UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

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

THE CLASS' MEMORANDUM IN SUPPORT OF ITS' MOTION TO COMPEL HOUSEHOLD DEFENDANTS' RESPONSES TO THE THIRD SET OF INTERROGATORIES

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In support of the Class' Motion to Compel defendants Household International, Inc. ("Household"), Household Finance Corporation, William F. Aldinger ("Aldinger"), David A. Schoenholz ("Schoenholz"), Gary Gilmer ("Gilmer") and J.A. Vozar ("defendants") to supplement their responses to Lead Plaintiffs' Third Set of Interrogatories ("Interrogatories"), the Class submits as follows:

I. INTRODUCTION

The Class has served three sets of interrogatories. As to each of the first two sets, the Class was forced to file motions to compel adequate responses. Both times, defendants were ordered to supplement their responses. Defendants, however, have not been deterred by the Court's prior rulings and have once again forced the Class to resort to motion practice rather than willingly provide full and complete responses to interrogatories in violation of the Federal Rules of Civil Procedure. In addition to improper and meritless objections, defendants' responses repeat many of the same deficiencies they have been ordered to cure in the past, *i.e.*, failing to identify individuals with knowledge of relevant facts, improperly resorting to Federal Rule of Civil Procedure ("Rule") 33(d) in lieu of narrative responses and failing to justify undue burden objections. *See*, responses to Interrogatory Nos. 22-23, 26, 28-29, 32, 34, 36, 38-42, 44 and 52.[1]

With a Class Period of more than three years, the Class needs complete responses to these interrogatories in order to move discovery forward and further tailor the issues in this complex multi-component fraud litigation. Defendants' repeated delays and warrantless objections in responding to interrogatories have wasted the Class' and Court's resources. The Court should compel defendants to provide complete and responsive answers to the Interrogatories.

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[1] Defendants' responses are attached to the Declaration of Luke O. Brooks in Support of Compliance with Local Rule 37.2 and the Class' Motion to Compel Responses to Third Set of Interrogatories from Household Defendants ("Brooks Decl.") filed herewith, Exhibit ("Ex.") K.

II. STATEMENT OF COMPLIANCE WITH LOCAL RULE 37.2

Plaintiffs' Third Set of Interrogatories were served on March 6, 2006. Defendants served their initial responses and objections on April 19, 2006. The parties discussed the Interrogatories and defendants' initial responses during lengthy meet and confers on May 3, 2006 and May 5, 2006. As has been their practice, defendants did not make any commitment to supplement their responses during the meet and confers. Brooks Decl., Ex. B at 58. Two weeks later, on May 19, 2006, defendants finally responded with their position, indicating that they would supplement some of their responses by June 2, 2006. Brooks Decl., Ex. G. Defendants, however, did not serve supplemental responses until June 13, 2006. The parties discussed defendants' supplemental responses at a face-to-face meet and confer prior to the June 15, 2006 status hearing at which time defendants indicated they would not further supplement their responses.

III. LEGAL STANDARD

The Class is entitled to full and complete responses to the Interrogatories. "[A] request for discovery must be complied with unless it is clear that there is no possibility that the information sought may be relevant to the subject matter of the litigation." *Schaap v. Executive Indus., Inc.*, 130 F.R.D. 384, 386 (N.D. Ill. 1990). "Complete and accurate responses to discovery are required for the proper functioning of our system of justice." *Wagner v. Dryvit Sys., Inc.*, 208 F.R.D. 606, 609 (D. Neb. 2001) (*citing Averbach v. Rival Mfg. Co.*, 879 F.2d 1196, 1201 (3rd Cir. 1989). Sanctions can be awarded against a party who refuses to answer interrogatories after being compelled to do so by court order. *GFW Constr. v. Chao*, 107 Fed. Appx. 661, 662 (7th Cir. 2004). The information sought by the Class is clearly relevant and very necessary to assist in streamlining depositions and other discovery as well as to narrow the issues for summary judgment and trial. However, as discussed more fully below, defendants' responses are incomplete and their objections are either meritless or, on their face, inapplicable.

