

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

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

**MEMORANDUM OF LAW IN SUPPORT OF THE CLASS' MOTION TO COMPEL
HOUSEHOLD DEFENDANTS TO PRODUCE RESPONSIVE DOCUMENTS TO THE
CLASS' THIRD [CORRECTED] REQUEST FOR PRODUCTION OF DOCUMENTS**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THE DOCUMENTS IMPROPERLY WITHHELD BY DEFENDANTS.....	1
III. ARGUMENT	2
A. Discovery Standard.....	2
B. Household Has the Documents the Class Seeks	2
C. Household Defendants Must Produce All Relevant Documents	5
1. Documents Detailing Household’s Accounting Structure and System Are Relevant.....	5
2. Documents Related to Household’s Predatory Lending Practices Are Relevant	6
3. Documents Related to Household’s Reaging or Restructure Policies and Practices Are Relevant	9
4. Documents Destroyed in the “Blitz Purge” Are Relevant	12
D. The Household Defendants Must Produce a Complete Set of Responsive Documents	13
Defendants Must Produce a Complete Set of Financial Data.....	13
E. Production of the Requested Documents Will Not Impose an Unreasonable Burden on Household	14
IV. CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page
 CASES	
<i>Burke v. New York City Police Department</i> , 115 F.R.D. 220 (S.D.N.Y. 1987)	15
<i>CSC Holdings, Inc. v. Redisi</i> , 309 F.3d 988 (7th Cir. 2002)	2
<i>Control Data Corp. Sec. Litig.</i> , Master Docket 3-85-1341, 1987 U.S. Dist. LEXIS 16829 (D. Minn. Dec. 10, 1997), <i>aff'd</i> , 3-85 CIV 1341, 1988 U.S. Dist. LEXIS 18603 (D. Minn. Feb. 22, 1988).....	9, 10, 12, 13
<i>Deitchman v. E.R. Squibb & Sons, Inc.</i> , 740 F.2d 556 (7th Cir. 1984)	2
<i>FDIC v. Mercantile National Bank of Chicago</i> , 84 F.R.D. 345 (N.D. Ill. 1979).....	15
<i>Henderson v. National R.R. Passenger Corp.</i> , 113 F.R.D. 502 (N.D. Ill. 1986).....	14
<i>Murata Manufacturing Co. v. Bel Fuse, Inc.</i> , 422 F. Supp. 2d 934 (N.D. Ill. 2006)	2
<i>Oleson v. Kmart Corp.</i> , 175 F.R.D. 560 (D. Kan. 1997).....	14
<i>In re Sulfuric Acid Antitrust Litigation</i> , 231 F.R.D. 351 (N.D. Ill. 2005).....	14
 STATUTES	
Federal Rules of Civil Procedure	
Rule 26(b)(1).....	2
Rule 30(b)(6).....	<i>passim</i>
Rule 34(a).....	2
Rule 72(a).....	1
 15 U.S.C.	
§78m(b)(2)	14

I. INTRODUCTION

The Class propounded the Third [Corrected] Request for Production of Documents (“Third Request”) based on its review of defendants’ prior production and an assessment of the gaps in those productions. The Third Request was designed to pick up on the documents missing from the prior production. Documents encompassed within the Third Request should have been turned over as part of the First and Second Requests for Production of Documents. Despite the Class’ repeated requests (as outlined in the accompanying Declaration of Bing Z. Ryan (“Ryan Decl.”)), defendants have refused to turn over critical documents comprising documentation of the support underlying their financial statements and accounting methodologies – issues that go to the very core of this securities fraud action. The Court should compel defendants to produce these documents in response to Third Request Nos. 1-2, 6, 9-13, 16, 24, 27, 30 and 35.¹

II. THE DOCUMENTS IMPROPERLY WITHHELD BY DEFENDANTS

With this motion, the Class seeks an order compelling defendants to produce the following categories of documents:² (1) documents reflecting or describing the accounts and subaccounts in any Household International, Inc. (“Household” or the “Company”) general ledger (Request No. 16); (2) documents reflecting Household’s various sales practices that the Class alleges were predatory and revenues earned through these practices (Request No. 9 regarding prepayment penalties;

¹ Request Nos. 17 and 18 were included as part of the Class’ Cross-Motion to Compel Production of Certain Documents Provided to Outside Auditors by Household Defendants, and hence are not being included in this motion.

