UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED, Plaintiff, *- against -* HOUSEHOLD INTERNATIONAL, INC., ET AL., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

MEMORANDUM OF LAW IN OPPOSITION TO LEAD PLAINTIFFS' MOTION TO COMPEL HOUSEHOLD DEFENDANTS' RESPONSES TO THIRD SET OF INTERROGATORIES

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

INTRODUCTION

As Plaintiffs generate interrogatories and react to Household's responses, two major themes have emerged: persistent harassment of Defendants and an ongoing effort to co-opt Defendants into doing Plaintiffs' work.

Despite having received comprehensive responses to the 85 interrogatories this Court allowed, Plaintiffs argue that they need more information "in order to move discovery forward and further tailor the issues." (Pls. Br. at 1) That sentiment may seem laudable in the abstract, but given the breadth of the Third Interrogatories and Plaintiffs' nitpicking of Defendants' good-faith responses, it cannot be taken at face value. At a time when discovery should be winding down and focused on narrowing and refining issues, Plaintiffs are still determined to broaden the dispute at every turn, thus further delaying a day of reckoning on the merits while subjecting Defendants and the Court to unreasonable burden. To that end, Plaintiffs' counsel indicated in a recent meet-and-confer that they intend to serve yet another set of interrogatories, a decision that flies in the face of the interrogatory limit set by this Court. (These would be on top of 251 "Requests for Admission", which for the most part are thinly-disguised interrogatories substantially in excess of any reasonable limit.) Defendants are entitled to protection from these excesses — particularly in view of Plaintiffs' unprincipled refusal to answer basic contention interrogatories about the scope of their theories and connection to a viable claim of securities fraud.

ARGUMENT

Courts recognize that "interrogatory practice . . . can be costly and may be used as a means of harassment." *Duncan* v. *Paragon Publishing, Inc.*, 204 F.R.D. 127, 128 (S.D. Ind.

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[1] Defendants submit herewith in further support of their opposition to Plaintiffs' motion the Affidavit of Diane E. Giannis ("Giannis Aff. ¶__"). Defendants also submit herewith the Declaration of Joshua M. Newville ("Newville Decl. __").

2001) (citations omitted). Plaintiffs have turned this admonishment into their mission statement.[2] No level of detail satisfies them. They fault Defendants for not giving the answers they would have preferred, they disregard Defendants' proper assertions of privilege, and they even demand that Defendants scour the public record to seek out disclosures Plaintiffs could as easily research themselves. They also quibble with Defendants' definition of "predatory lending" while failing to give a good faith explanation of their own use of that term as a key element of their Complaint. Household has already borne the immense burden of Plaintiffs' oppressive and grossly asymmetrical discovery campaign. It has answered Plaintiffs' Interrogatories fairly and in good faith, and deserves protection from Plaintiffs' relentless and unreasonable demands for more.

1. Interrogatories 28, 34 and 39 Requesting Identification of "All Public Statements" Regarding Charge-Offs, Reaging or "Predatory Lending" Are Overbroad and Cannot Be Answered Without Undue Burden

Interrogatories 28, 34, and 39[3] collectively ask Household to identify four years worth of written and oral public statements regarding its charge-off policies, including reaging and restructuring policies;[4] a year's worth of written and oral statements regarding claims of predatory lending; and all statements by the Company regarding financial losses due to predatory lending. The sheer breadth of these requests and the fact that Plaintiffs can and should themselves identify public statements relative to their claims compel the conclusion that "the

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[2] The careless drafting of the Third Interrogatories betrays Plaintiffs' lack of genuine interest in information-gathering and smacks of harassment. Examples include Interrogatory 31, which asks Defendants to identify "each estimate" in a preceding interrogatory that had nothing to do with estimates; Interrogatories 30, 40 and 41, which inquired about "third loans" when Plaintiffs meant to say "second"; and Interrogatory 43, which inquired about "fact revenues" instead of "actual revenues". Plaintiffs' failure even to read their interrogatories for coherence before serving them and necessitating wasteful meet and confer sessions to explain their meaning make clear that they have more interest in expanding the volume of oppressive discovery than in narrowing and refining relevant issues.

[3] For the sake of clarity, Defendants will herein refer to Plaintiffs' Interrogatories using Plaintiffs numbering, although Defendants object to Plaintiffs' numbering as designed to avoid the interrogatory limit set by this Court on January 6, 2006. *See infra* at p. 14-15.