IV. ARGUMENT

A. Defendants Must Identify Household's Statements to the Public

This is a case about Household's false and misleading statements regarding its charge-off and reaging policies and predatory lending practices. Interrogatory Nos. 28, 34 and 39, which seek the identification of Household's public statements on these topics are therefore, without question, relevant.[2] Defendants, however, refuse to answer these interrogatories, contending that they are "overbroad, unduly burdensome and harassing" because the Class "maintains Defendants' document production in searchable form [and] therefore can conveniently search for the requested information." Brooks Decl., Ex. K at 43, 52 and 59-60. Defendants cannot make any showing that responding to these interrogatories would be unduly burdensome, let alone the particularized showing required. With respect to Interrogatories 34 and 39, defendants also object on the grounds that the information is equally available to the Class. *Id.* at 52 and 59-60. Defendants' objections rest on the faulty assumption that all of the public statements the Class seeks to have identified are contained or quoted in documents produced to the Class. They are not. Finally, even if the information sought is equally available to the Class, defendants still would not be excused from providing a full response – the objection that information is "equally available to [p]laintiffs" has

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[2] Interrogatory Nos. 28, 34 and 39 seek to discover certain oral and written statements made to the public by or on behalf of Household from 1999-2002. Brooks Decl., Ex. K at 43, 52 and 59. Interrogatory No. 28 asks defendants to identify public statements made by Household regarding Household's charge-off policies, which include the Company's policies regarding reaging. *Id*. at 43. Interrogatory No. 34 seeks the identity of Household's public statements concerning whether, or responding to claims that, Household engaged in predatory lending. *Id*. at 51. Interrogatory No. 39 seeks the identity of any public statements disclosing the potential for material financial loss due to Household's predatory practices. *Id*. at 59.

Defendants incorporated their General Objection No. 12 into their responses, which states: "Defendants object to the Third Interrogatories to the extent they seek information that is neither relevant to the claims or defenses of any party, nor reasonably calculated to lead to the discovery of admissible evidence." Brooks Decl., Ex. K at 4. During meet and confers, however, defendants did not pursue this frivolous objection.

been consistently rejected. *Innovative Piledriving Prods., LLC v. Unisto Oy*, Cause No. 1:04-CV-453 2005 U.S. Dist. LEXIS 14744, at *5 (N.D. Ind. July 21, 2005).

1. Responding to Interrogatory Nos. 28, 34 and 39 Would Not Impose Undue Burden on Defendants

The "mere statement by a party that the interrogatory was 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection." *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir. 1982) (quoting *Roesberg v. Johns-Manville Corp.*, 85 F.R.D. 292, 296-97 (E.D. Pa. 1980)); *see also Oleson v. Kmart Corp.*, 175 F.R.D. 560, 565 (D. Kan. 1997) ("The litany of overly burdensome, oppressive, and irrelevant does not alone constitute a successful objection to a discovery request."). "In order to demonstrate undue burden, the [responding party] must provide affirmative proof in the form of affidavits or record evidence." *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 351, 360 (N.D. Ill. 2005).

Defendants have provided no information regarding how expensive or time-consuming it would be to obtain the requested information. Indeed, any burden attached to responding to these interrogatories is small, especially in the context of this large securities class action and given the relevance of the statements at issue. *Board of Educ. v. Admiral Heating & Ventilating, Inc.*, 104 F.R.D. 23, 30 (N.D. Ill. 1984) (the burden of answering interrogatories should be measured against the complexity of the lawsuit, the importance and relevance of the information and the financial weakness of the responding party). The statements sought were made by and on behalf of defendants, thus identifying them is not an undue burden.[3] Moreover, the ability or inability of the

[3] This is especially true in light of the fact that defendants have asserted a "truth on the market" defense. *See* First Amended Answer at 261. In order to prevail on that defense, defendants must demonstrate that the market was aware of their fraud, *i.e.*, that they made statements to the public revealing their predatory lending and reaging schemes, and that these corrective statements made to the public were of such "'intensity and credibility'" that these statements counter-balanced any possible effect of the fraud. *In re Motorola Sec. Litig.*, No. 03 C 287, 2004 U.S. Dist. LEXIS 18250, at *86 (N.D. Ill. Sept. 9, 2004).