² All requests seek enumerated documents within the Relevant Time Period, which refers to the period from January 1, 1999 through December 31, 2003, unless specified otherwise. The Class recognizes that the Court has denied post-Class Period discovery for the Third Request in the June 15, 2006 Order. Post-Class Period discovery of the requests noted here is being included consistent with the Class’ objection to the June 15, 2006 Order. An objection to the June 15 Order has been timely filed under Fed. R. Civ. P. 72(a).

Nos. 10, 27 regarding single premium credit life insurance; No. 11 regarding discount points; No. 12 regarding EZ Pay; No. 13 regarding second loans with interest rates of more than 20%; and No. 24 regarding excessive loan-to-value ratios); (3) documents evaluating the adequacy of Household's credit loss reserves and documents relating to reaging or restructuring of loans (Request Nos. 1-2, 6, 30); and (4) documents relating to Household's "blitz purge" of documents (Request No. 35).

III. ARGUMENT

A. Discovery Standard

The Federal Rules of Civil Procedure "permit the broadest possible scope of discovery." *Deitchman v. E.R. Squibb & Sons, Inc.*, 740 F.2d 556, 566 (7th Cir. 1984) (citation omitted); *see also Murata Mfg. Co. v. Bel Fuse, Inc.*, 422 F. Supp. 2d 934, 945 (N.D. Ill. 2006). Plaintiffs are entitled to "discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party." *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 995-96 (7th Cir. 2002) (citing Fed. R. Civ. P. 26(b)(1)). When served with requests for documents within the scope of Rule 26(b), a party must produce documents in its possession, custody or control. Fed. R. Civ. P. 34(a). The burden rests on the objecting party to show why a particular discovery request is improper. *Id.*

B. Household Has the Documents the Class Seeks

There is ample evidence that Household has the documents the Class seeks, despite defendants' suggestions to the contrary. With regard to the first category of documents, those describing the accounts and subaccounts in Household's general ledgers, the Class has been provided with documents that include certain account codes, names and balances for these accounts. *See, e.g.*, Ryan Decl., Ex. 20. Such documents are supported by detailed transaction reports, such as detailed trial balance. Moreover, Peter Sesterhenn – Household's Controller and the person designated by Household under Fed. R. Civ. P. 30(b)(6) as most knowledgeable about Household's internal financial reports and underlying supporting documents – testified during his deposition that

“there is a specific document” that lists the general ledger accounts and identifies “what transactions feed that account.” Ryan Decl., Ex. 5 at 122:6-17.³ Such a document is directly responsive to Request No. 16.

As to the second category of documents, those relating to Household’s lending practices, Sesterhenn, speaking for Household, identified certain documents that would be responsive to the Class’ requests, but which defendants have not produced. For example:

- Sesterhenn reviewed monthly reports that detailed prepayment penalties revenue. *Id.* at 83:23-85:19. Sesterhenn also testified that there was a report that detailed the total dollar amount collected for prepayment penalties and percentage of prepayment penalties charged relative to the amount of a given loan, broken down by state. *Id.* Such information is responsive to Request No. 9.
- Sesterhenn reviewed monthly reports tracking customer acceptance rate for single premium credit life insurance, prepared on a monthly basis, most likely by Insurance Services business unit. *Id.* at 64:20-22, 65:11-23, 72:8-13. Household has produced only one of these monthly reports for the 60-month period for which these documents were requested. Ryan Decl., Ex. 21; Ex. 5 at 72-8:13. Sesterhenn testified that Insurance Services business unit tracked revenues and profits generated by sales of single premium credit life insurance and allocated them to other Household business units, including Consumer Lending, on a monthly basis. Ryan Decl., Ex. 5 at 35:24-36:6, 38:2-39:10. The reports described by Sesterhenn are responsive to Request Nos. 10 and 27.
- Household has produced a document showing that the Consumer Lending business unit was working on a project to differentiate origination points and discount points, suggesting that discount points were being tracked separately in some way. Ryan Decl., Ex. 22. Any documents showing such tracking of discount points are responsive to Request No. 11.
- Sesterhenn testified that special reports generating statistics regarding charges to customers for EZ Pay were prepared during the Class Period (July 30, 1999-October 11, 2002). Ryan Decl., Ex. 5 at 131:1-12. Such reports are responsive to Request No. 12.

