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

LEAD PLAINTIFFS' RESPONSE TO THE HOUSEHOLD DEFENDANTS' MOTION TO COMPEL RESPONSES TO HOUSEHOLD DEFENDANTS' SECOND SET OF INTERROGATORIES

REDACTED VERSION

I. INTRODUCTION

By their motion, defendants seek responses to premature contention interrogatories as well as supplemental responses to interrogatories that lead plaintiffs have already sufficiently answered.

With respect to the contention interrogatories (Nos. 17 and 25-37), defendants have made no showing that immediate responses are justified and instead invoke "the rule of goose versus gander" to support this contention. However, the parties are not in the same position. Defendants have unfettered access and control over the relevant documents and witnesses, while lead plaintiffs' access is limited. Discovery is ongoing, and forcing lead plaintiffs to respond is inefficient as it would only result in multiple revisions as depositions and document production continues. It is for this very reason that courts generally defer responses to contention interrogatories until the end of discovery. November 10, 2005 Order at 4. Because defendants have provided no valid justification for compelling early responses to contention interrogatories, their motion should be denied.

With respect to Interrogatory Nos. 19-24, lead plaintiffs provided adequate responses, particularly given defendants' refusal to clarify them in any way. Lead plaintiffs fully responded by identifying the Household International, Inc. ("Household" or the "Company") lending practices that underlie defendants' fraud. Now, in their motion to compel defendants interpret these vague interrogatories in a manner that they expressly rejected during the parties' meet and confer. The interrogatories do not support this new interpretation. Defendants' gamesmanship should not be rewarded, and their motion should be denied.

II. RELEVANT PROCEDURAL HISTORY

Defendants served the [Fourth] Set of Interrogatories on February 13, 2006 (according to defendants, this is the Second Set; however, this ignores the first two sets which included ten interrogatories. The numbering sequence used in lead plaintiffs' responses and this motion includes the ten interrogatories served on lead plaintiffs on July 30, 2004). On March 15, 2006, lead plaintiffs

served their responses, objecting to Interrogatory Nos. 17 and 25-37 which are premature contention interrogatories and Nos. 19-24 which are vague, ambiguous and unintelligible.[1] The parties met and conferred on April 27, 2006 to discuss the Interrogatories and lead plaintiffs' responses. Owen Aff., Ex. 9.[2]

During the meet and confer, lead plaintiffs expressly asked defendants if the purpose of Interrogatory Nos. 20-24 was to discover whether lead plaintiffs "contend that all of that revenue was derived from illegal predatory lending practices." *Id.* at 31. Defendants responded, "No." *Id.* at 31-32. Lead plaintiffs then asked if defendants sought to discover "whether the sale of all single premium credit life insurance is an illegal predatory practice." *Id.* at 39. Again, defendants responded, "***the answer is no*** . . . . What we want is what you meant, nothing more nothing less." *Id.* Defendants now claim this ***is*** the information they seek. Defs' Mem. at 10-11.[3]

Ultimately, defendants refused to clarify or narrow Interrogatory Nos. 20-24 in any way, stating: "We just want you to answer the interrogatory and we have posed it pursuant to the federal rules of civil procedure. . . . What we really want is for you to answer the interrogatory. We think it's a proper interrogatory and it's also a response from the plaintiff. That's our position." Owen Aff., Ex. 9 at 35-35.

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[1] Interrogatory No. 25 which as clarified during the parties' meet and confer seeks the specific damages lead plaintiffs contend the Class suffered as a result of defendants' predatory lending practices is subject to expert analysis and opinion and is premature for that additional reason. Defendants do not address this objection in their motion and are precluded from doing so on reply. *Estate of Phillips v. City of Milwaukee*, 123 F. 3d 586, 597 (7th Cir. 1997) ("'arguments raised for the first time in the reply brief are waived'") (citation omitted).

[2] "Owen Aff." refers to the Affidavit of David R. Owen in Support of the Household Defendants' Motion to Compel Responses to Household Defendants' Second Set of Interrogatories to Lead Plaintiffs.