Class to search its database for these statements is not in any way related to defendants' burden. Defendants' objections on the ground of undue burden should be rejected.

2. The Class Does Not Have Equal Access to the Information Sought by Interrogatory Nos. 28, 34 and 39

As the Class pointed out during the parties' meet and confers, Interrogatory Nos. 28, 34 and 39 seek identification of both written and oral public statements. Brooks Decl., Ex. K, 43, 52, 59 and Ex. B at 59. Obviously, a search of the documents produced by defendants will not reveal all of the relevant oral statements made by them during the Class Period. Defendants regularly met with analysts to discuss the Company's business and prospects. *See, e.g*. Brooks Decl., Ex. L at HHS 03155446 (between November 27, 2000 and December 6, 2000, Household management had four separate meetings with analysts). Household also spoke directly to investors on numerous occasions, including annual investor conferences, where senior management (including defendants) gave presentations to investors and analysts. Brooks Decl., Ex. M at 90. Throughout the Class Period, defendants met with and made oral statements to the press. For example, in May 2000, defendants Gilmer and Aldinger met with the editorial board of the *Wall Street Journal* to discuss "predatory lending issues" and participated in editorial briefings with the *Sacramento Bee* and *Fresno Bee* regarding "predatory lending legislation." Brooks Decl., Ex. N. Oral statements made at these conferences and meetings regarding Household's charge-off and reaging policies and predatory lending practices are not available anywhere on the Class' database.

Even Household's written public statements are more easily identifiable and accessible by defendants. They have superior knowledge of the written public statements they issued, when these statements were made and where these statements can be found. Individual defendants Aldinger, Schoenholz and Gilmer, who refused to respond to the interrogatories on the grounds that they no longer work for Household or HSBC and no longer have access to Company documents, have independent knowledge of the statements they made and heard during the Class Period. Ex. K

(Aldinger, Schoenholz and Gilmer's Responses) The Class seeks substantive responses by all defendants to Interrogatory Nos. 28, 34 and 39 as well as any other interrogatories for which these defendants have responsive information under their control. They have no valid reason for withholding this relevant information from the Class.

3. Even if Defendants' Public Statements Were Equally Available to the Class, They Would Still be Required to Respond to Interrogatory Nos. 28, 34 and 39

In addition to being unsubstantiated, defendants' objection that this information is equally available to the Class is not a valid objection. Even if the information was equally available to the Class, this would not excuse defendants from responding. Indeed, "courts have unambiguously stated that this exact objection is insufficient to resist a discovery request." *See St. Paul Reinsurance Co. v. Commer. Fin. Corp.*, 198 F.R.D. 508, 514 (N.D. Iowa 2000); *Innovative Piledriving*, 2005 U.S. Dist. LEXIS 14744, at *5 (N.D. Ind. 2005). This is because, as is the case here, "frequently it is not enough for a party to have knowledge of facts. Often it is necessary to narrow and define the issues for trial, or to transform the facts into evidence that can be readily used at trial." *Wilson Land Corp. v. Smith Barney, Inc.*, No. 5:97CV519, 2000 WL 33672980, at *3 (E.D.N.C. Dec. 8, 2000) (citation omitted). Interrogatory Nos. 28, 34 and 39 were propounded both to discover each of the public statements Household made and to narrow the issues for trial. The Class is entitled to discover in advance of summary judgment and trial which public statements Household made and whether defendants disavowed certain statements attributed to the Company. By refusing to respond, it appears that defendants simply want to maintain room to maneuver at summary judgment and trial. Such tactics run counter to the purpose of discovery.