³ Household has improperly designated the entire deposition transcript for Peter Sesterhenn as confidential. Despite repeated requests that only those portions of this and other transcripts that truly are confidential, defendants continue to make entire transcripts as CONFIDENTIAL.

- Sesterhenn testified that the Branch Operations Group, led by Rich Kolb, prepared monthly reports that tracked the average loan-to-value (“LTV”) ratio and he received this type of report on a monthly basis. *Id.* at 145:20-146:20. Household’s own documents further corroborate Sesterhenn’s testimony. For example, defendants have produced a report that was sent to the Washington Attorney General upon their request, which contains LTV ratio and number of loans for all of Household’s real estate owned loans sold with greater than 100% LTV. Ryan Decl., Ex. 26. These reports are responsive to Request No. 24.
- Sesterhenn also testified that Household tracked interest rates on all of its loans, including the second loans. Ryan Decl., Ex. 5 at 144:8-21. The reports tracking interest rate for the second loans are responsive to Request No. 13.

For the documents evaluating the adequacy of the credit loss reserves and documents relating to reaging or restructuring of loans, the Class has identified for defendants – by name – numerous missing periodic reports detailing loss reserves. For example, defendants have produced two 1998 quarterly memoranda evaluating the adequacy of loss reserves from a small business unit (HRSI), but have not produced the quarterly memoranda for other business units from the Class Period, specifically Consumer Lending and Mortgage Services. *See* Ryan Decl., Ex. 16. Similarly, defendants have failed to produce the reports entitled, “Evaluation of the Adequacy of HFC Credit Loss Reserves” for 13 of the 20 quarters between 1999 and 2003. *Id.* Among others, defendants have not produced these reports for the last three quarters of 1999, the first three quarters of 2000, and the last three quarters of 2002. *Id.* All such memoranda for every quarter and every business unit are responsive and should be produced.

When asked about the missing reports, defendants simply stated that they “have not located” these documents and did not indicate that they had looked or would look for them. *See* Ryan Decl., Ex. 17. Further, Arthur Andersen LLP has produced a few reports that appear to have been created on a monthly basis regarding credit loss reserves. However, the Class has not received the majority of these monthly reports from the Relevant Period. These reports are responsive to Request Nos. 1-2 and 6. Sesterhenn also testified that Household tracked finance charges and the reversal thereof

through a database. Ryan Decl., Ex. 5 at 231:3-234:12. Information from that database and documents reflecting the information that was put into the database is responsive to Request No. 30.

Finally, as to Request No. 35, defendants carried out a “blitz purge” of documents. *See* Ryan Decl., Ex. 23. They kept a sample copy of the documents that were destroyed. *See* Ryan Decl., Ex. 24 at HHS 02868141-42. The copies of the destroyed documents are relevant and responsive to the Class’ request, and should be produced.

C. Household Defendants Must Produce All Relevant Documents

Documents sought by the Class in this motion are highly relevant to the Class’ securities fraud claims. Specifically, in the Complaint,⁴ the Class alleges that defendants engaged in a fraudulent scheme to artificially inflate Household’s financial results and key financial metrics. ¶¶50-153. The Class alleges that defendants accomplished their fraudulent scheme by, among other things, engaging in predatory and abusive lending practices (¶¶51-106) and by arbitrarily and improperly reaging or restructuring delinquent loans which resulted in a systematic undercalculation of loss reserves (¶¶107-133). The documents sought through this motion are relevant to the evaluation of Household’s finances and the predatory lending and reaging aspects of defendants’ fraudulent scheme. In particular, documents sought here are relevant to the elements of knowledge, financial impact and materiality of the defendants’ false statements.

1. Documents Detailing Household’s Accounting Structure and System Are Relevant

Request No. 16 asks for documents that describe the accounts or subaccounts in Household’s general ledger. This request includes, for example, the monthly detailed trial balance during the Relevant Time Period for Household. Such a document contains general ledger accounts and

⁴ “Complaint” refers to the [Corrected] Amended Consolidated Class Action Complaint for Violation of the Federal Securities Laws. (All paragraph (“¶”) references are to the Complaint.)

subaccounts of Household and their balances at a given point in time. It provides two types of relevant information. First, each account and subaccount are identified by a reference number or code for use within Household's accounting system. *See, e.g.*, Ryan Decl., Ex. 20. Ultimately, information recorded with an account code will be recorded into the financial records and from there into financial reports. The linkage between the code and the accounts is clarified by the trial balance. Second, the detailed trial balance shows changes from month to month in these accounts. The detailed trial balance is the most basic accounting document for any business and is an important tool to help a business outsider understand the basic accounting structure of a company.

