegal predatory lending" with sufficient clarity to establish what it is Defendants allegedly did so that the focus can finally turn to the stuff of a securities fraud case (e.g., whether "it" or its related earnings were material, whether or not Household lied about "it" to investors with an intent to defraud, and whether alleged lies or omissions about "it" induced reliance to the detriment of any class member when disclosures about "it" were finally made). The considerable uncertainty and resulting prejudice caused by Plaintiffs' vagueness is compounded by Plaintiffs' evasive responses to Interrogatories No. 10-14.

Those interrogatories asked about specific products and whether sales of those products met Plaintiffs' criteria of "illegal predatory lending." The interrogatories did not ask about the definition, they asked about the scope of things reached by that definition.

In the hope of making this identification easier for Plaintiffs, Interrogatories No. 10-14 used Plaintiffs' own terminology of products to establish which products or sales were part of the alleged scheme. Specifically, Plaintiffs had previously identified (in discovery requests made to Defendants) five categories of loan products that appeared to potentially fall within the scope of Plaintiffs' claims, including:

(1) "discount points",

(2) "single premium credit insurance",

(3) "prepayment penalties",

(4) "Use of E-Z-Pay", and

(5) "Origination of second loans at interest at rates in excess of 20%"

(*See* Owen Aff., Ex. 5 at 3-4 ("Plaintiffs' Interrogatories"[15])). Plaintiffs' asked Defendants to quantify "*the amount of revenues and net income derived*" from each of these products and "*the number of loans from which such revenues and net income . . . were derived.*" (*Id.*).[16]

Lacking knowledge about whether Plaintiffs contend that all or only some of the "revenues" from these products should be deemed fruits of the alleged "illegal predatory lending" practices, Defendants' Interrogatories No. 10-14 asked, for example:

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15 "Plaintiffs' Interrogatories" refers to Lead Plaintiffs' Second Set of Interrogatories Propounded to Defendants Household International, Inc., Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer, and J.A. Vozar served on September 21, 2005. (Owen Aff., Ex. 5).

16 For example, Plaintiffs proffered interrogatory No. 6, which states:

Identify by quarter for every business unit within each Household subsidiary during the Relevant Period:

(a) the amount of revenues and net income derived from discount points for both owned and managed real estate secured loans, and

(b) the number of loans from which such revenues and net income for such discount points were derived.

(Owen Aff., Ex. 5 at 3).

> Identify whether the use of "discount points" as referenced in Interrogatory No. 6 of Plaintiffs' Second Interrogatories falls within the definition of "illegal predatory lending" as that term is used by Plaintiffs in the Complaint.

(Owen Aff., Ex. 7 at 2).

Plaintiffs' responses did not indicate whether all or only some of those products were included within their term "illegal predatory lending," but rather reverted to the same meaningless definition in their previous answer, stating:

> Household's use of discount points *in the manner described in response No. [9], supra*, falls within the definition of 'illegal predatory lending' as that term is used by Lead Plaintiffs in the Complaint.

(Owen Aff., Ex. 8 at 27 (emphasis added)).[17]

A request to establish which sales or which products are covered by the phrase "illegal predatory lending" is not sufficiently answered when the response merely reiterates the definition. Requests No. 10-14 sought to flesh out the actual contours of Plaintiffs' ambiguously defined term "illegal predatory lending" by reference to particular products and revenues from particular products. Plaintiffs' circular response amounts to saying "the use of discount points is included in our definition of predatory lending to the extent that it is included in our definition of predatory lending."[18] Plaintiff should not be permitted to maintain ambiguity about whether all or only some of those "revenues" are included in Plaintiffs' contentions.

It is well-settled that a plaintiff may not evade an interrogatory requesting specific information by referring to general propositions or vague references to other materials. *See Bell*, 2005 U.S. Dist. LEXIS 19602, at *9-10 ("Defendant is not asking Plaintiffs about their case in a general matter. Defendant is after specifics." *Id.* at 10. "Defendant is entitled to the information that Plain-

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17 The reason for Plaintiffs' evasion is readily apparent given that none of the five products referenced is prohibited by the laws of any of the locations in which the products were offered. Indeed, Plaintiffs' complaint appears to be predicated upon a word game that Plaintiffs employ with respect to their use of the term "illegal predatory lending."

18 "Response No. [9]" is the "definition" that Plaintiffs' have offered for "illegal predatory lending." (*See* Owen Aff., Ex. 8 at 24-26). Plaintiffs' statement that "Response No. [9], *supra*, falls within the definition of 'illegal predatory lending'" is therefore circular nonsense. (*See Id.* at 27).

tiffs have identified as specific material or principal facts supporting their prima facie case." *Id.* at 13). Where plaintiffs evade answering an interrogatory that is susceptible to a "yes" or "no" answer, courts will order such a response. *See, e.g. In re Industrial Gas Antitrust Litigation*, No. 80 C 3479, 1985 U.S. Dist. LEXIS 15646, at *4-7 (N.D. Ill. Sept. 24, 1985). Plaintiffs should be ordered to provide real answers to Interrogatories 10-14 without further delay.

Plaintiffs' objections to these interrogatories have no merit and should be overruled. For example, Plaintiffs assert that each of these short and precise interrogatories is "vague, ambiguous, overly broad, unintelligible and fails to state with sufficient particularity the information to be provided." (Owen Aff., Ex. 8 at 26-30). The objection is nonsensical, but it is also revealing, considering that the Interrogatories request clarification regarding terms and allegations that *Plaintiffs assert in their own pleadings*. For Plaintiffs to claim that the interrogatories are "vague" and "unintelligible" only serves to admit that their own allegations suffer from these very defects.

Plaintiffs have explained to Defendants (in resisting Defendants' request that they "define illegal predatory lending as the term was used in the complaint") that the term "predatory lending" is "such a broad and elusive term." (Owen Aff., Ex. 9 at 24 (Tr: April 27, 2006)). This is precisely the reason why it is *essential* that Defendants receive a useful response to their interrogatories. To prepare an adequate defense, Defendants need to know specifically what *Plaintiffs* mean when they allege "illegal predatory lending" as a predicate for alleged securities fraud claims. This litigation cannot efficiently and fairly move forward if Plaintiffs refuse to inform Defendants as to what categories of practices or acts gave rise to the alleged fraud. Requesting clarification of a term used by the opposing party is appropriate when the term is not "understandable on its face." *See Portis* v. *City of Chicago*, No. 02 C 3139, 2005 U.S. Dist. LEXIS 7972, at *15-16 (N.D. Ill. Apr. 15, 2005) (Nolan, M.J.). Defendants simply want to know what Plaintiffs contend were the products, services, practices and related revenues that were allegedly fraudulently misrepresented in or omitted from Household's public disclosures—what is *in* and what is *out* of the litigation. Although it is obvious that Plaintiffs are reluctant to take a position, it should be no burden for them to identify the contentions that provided the basis for the filing of this action.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that Defendants' motion to compel be granted, that Plaintiffs be ordered to respond forthwith to all Interrogatories that they have refused to respond to—including all unanswered interrogatories contained in Household Defendants' Third Set of Interrogatories to Lead Plaintiff, and that Plaintiffs be ordered to provide new and responsive answers to Interrogatories No. 9-14.

Dated: June 29, 2006
New York, New York

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