[4] Plaintiffs continue to lump together charge-off policies with reaging and restructuring policies despite the fact that they are separate and distinct sets of policies, rendering Plaintiffs' interrogatories as inquiring into two discrete subparts. *See, e.g.* Defs' Resp. to Interrogatory 25 (attached as Ex. K to the Declaration of Luke O. Brooks in Support of Plaintiffs' Motion ["Brooks Decl. Ex. K"] at p.34).

burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(2).

Plaintiffs essentially ask the Court to require Defendants to review all of their public statements over an extended period of time in order to compile every statement regarding charge-off practices, reaging practices and so-called "predatory lending" practices (however Plaintiffs may eventually identify that term). This exercise would entail a company-wide investigation for every written and oral statement made by the corporation as a whole and by any of its thousands of employees. Household would also have to contact the countless employees who no longer work at the company and investigate every written and oral communication attributed to them over the four-year span. It is difficult to imagine a more burdensome and pointless fishing expedition, and it is laughable for Plaintiffs to suggest that they propounded these interrogatories to "narrow and define the issues for trial." (Pls. Br. at 6)

Plaintiffs unconvincingly explain that the requested statements are necessary to discover whether Defendants ever disavowed statements attributed to Household. (Pls. Br. at 6) In this regard the reference to certain of Defendants' affirmative defenses (Pls. Br. at 4 n.3) is an obvious red herring. Defendants have already responded to an interrogatory requesting "all facts" upon which each of Defendants' affirmative defenses are based. If that is the justification for relevance, then Interrogatories 28, 34 and 39 are redundant and cumulative. Plaintiffs' vague justifications are not enough to outweigh the burden and expense of the proposed discovery — especially when the requested statements are by definition in the public domain. *See, e.g., Fridkin* v. *Minnesota Mutual Life Ins. Co., Inc.*, No. 97 C 0332, 1998 U.S. Dist. LEXIS 1017, *10-*11 (N.D. Ill. Jan. 29, 1998) (narrowing discovery request because defendant "need not produce any documents which are available in the public domain"). The 64-page section of the Complaint setting forth statements made during the Class Period shows that Plaintiffs have had no problems so far identifying alleged statements they contend are false and misleading. (Compl. at ¶¶192-344).

F.R.C.P. 33(d) provides that when the burden of deriving an answer to an interrogatory is the same for the serving party as it is for the party served, the party requesting the information should bear the burden of retrieving it. *Oppenheimer Fund* v. *Sanders*, 437 U.S. 340, 357 (1978). In the case of public statements, which are equally available to Plaintiffs and Defendant,

Rule 33(d) dictates that it is Plaintiffs who must undertake the burden of sifting through the statements and analyzing them. In addition, because Plaintiffs' counsel maintains Defendants' document production in searchable form on its network and seven databases, Plaintiffs are able to search on their own for written statements and transcriptions of oral statements on the topics they consider relevant to their case.

Plaintiffs' demand that Defendants sift through years of public disclosures on their behalf exemplifies their persistent attempt to force Defendant to build and organize their case for them. Identifying material misstatements of fact in a securities lawsuit and building an affirmative legal argument is the job of the plaintiff — not the defendant. *See United States* v. *Northern Trust Co.*, 210 F. Supp. 2d 955, 958 (N.D. Ill. 2001) (denying motion to compel interrogatories requesting publicly available IRS rules and guidelines because "[d]efendants must do their own research to find the relevant legal authorities."). If Plaintiffs have not figured out by now whether there are any material misstatements to support their prolix complaint, they do not have a case. Without doubt Plaintiffs' demand for "all" statements by any employee of Household on these broad and open-ended topics would tend only to expand the issues (and opportunities for more discovery digressions) in this case, while imposing an immense burden on Defendants out of all proportion to any perceived value of such cumulative detail. Plaintiffs have not begun to justify that outcome.

2. Household's Answers to Interrogatories 22-23, 26, 38, 44, and 52 Comply Fully with Rule 33

(a) Household Has Already Responded to 22-23, 26, 38, and 44

In its Second Amended Responses to Interrogatories 22-23, 26, 38, and 44, Household identified, to the best of its ability, individuals responsible for five different subject matters or decisions.[5] In total, Household identified 47 employees or groups of individuals.[6] Because

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[5] These interrogatories do not seek "the identity of the individuals most knowledgeable or responsible for certain subject matters or events" as Plaintiffs claim (Pls. Br. at 7), but instead seek "all persons" who participated in a decision to make a restatement (No. 22), "all persons involved" in deciding a particular accounting treatment (No. 23), "all individuals" with knowledge about particular policies (No. 26), "the individuals responsible" for accounting treatment (No. 38), and "all individuals" involved in preparing an estimate (No. 44).