The accuracy, integrity and completeness of a company's financial statements are central to securities fraud claims. Moreover, to assess the financial impact of defendants' fraudulent activities, the Class must be able to decipher the financial statements – a process that is greatly hindered by defendants' incomplete production of documents.

Because these documents are important tools for the Class to understand how the financial results were prepared at Household and to quantify the financial impact of defendants' fraudulent activities, defendants must produce these documents.

2. Documents Related to Household's Predatory Lending Practices Are Relevant

In Request Nos. 9-13, 24 and 27, the Class seeks documents that demonstrate revenues that Household obtained from engaging in various predatory lending practices. Because defendants utilized predatory lending practices to overstate Household's revenues, as alleged by the Class in the Complaint, documents that are related to revenues that Household generated by engaging in such practices go to the heart of the Class' claims and are relevant to this case. ¶¶51-106.

Specifically, in Request Nos. 9-13, the Class seeks documents that track, analyze or describe prepayment penalties, single premium credit life insurance, discount points, EZ Pay accounts and second loans with an interest rate in excess of 20%. In the Complaint, the Class alleges that (1)

Household concealed the existence of the prepayment penalties in its loan documents (¶¶69-70), (2) Household tacked single premium credit life insurance onto its loans by misleading borrowers into believing that it was compulsory (¶¶71-82), (3) Household improperly used discount points to extract additional fees from customers (¶¶61-67), (4) Household misrepresented the interest rates and savings associated with the EZ Pay Plan (¶¶55-60), and (5) Household illegally up-sold second loans that carried exorbitant interest rates (20% and higher) (¶¶75-82).

The Class seeks documents that demonstrate the extent of and revenues from specific products and/or practices to show their impact, and hence materiality. These documents are also closely tied to defendants' knowledge of various predatory lending practices during the Class Period and their effect on Household's finances. For example, any revenue tracking regarding second loans with an excessive interest rate necessarily shows that defendants were well aware of such abusive practice by closely monitoring the profit generated from this practice.

These documents – as evidence of Household's predatory lending practices – are also relevant to show the false and misleading nature of defendants' statements that they did not engage in predatory lending practices throughout the Class Period. ¶¶83-96. Moreover, defendants admitted that Household engaged in predatory lending practices by agreeing to change various of Household's consumer lending practices as part of the multi-state Attorneys General settlement. ¶99. Evidence of Household's lending practices during the Class Period and a comparison to the subsequent changes, is directly relevant to show the falsity of defendants' statements during the Class Period.

Request No. 24 asks for monthly reports that track or analyze average LVT ratio. The Class alleges that one of Household's predatory lending practices was to maximize the LTV ratio (often above 100%) of a loan to the detriment of the borrower. ¶51. The Class further alleges that Household employees were required to pressure customers into taking larger loans than they wanted

or could afford. ¶78. Documents that track or analyze average LTV ratio are directly relevant to these allegations.

Request No. 27 seeks monthly reports prepared by Household's Insurance Services business unit that allocates insurance revenue and profit. The Complaint alleges that Household tacked insurance products, such as single premium credit life insurance, onto its loans either without the customers' awareness or led the customers to believe that such insurance was compulsory when it was not. ¶¶71-82. According to Sesterhenn's testimony, the Insurance Services business unit tracked revenues associated with the sales of single premium credit life insurance and allocated a certain percentage of profits to different Household business units, including the Consumer Lending business unit, during the Class Period. Ryan Decl., Ex. 5 at 35:24-36:21. The imposition of single premium credit life insurance provided no value to the borrower and was deemed a predatory lending practice by the multi-state group of Attorneys General. Household agreed in a settlement with the Attorneys General in October 2002 to eliminate single premium credit life insurance. Profits and revenues generated from the sales of single premium credit life insurance are directly relevant to the allegation that Household improperly tacked insurance products onto its loans, as well as to the falsity of Household's public statements that it was not engaged in predatory lending.