B. Defendants' Responses to Interrogatory Nos. 22-23, 26, 38, 44 and 52 Are Incomplete

Under Rule 33, a party to whom interrogatories are propounded must answer with the information known to that party. *Hanley v. Como Inn, Inc.*, Case No. 99 C 1486, 2003 U.S. Dist.

LEXIS 7130, at *12 (N.D. Ill. Apr. 25, 2003). The responding party must give a complete and responsive answer to each interrogatory. *Id*.

Defendants have failed to provide complete answers to Interrogatory Nos. 22-23, 26, 38, 44 and 52 in which the Class sought the identity of the individuals most knowledgeable or responsible for certain subject matters or events. This type of interrogatory is commonplace, and proper responses will help tailor discovery and depositions going forward. Defendants, however, answered these interrogatories evasively and incompletely by omitting the names of individuals. Brooks Decl., Ex. K at 26-27, 39, 59, 67 and 78. Without identification of specific individuals, the Class is left to guess who among the broad categories of witnesses should be deposed.

Instead of identifying all of the relevant individuals, defendants responded with categories of information such as: (a) the names of other companies, *see* Brooks Decl., Ex. K at 26-30 (listing Arthur Andersen and KPMG as individuals); (b) names of departments within Household, *see id.* at 26-27 ("Members of the Audit Committee"), *id*. at 38-40 ("various members of Household management and members of the Board of Directors"), *id.* at 58-59 ("Corporate Accounting Department"); or (c) by identifying individuals as "employees," "some Household employees" and/or "those employees." (*Id.* at 26-27, 38-40, 59, 65-67 and 77-78). For example, Interrogatory No. 26 seeks the identity of individuals with knowledge about whether Household's charge-off policies followed industry standards closely. *See id.* at 38. Defendants' two-page response does not list a single individual. *Id*. at 38-40. Instead, defendants direct the Class to "those [Household employees] who participated in or reviewed a certain 'benchmarking study.'" *Id.* Essentially, defendants' responses boil down to nothing more than "the witnesses you should depose are the witnesses with knowledge." This is not a helpful response, nor is it proper.

On two prior occasions, the Class has been forced to move the Court for an order requiring defendants to identify individuals in response to interrogatories. Twice this Court has ordered

defendants "to identify witnesses with knowledge of the facts" sought by the Class. *See* November 10, 2005 Order at 5; *see also* February 17, 2006 Order (requiring defendants to identify all individuals responsible for training). In the November 10, 2005 Order, the Court cautioned defendants that when they "identify which witnesses have knowledge of facts relating to the affirmative defenses, defendants must specifically identify which witness has knowledge regarding which [fact(s)]." Order at 5. Defendants have ignored this guidance and failed to respond with the names of these individuals as requested by Interrogatory Nos. 22-23, 26, 38 and 52. Defendants' failure impacts the Class' ability to prioritize witnesses for depositions.

Defendants have a duty to respond to the Class' interrogatories with complete answers specifically identifying those individuals by name and title. Defendants should be ordered to supplement their responses.

C. Defendants Should be Required to Respond to Interrogatory Nos. 29 and 33 Regarding Household's Analysis of the Impact of Switching to Bank-Like Policies

Interrogatory Nos. 29 and 33 seek information regarding the impact on Household's financial statements if Household had used bank-like policies between January 1, 1999 and December 31, 2002. Brooks Decl., Ex. K at 43 and 50. Interrogatory No. 29 seeks the identity of any analysis done at Household that would show the impact on Household's financial statements, if Household had used bank-like policies. *Id.* at 43-45. Interrogatory No. 33 asks defendants to state in detail the impact on the financial information Household provided to the rating agencies, if Household had used bank-like policies. *Id.* at 50-51. Defendants object to these interrogatories on the basis of relevance. *Id.* at 43-45 and 50-51.