[6] In response to Interrogatory 22, Defendants identified three individuals (with titles), the Members of the Audit Committee, plus Household's current and former auditors. In response to

Household has satisfied its obligations under Rule 33, Plaintiffs' motion as to this Interrogatory should be denied. Plaintiffs' complaints about the responses to Interrogatory Nos. 22-23, 26, 38 and 44 are a transparent attempt to harass Defendants. Their motion to "compel" responses that have already been provided for each Interrogatory is an inexcusable waste of time and resources.

Even worse, Plaintiffs did not raise any alleged problems as to Defendants' responses to Interrogatories 22 and 23 during the meet and confer process. (Newville Decl. ¶¶ 3, 4, 7) Local Rule 37.2 of the Northern District of Illinois states that the "court shall hereafter refuse to hear any and all motions for discovery and production of documents under Rules 26 through 37 of the Federal Rules of Civil Procedure" unless the motion includes a certification that the moving party has consulted with, or has attempted to consult with, the nonmoving party to resolve the discovery dispute. Compliance with the Local Rule "requires personal consultation." *Tax Track Systems Corp.* v. *New Investor World, Inc.*, No. 01 C 6217, 2002 WL 31473818, at *7 (N.D. Ill. Nov. 4, 2002). A party's failure to comply with Local Rule 37.2 may result in denial of the motion. *Ridge Chrysler Jeep, L.L.C.* v. *Daimler Chrysler Services North America, L.L.C.*, No. 03 C 760, 2004 WL 3021842, at *4 (N.D. Ill. Dec. 30, 2004) (denying motion to compel where the moving party failed to comply with Local Rule 37.2 as well as Fed. R. Civ. P. 37(a)(2)(B)); *see also Metzger v. Francis W. Parker School*, No. 00 C 5200 2001 WL 910443, at *3 (N.D. Ill. Aug. 10, 2001). Because Plaintiffs have aired their dispute regarding Interrogatories 22 and 23 only by way of a motion to compel, this portion of Plaintiffs' motion should be summarily denied pursuant to Fed. R. Civ. P. 37(a)(2) and N.D. Ill. Local Rule 37.2.

Defendants' answers to Interrogatories 22 and 23 are not objectionable in any event. Defendants identified their current and former auditors as part of the group of those people "primarily responsible" for decisions on accounting issues. This identification is justified, since the accounting firm as a whole audits the financial statements. In response to Interrogatory 22, the Members of the Audit Committee are listed as a group because the "decision" to make the

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Interrogatory 23, Defendants identified six individuals (with titles and specific roles), plus Household's current and former auditors. In response to Interrogatory 26, Defendants referred Plaintiffs to the 26 individuals and one department listed in the response to Interrogatory 27, and also identified KPMG, the Board of Directors and senior management in connection with the "benchmarking study" performed by KPMG. In response to Interrogatory 38, Defendants identified two individuals (with titles) and one department. In response to Interrogatory 44, Defendants identified five individuals (with titles).

restatement was not made by one of those members in isolation. The Audit Committee participated as a group in making this decision. Furthermore, since Plaintiffs are already in possession of the audit committee minutes, they know who the members were at any given time.

Interrogatory 26 asks for names of individuals with knowledge about whether charge off policies or reaging or restructuring policies "followed industry standards closely" (a vague concept to begin with). In addition to identifying those individuals primarily responsible for the relevant policies at the business unit level by referring Plaintiffs to the response to Interrogatory 27, Defendants identified those individuals who participated in or reviewed a certain identified "benchmarking study". This study included comparative information compiled by a consultant regarding standards employed by other companies. Household is under no obligation to conduct a company-wide search to determine which of its more than 30,000 employees happened to review a copy of that study and thereby gleaned "knowledge" about the broad and amorphous subject referenced in this interrogatory or other topics identified by Plaintiffs. In its responses, Household properly limited the inquiry to the *core group* of persons most likely to possess the categories of information requested. *See In re Priceline.com Inc. Securities Litigation.*, 23 F.R.D. 83, 87 (D. Conn. 2005) (defendants not required "to canvass each employee . . . on [t]he slim chance that plaintiffs would discover relevant information outside the core group of persons listed by defendants"); *Birnberg* v. *Milk Street Residential Assocs.*, No. 02 C 978, 2002 U.S. Dist. LEXIS 9321 at *18-*19 (N.D. Ill. May 24, 2002) (holding that "it would be unduly burdensome" to require Defendant extend a search for employee travel information beyond its headquarters and into its affiliate offices).