Additionally, Sesterhenn testified that Consumer Lending, Insurance and Mortgage Services business units were not the only business units that sold single premium credit life insurance during the Class Period. *Id.* Yet, defendants arbitrarily limited their production in response to the Class' Third Request to these three business units, thereby attempting to prevent the Class from determining just how widespread this practice was.⁵ Therefore, these monthly reports are relevant to

⁵ Defendants have agreed to produce documents from the Mortgage Services business unit in a letter dated June 26, 2006. However, since receipt of such documents is pending, the Class includes this issue here to preserve its right to compel such documents.

the determination of how many business units actually sold single premium credit life insurance during the Class Period as well as their total impact on Household's finances.

3. Documents Related to Household's Reaging or Restructure Policies and Practices Are Relevant

Request Nos. 1-2, 6 and 30 seek documents concerning Household's reaging or restructure policies and practices. The Class alleges that defendants manipulated the number of loans of questionable collectibility and artificially improved the credit quality of Household's loan portfolio. Defendants did this by improperly reaging or restructuring delinquent loans – by simply declaring delinquent loans to be current. ¶¶107-133. As a result, Household appeared to be reserving adequately, when in truth, its reserves were underfunded during the Class Period due to manipulation of the reage and 2+ statistics. ¶125. Further, Household's improper reaging practices were also the subject of Securities and Exchange Commission ("SEC") investigation. The SEC ultimately concluded that Household's disclosures relating to its reaging and restructure policies and practices were false and misleading and that Household knew or was reckless in not knowing the false and misleading nature of its disclosure. *See* Ryan Decl., Ex. 15. The SEC found that such conduct violated §10(b) of the Securities Exchange Act of 1934. *Id.* In March 2003, Household entered into a Consent Order with the SEC and agreed to cease and desist from further violating the federal securities laws. *Id.*⁶ Therefore, documents concerning Household's reaging or restructure practices and disclosures thereof are relevant to the issue of falsity of Household's public statements and the impact of these practices on Household's financials.

⁶ Defendants' assertion that because the Consent Order was entered after the Class Period, the content of it is irrelevant to the Class' claims is meritless. It is well established that post-class period information is relevant and discoverable in securities fraud cases such as this one. *In re Control Data Corp. Sec. Litig.*, Master Docket 3-85-1341, 1987 U.S. Dist. LEXIS 16829, at *7-*8 (D. Minn. Dec. 10, 1997), *aff'd*, 3-85 CIV 1341, 1988 U.S. Dist. LEXIS 18603 (D. Minn. Feb. 22, 1988). The Class has timely filed an objection to the June 15, 2006 Order denying post-Class Period discovery to the Class.

Specifically, Request Nos. 1 and 2 ask for documents supporting Household's credit loss reserves calculation for its owned and managed receivables portfolios such as Household's own evaluation whether it maintained adequate amount of reserves. Household was required to establish credit loss reserves to cover probable losses for both portfolios during the Class Period.

The Class alleges that Household did not maintain adequate credit loss reserves to cover probable losses of principal, interest and fees. ¶¶107-133. Thus, the documents sought through Request Nos. 1 and 2 are relevant to show the false and misleading nature of defendants' statements as well as their knowledge that the statements in Household's SEC filings were false and misleading.

During the Class Period, defendants changed the methodology of credit loss reserves calculation to adjust the level of reserves. Ryan Decl., Ex. 5 at 207:6-14. Any documents describing or advocating for or against such changes and the financial impact analyses associated with these changes demonstrate defendants' knowledge of Household's reserves and the inadequacy thereof.

Request No. 6 seeks documents supporting the revenue, profit or loss and for securitized receivables. Household met its funding requirements by reselling its loans through securitizing its loan pools, *i.e.*, selling them for cash, but continuing to service them for a fee with limited recourse for future credit losses. ¶108. It was critical for Household to appear to generate stable and consistent loan pools because of these securitizations. ¶109. To achieve this goal, defendants engaged in a consistent pattern of improperly reaging delinquent loans to make them current, thus artificially improving the credit quality of Household's loan pools. *Id.* Naturally, if Household was artificially improving the quality of its loan pools through improper reaging practices, it would be able to sell the loan pools for more cash than if the true weakness of the loan pool was known. Additionally, Household was required to establish credit loss reserves to estimate probable losses for its securitized loans. By artificially improving the quality of the loans, Household lowered the amount of reserves required.

The arguments above with respect to Request Nos. 1 and 2 regarding the relevancy of the credit loss reserves for the managed and owned receivables also apply to the documents sought through Request No. 6. In addition, documents supporting the recorded gain or loss as a result of securitization of receivables are important to determine whether Household materially misstated its gain or loss through securitization.