[3] "Defs' Mem." refers to Memorandum of Law in Support of the Household Defendants' Motion to Compel Responses to Household Defendants Second Set of Interrogatories to Lead Plaintiffs.

The parties also discussed defendants' premature contention interrogatories during the April 27, 2006 meet and confer. Defendants were unable to articulate any manner in which early responses to their contention interrogatories would narrow the issues going forward. *Id.* at 9. Defendants' stated reason for seeking early responses was that the Court ordered them to respond to contention interrogatories previously served by lead plaintiffs. *Id.*

On May 3, 2006, in an effort to avoid motion practice, lead plaintiffs agreed to supplement their responses to Interrogatory Nos. 19-24, despite defendants' refusal to clarify them in any way. Ex. A at 5-6. (All exhibits are attached hereto unless otherwise noted.) With respect to defendants' contention interrogatories (Nos. 17 and 25-37) – again, to avoid motion practice – lead plaintiffs proposed a compromise at the May 11 status hearing. Ex. B at 77-82. Lead plaintiffs committed to identify certain contention interrogatories to which they would respond with the intention that the rest of the contention interrogatories would be left to the end of discovery. *Id.* As the Court observed at that time, defendants were "actually getting the answers quicker" based on the lead plaintiffs' compromise. *Id.* at 81:9-10. On May 19, 2006, lead plaintiffs identified by letter the eight responses they intended to supplement, with the expectation that the remainder of lead plaintiffs' responses would be deferred until the end of discovery. Ex. C; Ex. B at 81. Defendants did not object in any way to the interrogatories lead plaintiffs identified nor did they communicate that a motion would be filed if the Class did not answer each and every contention interrogatory immediately.

On May 25, 2006, lead plaintiffs served their Supplemental Responses and Objections to Household's [Fourth] Set of Interrogatories to Lead Plaintiffs. Defendants did not seek to meet and confer again. Although lead plaintiffs were under the impression that an acceptable compromise had been reached, defendants announced their intention to move to compel at the June 15, 2006 Status Conference. Defendants filed the instant motion on June 29, 2006.

III. ARGUMENT

A. Defendants' Have Not Sufficiently Justified Their Demand for Early Responses to Contention Interrogatories

Defendants concede that Interrogatory Nos. 17 and 25-37 are contention interrogatories. Defs' Mem. at 4. As this Court stated in its November 10, 2005 Order, "requiring early responses [to contention interrogatories] may force a party to articulate theories of its case that have not been fully developed, to prematurely commit to a position, or to submit multiple supplemental answers later in the litigation. Because of these concerns, and in an effort to promote fairness and efficiency, courts generally defer answers to contention interrogatories until near the end of discovery." November 10 Order at 4 (citations omitted).

As defendants have correctly noted in prior briefing, the propounding party "bear[s] the burden of showing that ***early*** answers to well-tailored contention interrogatories will result in a significant re-shaping of the litigation or a significant savings for one or more parties." Owen Aff., Ex. 3 at 4 (emphasis in original); *see also In re Convergent Techs. Sec. Litig.*, 108 F.R.D. 328 (N.D. Cal. 1985). Absent such a showing, responses should be left until the end of the discovery period. *Convergent*, 108 F.R.D. at 338; *see also* Owen Aff., Ex. 3 at 4-5, 7-11 ("It is well settled that contention interrogatories are premature until the end of the discovery period.") (citing cases). Defendants have not even attempted to demonstrate "that there is a real likelihood that ***early*** answers . . . will result in a significant re-shaping of the litigation."[4] *Convergent*, 108 F.R.D. at 338-39. Accordingly, defendants' motion should be denied. *Id.*

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[4] Any attempt to meet this burden on reply should be rejected. *Estate of Phillips*, 123 F.3d at 597; *see also Central States, Southeast & Southwest Areas Pension Fund v. Midwest Motor Express, Inc.*, 181 F.3d 799, 808 (7th Cir. 1999)("Arguments not developed in any meaningful way are waived.").