The information sought by these interrogatories, *i.e.*, the impact that changing to bank-like policies would have had on Household's reported financials and the financial information provided to the rating agencies, is clearly relevant. The Class alleges that Household misled investors

regarding its charge-off and reaging policies and practices. The Class also alleges that these misstatements had a material impact on the Company's reported financials by, among other things, falsely deflating delinquency and charge-off statistics and allowing the Company to record lower than required loan loss reserves. Evidence is relevant if it tends logically to prove or disprove some fact in a case (*see Collins v. Old Ben Coal Co*., 861 F.2d 481, 490 (7th Cir. 1988)) and need only be reasonably calculated to lead to admissible evidence. *Northwestern Mem'l Hosp. v. Ashcroft,* 362 F.3d 923, 930 (7th Cir. 2004).

In December 2001, in response to an accusation that Household was moving its loans from bank subsidiaries to minimize the need for reserves, the Company publicly took the position that "[A]pplying bank regulatory rules would barely increase the amount of charge-offs." Brooks Decl., Ex. R. The Class is entitled to discover whether Household had any basis for this statement, including whether any studies analyzing the impact of changing to "bank-like" policies had been done at that time.

In the summer of 2002, in response to external pressure, Household considered changing some of its policies "to become more bank-like." Brooks Decl., Ex. O and P. Documents produced by Household suggest that the Company analyzed the impact changing policies would have on their financials. Brooks Decl., Ex. Q and P ("I'm assuming that you will be coordinating these draft policies for your business as well as determining the financial impact."). At the very least, the Class is entitled to these studies which represent the Company's assessment of how the change would impact financials for purposes of demonstrating materiality. The Class is also entitled to discover whether defendants disclosed such information to the ratings agencies, and what, if any, information

was disclosed. If these studies already exist, Household bears no burden in producing this information to the Class.[4]

The Court should compel defendants to answer Interrogatory Nos. 29 and 33, as written, as the Class seeks relevant information and defendants have failed to establish any undue burden.

D. Interrogatory No. 36 – Defendants Must Disclose All of the Reasons Why Household Entered into the AG Settlement in Narrative Form

Interrogatory No. 36 requests that defendants state all reasons why Household entered into the AG Settlement. Brooks Decl., Ex. K at 54. Defendants object to this interrogatory on the basis of attorney-client privilege and work product and provided a partial response, referring the Class to documents pursuant to Rule 33(d). Defendants' assertion of privilege in order to conceal their reasons for entering into the AG Settlement is unfounded and their use of Rule 33(d) is improper.

1. The Decision to Settle Is Not Privileged

The decision to settle a lawsuit is a business decision, protected by neither the attorney-client privilege nor the work product doctrine. This is true even where the Company's decision to settle is based on the advice of counsel. *Nat'l Union Fire Ins. Co. v. Continental Ill. Group,* Case No. 85 C 7080, 1988 U.S. Dist. LEXIS 7826, at *4 (N.D. Ill. July 21, 1988). In *Nat'l Union*, an insurance company sought to question defendant's general counsel about the contents of communications made in meetings between the counsel and the Board of Directors, including the reasons for the settlement of a prior lawsuit. *Id*. at *3. Defendants attempted to conceal their reasons for the

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[4] Moreover, even though defendants provided no substantive response, they rephrased Interrogatory 33 in a way that substantially changed its meaning. Brooks Decl., Ex. K at 51. The Class did not agree to modify the request in this way, and the Class objects to the defendants' inaccurate rephrasing of Interrogatory No. 33. *Id*. Household incorrectly states that the Class is seeking "'whether any analysis identified in response to Interrogatory No. 29 [42] was provided to any of the rating agencies.'" *Id*. However, the Class is actually seeking studies performed by Household that show the impact of using bank-like policies on the information given to the rating agencies. While the Class would view any information of financial impact expressed to the rating agencies as discoverable and relevant, the Class seeks any studies done by Household on the financial information given to the rating agencies.

settlement by asserting the attorney-client privilege. The court granted the insurance company's motion to compel and ordered the in-house counsel to answer the deposition questions, holding that his recommendation to the Board of Directors to settle the case was a business decision and therefore not privileged *Id*. at **3-4, *citing North American Mortgage Invs. v. First Wisconsin Nat'l Bank of Milwaukee*, 69 F.R.D. 9, 11 (E.D. Wis. 1975) (the fact that an attorney is "'house counsel'" does not automatically render a communication privileged).