Request No. 30 seeks monthly reports concerning the analyses of the imposition or reversal of finance charges. Finance charges, including interest charged on loans, was core revenue for Household. Household accrued finance charges and recorded these revenues when the interest was due. Household had to stop recognizing finance charges on delinquent accounts. Once an account was restructured and brought current, Household could again recognize finance charges on that particular account. However, according to Household's policy, the Company stopped accruing and reversed any finance charges on any restructured accounts that later became delinquent three months or more. Ryan Decl., Ex. 5 at 231:11-15, 232:5-11, 233:14-18. The Class alleges that Household improperly reaged or restructured accounts, making them current, when they should have been delinquent. Had the loans not been restructured and brought current, the Company would have to stop accruing interest income on these loans. Therefore, Household's improper reaging activities not only artificially improved the credit quality of its loan portfolios, it also overstated income by continuing to recognize finance income on the improperly restructured loans. Therefore, the reversal of finance charges on restructured loans represents the finance income that Household should not have recognized in the first place. Such information is relevant to show whether defendants materially overstated Household's finance income.

4. Documents Destroyed in the “Blitz Purge” Are Relevant

In Request No. 35, the Class seeks a sample of each type of document or an index of documents directed to be destroyed in the “blitz purge” that occurred throughout Household branch offices and headquarters in mid-2001.

In the summer of 2001, the senior management of Household initiated a “blitz purge” campaign to instruct all the branches to destroy unauthorized documents, including training and sales materials. On June 22, 2001, Tom Detelich, then Managing Director of Household Finance Corporation, sent an email to 29 addressees, including six District General Managers (“DGMs”) who oversaw Household’s Consumer Lending business unit consisting of over “1,400 branches located in 46 states, . . . and 13, 000 employees.” *See* Ryan Decl., Exs. 27-28, 14. In the email and the attachment, Mr. Detelich instructed the DGMs to “purge all unapproved sales material” to help Household “minimize the risk” it faced related to the “predatory lending issues.” Ryan Decl., Ex. 28 at HHS 03208097, HHS 03208099. In response to Detelich’s email, Steve Pummill stated that he instructed all the DSMs and Branch Sales Managers who reported to him to “*blitz to purge* every office of unauthorized sales material as well as any other unauthorized material such as training and the like.” Ryan Decl., Ex. 23 (emphasis added). On June 16, 2001, Robert O’Han, then Regional General Manager of Household Finance Corporation, similarly orchestrated the destruction of all unapproved sales materials in an email sent to six DGMs. Ryan Decl., Ex. 25.

Defendants kept samples of the documents destroyed in the purge. *See* Ryan Decl., Ex. 24 at HHS 02868141-42. The documents are evidence of the very predatory lending practices alleged by the Class. *See id.* The “blitz purge” campaign demonstrates defendants’ knowledge of company-wide fraudulent activities and their intent to destroy the evidence of such activities. The destruction of documents related to Household’s predatory lending practices further shows the falsity of defendants’ statement that Household did not engage in predatory lending practices during the Class

Period. Thus, samples of the documents that were destroyed in the “blitz purge” campaign are squarely at issue.

D. The Household Defendants Must Produce a Complete Set of Responsive Documents

The Household Defendants must produce a complete set of documents identified by Household’s own witness and the Class in this motion. Since the Class has already done the work for defendants by providing detailed information for these documents, defendants should be able to locate these documents promptly. However, they refuse to do so.

Defendants Must Produce a Complete Set of Financial Data

Incomplete financial data does not show an accurate picture of a company’s financial condition. For example, the Class seeks documents evaluating Household’s credit loss reserves calculation in Request Nos. 1-2 and 6. Household’s operations are divided into three reportable segments: Consumer, Credit Card Services, and International. Ryan Decl., Ex. 13. The Consumer segment further includes Consumer Lending, Mortgage Services, Retail Services and Auto Finance business units. *Id.* To fully assess whether the reserves were adequate on the consolidated level for the Consumer segment, the Class needs relevant financial data from all business units within that segment. The Class further needs financial data from the entire Relevant Time Period to evaluate any changes of reserves calculation, reasons behind these changes, and trend, if any, throughout the Relevant Time Period. Piecemeal or limited disclosure of financial data limits the Class’ ability to examine the integrity or accuracy of the financial data. Segregating financial information from a certain business unit or specific time period takes them out of context, leading to possible misinterpretation of the segregated documents. Therefore, the incomplete production of financial data, lacking certain business units or certain time periods, is not only improper under the discovery rules, but actually diminishes the usefulness of the documents that actually are produced.