(b) Interrogatory 52 Has Been Answered Fully and Properly

In an effort to bootstrap Interrogatory 52 into this motion, Plaintiffs lump it together with the group of interrogatories that they claim seek "the identity of the individuals most knowledgeable or responsible for certain subject matters or events." (Pls. Br. at 7) In fact, Interrogatory 52 does not seek the names of individuals. Instead, it asks Household to "[d]efine the term 'predatory lending' as it was used internally at Household during the period January 1, 1999 through December 31, 2002." Defendants responded to Interrogatory 52 by outlining the commonly understood meanings of "predatory lending" both as it is used outside Household and within the context of Household's business. Plaintiffs' assertion that the response is incomplete

carries no weight, but provides a telling illustration of Plaintiffs' effort to shift the burden of fleshing out their ill-considered claims to Defendants. If Plaintiffs have any legitimate basis to inquire how Defendants understood a non-standard term that Plaintiffs themselves used in their own complaint, they have their answer. Defendants should not be harassed further on this subject, especially given Plaintiffs' resistance to answering the more significant question of what *they* meant when they used the term "predatory lending" in their Complaint and accused Defendants of misleading stockholders on this subject. *See generally* Defs' Mot. to Compel Resps. to Household Defs' Second Set of Interrogs.[7]

3. Interrogatories 29 and 33 Request Irrelevant Information and Are Designed to Harass

Interrogatories 29 and 33 follow Plaintiffs' pattern of inquiring into matters that are irrelevant to the issues in dispute. Both interrogatories ask Defendants to describe the impact of a hypothetical scenario and to create currently non-existing statistics to demonstrate the possible effects of such a scenario.[8] In particular, Plaintiffs ask Household to state the impact on its financial statements, including charge-off and delinquency numbers and loan loss reserves, if Household had adopted "bank-like" charge-off policies during the Class Period.[9] As Household

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[7] Plaintiffs' failure to make anything more than a passing — and factually inaccurate — argument with respect to Defendants' response to Interrogatory 52 reinforces the impression that the purpose of these interrogatories (and this motion) is to harass Defendants. Furthermore, Plaintiffs' arguments should be deemed abandoned by Plaintiffs and their motion on this issue summarily denied. *See, e.g., Central States, Southeast and 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."); *Renaldi* v. *Sears Roebuck and Co.*, No. 97 C 6057, 2001 WL 290372, at *17 (N.D. Ill. Mar. 21, 2001) (Nolan, M.J.) (rejecting an argument because its proponent "cite[d] . . . no authority for his assertions"). Having waived the opportunity to explain their position in their opening submission, Plaintiffs should not be allowed to do so for the first time on reply. *See Estate of Phillips* v. *City of Milwaukee*, 123 F.3d 586, 597 (7th Cir. 1997).

[8] Interrogatories 29 and 33 are made all the more absurd by Plaintiffs' motion, which asks the Court to compel Household "to answer Interrogatory Nos. 29 and 33 *as written*" (emphasis added) (Pls. Br. at 10). Answering the interrogatories as written would require Defendants to "state in detail the effects" of policies that were never in existence, a task that cannot be accomplished without expert analysis of the proposed scenarios.

[9] Plaintiffs also state that Defendants restated Interrogatory 33 in a way that substantially changed its meaning. (Pls. Br. at 10 n.4) However, Defendants made a good faith effort during the meet and confer process to determine what Plaintiffs were actually asking. (Newville Decl. ¶5) That Plaintiffs could not make their request understandable is a function of Plaintiffs' confusing and

explained in its response to Interrogatory 29, and in its relevant Form 10-Ks, the only Household business units that were required to follow "bank-like" standards (meaning those promulgated by the Federal Financial Institutions Examination Council ("FFIEC")), were its two credit card issuing banks and its thrift institution (the "Banking Subsidiaries"), which collectively held only a small part of Household International's loan receivables during the Class Period. (Newville Decl. ¶¶ 9, 10) As Household reported, the majority of Household's business was *not* subject to FFIEC guidelines. (*See id.*)

Plaintiffs vaguely contend that the information requested in these interrogatories are nevertheless relevant to its allegations "that Household misled its investors regarding its charge-off and reaging policies and practices" and that "these misstatements had a material impact on the company's reported financials." (Pls. Br. at 8-9) However, Plaintiffs do not (and cannot) allege that Household's Banking Subsidiaries failed to follow FFIEC guidelines during that part of the Class Period that they were in effect. Similarly, there is no allegation (nor could there be) that Household made any fraudulent statements or omissions regarding the identity of its Banking Subsidiaries or the fact that only the loans of the Banking Subsidiaries were subject to FFIEC guidelines. Plaintiffs' attempt to fabricate evidence about the results of Household's *actual* reaging or restructuring practices by asking questions about the possible "effects" of hypothetical alternatives to those practices is completely nonsensical.