Rather than demonstrate the reasons why ***they*** require early answers to contention interrogatories, defendants merely parrot the arguments made by lead plaintiffs in their Motion to Compel Responses to First Set of Interrogatories from Household Defendants. Defs' Mem. at 4-8. Defendants assert that because they were previously ordered to respond to contention interrogatories, plaintiffs should be as well. *Id.* This argument is both factually and logically flawed. As an initial matter, the Court did not order defendants to respond to plaintiffs' contention interrogatories until January 6, 2006, four months before the scheduled close of discovery and ***a year and a half after the interrogatories were served.*** November 10 Order.

As the Court noted in its November 10 Order, moreover, "the decision regarding timing depends on the facts of the case." *Id.* at 5 n.2. The factors that justified early responses to the contention interrogatories propounded by plaintiffs are not present with respect to those propounded by defendants. For example, defendants had all of the information necessary to respond to plaintiffs' interrogatories at the time they were served, including unfettered access to the relevant documents and witnesses. This fact negated the likelihood that defendants would have to repeatedly supplement their responses as new information was discovered or define their allegations without access to all of the relevant information. Lead plaintiffs are not in the same position. Although the parties have made substantial progress in discovery, more than 30 fact depositions remain, including depositions of the individual defendants and other senior management.[5] In addition, defendants' document

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[5] Defendants claim that discovery in this action has proceeded for four years. Defs' Mem. at 1. This is patently untrue. All discovery in this action was stayed under the mandatory discovery stay provision of the Private Securities Litigation Reform Act ("PSLRA"). This stay on discovery lasted until May 2004 when Judge Guzman ruled on the motions to dismiss, denying them in large part. Document production did not begin until June 24, 2004 after the Rule 26(f) conference had occurred and an interim protective order was in place.

production has not been completed.[6] If plaintiffs are required to respond to these contention interrogatories now they will have to be continuously updated as more depositions are taken and the facts become more crystallized. As the Court recognized in its prior order and again at the June 15 Status Conference, this inefficiency is the very reason contention interrogatories are normally left until the end of discovery. Defendants have provided no justification for imposing this unnecessary burden on plaintiffs.

In addition, whereas plaintiffs' First Set of Interrogatories focused on the factual basis of defendants' affirmative defenses which contained nothing more then unsupported and conclusory allegations, defendants have been on notice of lead plaintiffs' claims from the start. For example, defendants' Second Affirmative Defense read simply: "Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations and the doctrines of waiver, estoppel, ratification, unclean hands, laches, and/or *in pari delicto*."[7] Household Defendants' Answer at 261 (Docket No. 156). Without responses to contention interrogatories, plaintiffs would have had no way to determine what facts, if any, defendants contend serve as the foundation for this defense. Defendants, in contrast, are fully aware of the "factual underpinnings of Plaintiffs' claims," they simply choose to ignore them. Defs' Mem. at 8. Plaintiffs' Complaint contains 154 pages of detailed allegations, which Judge Guzman already has determined "satisf[y] Rule 9(b) and the PSLRA's requirement for particularity [by] pointing out misleading statements related to securities sales, indicating why it is material, and relating how the statements caused plaintiff's damages." *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, 02 C 5893, 2004 U.S. Dist. LEXIS 4659, at

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[6] Despite their repeated representations to the Court that document discovery is complete, defendants refuse to certify this fact and continue to produce voluminous documents in advance of depositions.

[7] Defendants' other affirmative defenses were similarly devoid of detail.

**24-25 (N.D. Ill. Mar. 19, 2004) ("MTD Order"). Despite defendants' protestations to the contrary, lead plaintiffs already have "articulated the who, what, when, where, and how of the fraud" with exacting particularity. *Id.*