Furthermore, the existence of a complete set of various types of financial data requested by the Class is undisputed. As a publicly held company, Household is required to “maintain a system of internal accounting controls sufficient to provide reasonable assurance that . . . transactions are recorded as necessary (1) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements” Foreign Corrupt Practices Act, 15 U.S.C. §78m(b)(2). Full access by the Class to a complete set of financial information is appropriate to properly understand, analyze, interpret and fully inquire into Household’s accounting improprieties. Defendants must produce a complete set of documents in response to Requests Nos. 1-2, 6, 9-13, 24, 27 and 30 of the Class’ Third Request.

Finally, the very fact of monthly tracking of the practices at issue in the case shows the importance of these issues to Household’s finances, defendants’ awareness of the impact of these issues, and the falsity of defendants’ statements throughout the Class Period. The entire sets of documents should be produced.

E. Production of the Requested Documents Will Not Impose an Unreasonable Burden on Household

Defendants object that the requests are unduly burdensome. To resist discovery on burden grounds, defendants must “prov[e] why the discovery requests are inappropriate.” *Henderson v. Nat’l R.R. Passenger Corp.*, 113 F.R.D. 502, 506 (N.D. Ill. 1986). “The litany of overly burdensome, oppressive, and irrelevant does not alone constitute a successful objection to a discovery request.” *Oleson v. Kmart Corp.*, 175 F.R.D. 560, 565 (D. Kan. 1997). “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 must demonstrate to the court “that the requested documents either do not come within the broad scope of relevance defined pursuant to Fed. R. Civ. P. 26(b)(1) or else are of such marginal relevance that the potential harm occasioned by disclosure would outweigh the ordinary

presumption in favor of broad disclosure.” *Burke v. New York City Police Dep’t*, 115 F.R.D. 220, 224 (S.D.N.Y. 1987). A simple assertion of failure to locate validly existing, relevant documents is not enough to meet this burden. Defendants have failed to identify to the Class any specific burden in producing the requested documents.

Further, any possible burden here has been greatly diminished by the precision of the Class’ Requests. *See FDIC v. Mercantile Nat’l Bank of Chicago*, 84 F.R.D. 345, 349 (N.D. Ill. 1979) (rejecting unduly burdensome objection where the objecting party could identify documents containing responsive information). Here, both defendants’ own witness and the Class identified detail information for certain documents in response to the Class’ Third Request. Moreover, for all but Request No. 16, the Class is seeking a discrete set of documents, not all documents relating to a particular subject, further limiting the burden. Finally, Household’s partial production in response to the Class’ first two sets of requests does not allow it to forgo a thorough search and a complete production in response to the Class’ Third Request. Had all documents responsive to the first two sets of requests been complete, there would be no need to go back and re-do the search to ensure complete production. Simply put, documents sought by the Class in this motion are important and relevant to the Class’ core allegations and should be readily available for production.

IV. CONCLUSION

For the reasons stated above, the Class respectfully requests that this Court order defendants to produce all documents responsive to Requests Nos. 1, 2, 6, 9-13, 16, 24, 27, 30 and 35 of the Class’ Third Request.

DATED: June 29, 2006

Respectfully submitted,

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP

s/ Bing Z. Ryan

BING Z. RYAN

PATRICK J. COUGHLIN (90785466)
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154452)
MONIQUE C. WINKLER (90786006)
LUKE O. BROOKS (90785469)
MARIA V. MORRIS (223903)
BING Z. RYAN (228641)
100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
WILLIAM S. LERACH
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Lead Counsel for Plaintiffs

MILLER FAUCHER AND CAFFERTY LLP
MARVIN A. MILLER
30 North LaSalle Street, Suite 3200
Chicago, IL 60602
Telephone: 312/782-4880
312/782-4485 (fax)

Liaison Counsel

LAW OFFICES OF LAWRENCE G.
SOICHER
LAWRENCE G. SOICHER
110 East 59th Street, 25th Floor
New York, NY 10022
Telephone: 212/883-8000
212/355-6900 (fax)

Attorneys for Plaintiff