Although courts have broad discretion to permit necessary discovery, "[a] litigant may not engage in merely speculative inquiries in the guise of relevant discovery." *Micro Motion, Inc.* v. *Kane Steel Co.*, 894 F.2d 1318, 1328 (Fed. Cir. 1990); *see also Gavin* v. *AT&T Corp.*, No. 01 C 2721, 2005 U.S. Dist. LEXIS 13600, at *5 n.3 (N.D. Ill. June 7, 2005) (denying speculative discovery request because "[w]ithout any allegations regarding these other hypothetical transactions, it would be nothing more than a fishing expedition in an attempt to dig up other class-worthy claims"). Since the "what if" effects of hypothetical policies not actually employed (or required to be employed) by most of Household's business units would have no bearing on Plaintiffs' allegations regarding Household's actual policies, these interrogatories are not reasonably calculated to lead to admissible evidence.

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unintelligible interrogatory, as written. Regardless of which reading is used, the interrogatory is objectionable for reasons stated in this section.

4. The Information Requested in Interrogatory 36 Is Privileged and Defendants' Identification of Relevant Documents Is Proper

(a) Defendants Properly Identified Non-Privileged Documents Regarding the Settlement Decision Under Rule 33(d)

Interrogatory 36 requests "all reasons why Household entered into the AG Settlement". In response, Defendants specifically identified the reasons that were given by Household executives when announcing the settlement (by reference to Bates numbered page and by identifying the speaker). Defendants also specifically identified the reasons contained in the Consent Decrees entered into with the participating States (by reference to page and paragraph).

When a party invokes Rule 33(d), it is the moving party's burden of persuasion to show that the Rule 33(d) disclosures are inadequate. *Bell* v. *Woodward Governor Co.*, No. 03 C 50190, 2005 WL 289963, at *2 (N.D. Ill. Feb. 7, 2005). Plaintiffs have failed to meet this burden. Plaintiffs are presumably capable of reading the reasons memorialized in the cited documents. Their demand that Defendants take the words on the pages that have already been specifically identified and then re-type those in a document should be denied as unreasonable This is not an interrogatory requesting "all facts" supporting an affirmative defense or "contentions" that would require a narrative response as Plaintiffs attempt to argue. (Pls. Br. at 12) Plaintiffs asked for the reasons. Defendants have identified the reasons that are subject to disclosure (i.e., non-privileged and non-work product).

(b) Defendants' Further Reasons for Entering Into the AG Settlement Are Protected from Disclosure

The information requested in Interrogatory 36 falls squarely within the definition of privileged communications. It is well-established that "documents relating to settlement negotiations and the avoidance of anticipated litigation are . . . protected by work product immunity." *Chemcentral/Grand Rapids Corp.* v. *EPA*, No. 91 C 4380, 1992 U.S. Dist. LEXIS 12539, at *26 (N.D. Ill. Aug. 20, 1992).

In *Remus* v. *Sheahan*, No. 05 C 1495, 2006 U.S. Dist. LEXIS 37231 (N.D. Ill. May 23, 2006), the plaintiff invoked attorney-client privilege in refusing to answer an interrogatory strikingly similar to Interrogatory 36, which read, in part: "Describe the circumstances surrounding your settlement of the lawsuit . . . including, without limitation, why you agreed to

settle the case." *Id.* at *3-*4. Although privilege was ultimately deemed waived for unrelated reasons, the Court recognized from the outset that "the communications or documents at issue are either attorney-client communications or work product." *Id.* at *5. Furthermore, this Court recently held that reserve figures based on Household attorneys' "assessment of the merits and value of the underlying cases . . . are protected by the work product doctrine." *See* July 6, 2006 Order at 10 Order at 14 (citing cases); *see also Mattenson v. Baxter Healthcare Corp.*, 438 F.3d 763, 768 (7th Cir. 2006) (work product privilege shields a "lawyer's thoughts about a potential suit against the company, [includ]ing some of the strengths and weaknesses of the company's case").