Perhaps the most important distinction between lead plaintiffs' position in the prior motion and defendants' position here is that lead plaintiffs met their "burden of showing that ***early*** answers to well-tailored contention interrogatories will result in a significant re-shaping of the litigation or a significant savings for one or more parties." Owen Aff., Ex. 3 at 4 (emphasis in original); *see also Convergent*, 108 F.R.D. 328. In the prior motion, lead plaintiffs demonstrated "by carefully developing the applicable law, and by applying that law to the facts as alleged" that early clarification of the factual basis for defendants' affirmative defenses was necessary to narrow issues for discovery going forward, including who to depose and what documents to seek. *Convergent*, 108 F.R.D. at 348. Indeed, as a result of lead plaintiffs' compelling explanation of the need for defendants' responses, defendants withdrew 17 of their previously asserted affirmative defenses, rather than provide factual support for their allegations. *See* Stipulation for Leave to File Amended Answer (Docket No. 342-1). Defendants have provided no such justification. Instead, defendants contend that early responses are necessary to move toward summary judgment and prepare for depositions in the damages phase. Defs' Mem. at 7. Neither of these reasons justifies the relief defendants seek. *Convergent*, 108 F.R.D. at 339 (Defendants "cannot meet [their] burden of justification by vague or speculative statements about what might happen if the interrogatories were answered.") Even if the Court denies defendants' motion they will receive responses at the end of discovery, well in advance of both summary judgment and depositions on individualized issues which are not permitted until liability has been determined. Indeed, relying on early responses to contention interrogatories is likely to cause defendants more harm than good, given that lead plaintiffs will almost certainly be forced to supplement them as discovery progresses.

There is no compelling reason to force lead plaintiffs to respond to contention interrogatories until the close of discovery, and defendants' motion should be denied. *Id.* at 339.

B. Lead Plaintiffs Have Provided Adequate Responses to Interrogatory Nos. 19-24

1. Lead Plaintiffs Have Identified the Household Practices that Fall Within the Definition of "Illegal Predatory Lending" as that Term Used in the Complaint

Interrogatory No. 19 is a compound interrogatory that seeks (1) a definition of the term "illegal predatory lending" and (2) identification of any practice, procedure or other activity that lead plaintiffs contend constitutes "illegal predatory lending."[8] In addition to objecting, lead plaintiffs responded by identifying the Household practices that fall within the definition of illegal predatory lending as the term is used in the Complaint. Owen Aff., Ex. 8 at 24-26. It is unclear from defendants' motion what problem, exactly, defendants have with plaintiffs' response to the interrogatory. This ambiguity is compounded by the fact that defendants did not bother to meet and confer regarding any of lead plaintiffs' supplemental responses, including this one, before filing their motion.[9]

To the extent defendants seek a precise definition of the term predatory lending in addition to the identification of Household's predatory practices already provided, they seek too much. As

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[8] Defendants attempt to obscure this fact by omitting the second portion of Interrogatory No. 19 from their brief. Defs' Mem. at 8. Interrogatory No. 19 reads in full:

> Define "illegal predatory lending" as that term is used by Plaintiffs in the Complaint ***and identify any practice, procedure, or other activity Plaintiffs contend constitute "illegal predatory lending***."

Owen Aff., Ex. 8 at 24 (emphasis added to portion omitted by defendants).

[9] Defendants have an obligation to identify the remedy they seek in their initial motion and should not be permitted to raise issues for the first time on reply. *Estate of Phillips*, 123 F. 3d at 597.

discussed, the Interrogatory No. 19 is impermissibly compound and lead plaintiffs would have been justified in refusing to respond to either of the questions posed.

More importantly, lead plaintiffs' response provides the necessary guidance as to the activities at issue in this case. Indeed, lead plaintiffs have already provided exactly what defendants purport to seek, the identity of the "conduct [defendants] allegedly lied about to investors."[10] Defs' Mem. at 9. A stand-alone definition of illegal predatory lending would do nothing to further illuminate this issue. This is because, as defendants are aware, predatory lending, like fraud, is a term not susceptible to the concise, inflexible definition that defendants seek to extract from lead plaintiffs. Indeed, defendants themselves have steadfastly refused to provide a definition for the term. In response to lead plaintiffs' interrogatory seeking Household's definition of predatory lending, defendants responded: "the use of the term 'predatory lending' by persons at Household during the Class Period depended on the context. ***A 'predatory' loan is not a legally uniformly defined term and does not have a commonly recognized definition.***" Ex. D at 77-78 (emphasis added). Company witnesses have similarly been unable to define predatory lending. For example, when Carin Rodemoyer,

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Thus, despite having constantly assured the market that Household did not engage in predatory practices, defendants have refused to attach a definition to the term.