The same reasoning applies here. Defendants cannot properly assert any privilege over their reasons for entering into the AG Settlement because the settlement was a business decision. Brooks Decl., Ex. K at 54. Defendants, moreover, have made no attempt to demonstrate how listing the reasons Household entered into the settlement would reveal attorney-client communications or attorney mental impressions. They would not. Defendants failure to establish that their reasons for settlement are privileged, combined with the fact that this District views decisions to settle claims in this context as business decisions, demonstrates that this information is not privileged and defendants should be compelled to state their reasons for entering into the AG Settlement. *Nat'l Union*, 1988 U.S. Dist. LEXIS 7826, at **3-4.

Additionally, defendants have not offered any specificity in support of their purported privilege, but rather provided a blanket assertion of attorney-client privilege. Brooks Decl., Ex. K at 54. The burden of establishing that a communication is privileged is on the party resisting discovery. *Nat'l Union*, 1988 U.S. Dist. LEXIS 7826, at *4. Defendants cannot meet this burden. This Court should compel defendants to state their reasons for entering into the AG Settlement.

2. Defendants' Use of Rule 33(d) Is Improper

Defendants should be compelled to provide a written response to this interrogatory, rather than referencing documents pursuant to Rule 33(d). In this Court's November 10, 2005 Order compelling defendants to respond to the Class' First Set of Interrogatories, this Court held that

"because of the complexity of this case, defendants may not rely on Rule 33(d) to avoid providing a written narrative" in response to interrogatories seeking facts supporting Household's affirmative defenses. Order at 6. In responding to Interrogatory No. 36, defendants ignored this guidance and failed to list even a single reason supporting Household's decision. Instead, defendants cited to examples of documents purportedly containing some of the reasons.

Defendants' reliance on Rule 33(d) is improper here. Merely designating documents from which an answer can be derived does not "state all facts." *SEC v. Elfindepan, S.A.*, 206 F.R.D. 574, 576-78 (M.D.N.C. 2002) (holding that requests for statements of facts "do not lend themselves to answer by use of Rule 33(d)"); *see also In re Savitt/Adler Litig.*, 176 F.R.D. 44, 49-50 (N.D.N.Y. 1997) (documents normally reveal evidence, not a party's contentions or statement of facts); *Daiflon, Inc. v. Allied Chem. Corp.*, 534 F.2d 221, 226 (10th Cir. 1976); *ITT Life Ins. Co. v. Thomas Nastoff, Inc.*, 108 F.R.D. 664, 666 (N.D. Ind. 1985).

The information responsive to the interrogatories is in defendants' possession and plaintiffs have the right to receive it in the form of a proper interrogatory response. Listing the reasons for entry into the AG Settlement is not burdensome. In fact, there is no reason for defendants to invoke Rule 33(d) in response to this interrogatory, other than to leave themselves some wiggle room. Defendants should not be permitted to use Rule 33(d) to hide the ball.

E. Defendants Should, at a Minimum, Disclose the Estimated Cost of Responding to Interrogatory Nos. 40-42

Interrogatory Nos. 40-42 seek financial statistics related to Household's predatory lending practices. Defendants objected to these interrogatories as unduly burdensome on the grounds that Household did not track these statistics during the relevant time period and provided no responses. Again, defendants have proffered no facts justifying their claim of undue burden.

During the parties' meet and confers, the Class requested that defendants identify the cost of compiling these statistics, as they were ordered to do with respect to certain of the interrogatories in

the Class' second set. Brooks Decl., Ex. D. Defendants have refused. At a minimum, defendants should be required to disclose the cost of compiling these figures so that the parties and the Court can assess whether the burden outweighs the utility of the information sought.