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[10] Even before plaintiffs responded to Interrogatory 19, defendants' complaint that lead plaintiffs have not been "specific about the alleged 'fraud' they allege [sic]" was soundly rejected by Judge Guzman. MTD Order at **24-25.

[11] REDACTED

Lead plaintiffs have sufficiently identified the predatory practices underlying their claims against defendants for securities fraud. Nothing more is needed. Defendants' motion for a supplemental response to Interrogatory No. 19 should be denied.

2. Interrogatory Nos. 20-24 Are Vague and Ambiguous

Defendants also take issue with lead plaintiffs' responses to Interrogatory Nos. 20-24. As written, these interrogatories are vague and ambiguous. For example, Interrogatory No. 20 asks lead plaintiffs to:

> 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. 8 at 26.

Lead Plaintiffs' Interrogatory No. 6, however, does not reference the "use of discount points" but rather seeks information regarding "the amount of revenues and net income derived from discount points."[12] Owen Aff., Ex. 5.

During meet and confers with defendants, lead plaintiffs sought to understand what, exactly, defendants sought by these interrogatories. Defendants refused to explain or clarify the interrogatories in any way, stating: "We just want you to answer the interrogatory and we have posed it pursuant to the federal rules of civil procedure. . . . What we really want is for you to answer the interrogatory. We think it's a proper interrogatory and it's also a response from the plaintiff. ***That's our position.***" Owen Aff., Ex. 9 at 35-36 (emphasis added).

In light of defendants' steadfast refusal to clarify these interrogatories in any way, lead plaintiffs supplemented their responses as best they could. For each of the practices referenced in

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[12] Interrogatory Nos. 21-24 similarly reference Lead Plaintiffs' Second Set of Interrogatories seeking information regarding revenue and income derived from Household products and practices.

Interrogatory Nos. 20-24, lead plaintiffs identified the manner and circumstances under which that practice falls within the definition of "illegal predatory lending" as that term is used in the Complaint. Owen Aff., Ex. 8 at 26-30. Lead plaintiffs also confirmed that Household generated, recorded and reported to the market revenue and income derived from these predatory practices. *Id.*; Defs' Mem. at 11. Defendants never communicated to lead plaintiffs that these responses were unsatisfactory. Instead, they moved to compel without further meet and confers.

Now, in their motion, defendants contend they are entitled to know "whether all or only some of those 'revenues' are included in Plaintiffs' contentions and whether all or only some of those products [referenced in the responses] were included within the term 'illegal predatory lending.'" Defs' Mem. at 11. Apart from the fact that Interrogatory Nos. 20-24 do not support this interpretation, ***defendants disavowed this meaning during the parties' meet and confer***. As noted earlier, lead plaintiffs specifically asked defendants during the meet and confer "[Is] [y]our question whether we contend that all of that revenue was derived from illegal predatory lending practices? Is that the yes or no that you want?" ***Defendants responded, "No."*** Owen Aff., Ex. 9 at 31-32 (emphasis added). The Class also asked if, for example, defendants sought to discover "whether the sale of all single premium credit life insurance is an illegal predatory practice." *Id.* at 39. Again, defendants responded, "the answer is no . . . ." *Id.* Having denied in meet and confers that this is the information they want, defendants are estopped from now asking this Court to compel responses providing this information. Accordingly, defendants' motion should be denied.

IV. CONCLUSION

For the foregoing reasons, lead plaintiffs respectfully request that the Court deny defendants' motion to compel.

DATED: July 13, 2006

Respectfully submitted,

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DECLARATION OF SERVICE BY EMAIL AND BY U.S. MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on July 13, 2006, declarant served by electronic mail and by U.S. Mail the **LEAD PLAINTIFFS' RESPONSE TO THE HOUSEHOLD DEFENDANTS' MOTION TO COMPEL RESPONSES TO HOUSEHOLD DEFENDANTS' SECOND SET OF INTERROGATORIES (REDACTED VERSION)**. The parties' email addresses are as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of July, 2006, at San Francisco, California.

s/ Marcy Medeiros
MARCY MEDEIROS