F. Defendants Must Respond to the Questions Posed by Interrogatory Nos. 49 and 53

Interrogatory No. 49 requests that defendants "[s]tate the time period in which employees of Household utilized an 'effective rate' comparison to promote acceptance of the EZ Pay Plan," Brooks Decl., Ex. K at 73. Defendants' response includes information regarding training on how to use the effective rate comparison and internal Household communications regarding use of the effective rate comparison, but does not answer the simple question posed. Absent any specific justification, defendants are required to respond with all information in their possession, they cannot withhold information simply because it may be adverse to them. *Hanley*, 2003 U.S. Dist. LEXIS 7130, at *13. Defendants should be ordered to respond to the interrogatory as posed and identify the time period in which Household employees were using the effective rate comparison.

Interrogatory No. 53 seeks the identity of all practices Household engaged in that fall within the Company's definition of "predatory lending." Defendants' response – that Household did not endorse any "predatory lending" practices as the phrase was defined in their response to Interrogatory No. 52 – does not answer the question posed. First, defendants did not define the term "predatory lending" in their response to Interrogatory No. 52. Instead, defendants identified what "some Household employees" (without providing names) understood the term to mean.[5] Brooks Decl., Ex. K at 77-78. More importantly, Interrogatory No. 53 does not seek which predatory

[5] Moreover, these unnamed employees only considered practices that "failed to adhere to Household's internal policies" to be predatory. Brooks Decl., Ex. K at 77-78. By this definition, no practice endorsed by Household could be predatory. These circular responses, which in the end mean nothing, are typical of Household's tactics in discovery and are not conducive to the free exchange of information.

lending practices Household endorsed, but rather, which of Household's business practices during the period of January 1, 1999 through December 31, 2006, would be characterized by the Company as "'predatory lending' practices." *Id*. at 79-80.

This question should not be difficult to answer. Defendants have acknowledged both internally, and to the public, that Household engaged in predatory lending practices. For example, defendants state in an internal report that the AG "Agreement addresses certain past practices where we unfortunately let some of our customers down." Brooks Decl., Ex. S. at HHS 03070985. In a conference call, Aldinger told investors:

> What we've learned from this experience is that our compliance procedures and policies were not as good as we thought . . . Going forward, compliance will be a high priority.

Brooks Decl., Ex. T. The Class is entitled to discover which practices defendants were referring to, as well all other practices Household or its employees engaged in during the Class Period that fall within the Company's definition of "predatory lending" practices. Brooks Decl., Ex. K at 79-80.

G. Defendants Manipulated the Count of the Interrogatories to Avoid Answering Them

Defendants refused to respond to Interrogatory No. 56 on the grounds that the Class exceeded its maximum number of interrogatories. On January 6, 2006, the Court decided to allow each party 85 interrogatories. Prior to the third set, the Class had propounded 18 interrogatories. Accordingly, the Class began its interrogatory numbering at 19 and continued through 56.

Interrogatories should be numbered sequentially and interrogatories containing subparts "eliciting details concerning a 'common theme' should generally be considered a single question."), *citing Swackhammer v. Sprint Corp. PCS*, 225 F.R.D. 658, 664-65 (D. Kan. 2004). This Court has adopted this standard for counting in this case. *See* November 10, 2005 Order at 2, n.1. Defendants, however, have substituted their own method for counting interrogatories. For example: (1) defendants count Interrogatory No. 27, which asks for identification of all individuals involved in

formulating or amending the charge-off policies, as five interrogatories (34-39) because there are five Household business units involved; (2) defendants count Interrogatory No. 40 as three interrogatories (58-60) despite the fact that the interrogatory seeks information on loans where the origination fee and discount points were in excess of 7%.

Defendants' gamesmanship should not be countenanced. They should be compelled to observe the Order of this Court with regard to counting interrogatories.

V. CONCLUSION

For the reasons stated above, and in the interest of the Class' and Court's resources, the Class respectfully requests that this Court compel defendants to provide full and complete answers to the Interrogatory Nos. 22-23, 26, 28-29, 32, 34, 36, 38-42, 44 and 52.

DATED: June 29, 2006

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