Defendants cite a single case, *National Union Fire Insurance Co.* v. *Continental Ill. Group*, Nos. 85 C 7080, 85 C 7081 1988 U.S. Dist. LEXIS 7826 (N.D. Ill. July 22, 1988), for the supposed rule that the decision to settle a lawsuit is not protected by attorney-client privilege or work product protection. However, this Court recently rejected the reasoning of *National Union*. *See* July 6, 2006 Order at 10 Order at 14. Furthermore, plaintiffs distort *National Union*'s fact-specific holding. In *National Union*, the company's general counsel was clearly acting in a non-legal capacity when he advised on settlement and "did not make a personal analysis, did not investigate the facts or instruct an investigation to be made." 1988 U.S. Dist. LEXIS 7826 at *3. The case establishes only that when the decision to settle is purely a business decision, and the attorney-client communications involved only business advice and did not contain legal advice, these communications are not privileged. *Id.* at *3.

Household's response to Interrogatory 36 complies fully with the principles discussed in applicable caselaw and this Court's recent order. Any legal analysis of the reasons for the settlement — which were informed by attorneys acting in their role as legal counsel — retain their work product protection and are therefore not discoverable.

5. Information Requested in Interrogatories 40-42 Is Burdensome to Compile and Irrelevant to the Issues in Dispute

(a) Interrogatories 40-42 Are Burdensome and Irrelevant

Interrogatories 40, 41 and 42 each request multiple subsets of highly specialized loan statistics that were not maintained by Household in the ordinary course of its business. Given that these multi-faceted statistics were not maintained by the Company during the Class Period,

their relevance is negligible at best. If a certain category of data was not tracked by management at the time, it stands to reason that it cannot form the basis for allegations that Defendants made false or misleading representations concerning that data during the Class Period. *See Pommer* v. *Medtest Corp.*, 961 F.2d 620, 625 (7th Cir. 1992) ("The truth (or falsity) of defendants' statements and their materiality, must be assessed at the time statements are made, and not in the light of hindsight"). Because these statistics bear little relevance to the issues in this case, the burden of compiling them plainly outweighs their likely benefit. Fed. R. Civ. P. 26(b)(2). Household has nevertheless made a good-faith investigation as to whether the information requested in Interrogatories 40-42 exists, whether it can be obtained without undue burden and the cost of obtaining such information.

Diane Giannis, who is Director of Business Systems within HSBC Technology & Services (USA), Inc. ("HTS") explains in detail in her accompanying Affidavit that information that may be responsive to these Interrogatories could not be obtained without imposing undue burden and expense on Household. Specifically, Ms. Giannis explains that HTS would have to develop a new software program to analyze customer account data, "which would require labor by an employee of HTS dedicated to the project full-time, interrupting the work-related responsibilities of such an HTS employee." (Giannis Aff. ¶ 4) Even if done concurrently in order to save costs, it would take approximately 56 business days at a cost of $26,600.00 to obtain this information by developing software specific to Plaintiffs' requests. (*Id.* ¶ 5)

Given the attenuated relevance, at best, of this information to Plaintiffs' securities fraud claims, the burden of compiling this information is not justified. *See* FRCP 26(b)(2); *see also Ron Bianchi & Assocs., Inc.* v. *O'Daniel Automotive, Inc.*, No. 1:02-CV-20, 2003 WL 21919186 (N.D. Ind. Feb. 20, 2003) (burden outweighed benefit where interrogatory with limited relevance required review of more than 200,000 transaction documents and over 100 man hours); *Mr. Frank, Inc.* v. *Waste Management, Inc.*, No 80 C 3498, 1981 WL 2050, at *3 (N.D. Ill. Mar. 27, 1981) (geographical scope of interrogatories unduly burdensome after weighing "the slim possibility that this broad discovery may prove fruitful" against "the undeniable expense and inconvenience to which defendants will be put in producing . . . information requested"); *Burger King Corp.* v. *Grais*, No. 90 C 6562, 1992 WL 44406, at *1 (N.D. Ill. Feb. 28, 1992) (burden

outweighed benefit where interrogatory seeking identification of prior lawsuits involving large international corporation required search of hundreds of case files).

These interrogatories display Plaintiffs' myopic focus on minute operational details rather than on discovery relating to their allegation that Defendants committed securities fraud in connection with public disclosures during the Class Period. The burden of requiring HTS employees to set aside their normal responsibilities for weeks on end, interrupting the work-related responsibilities of any such employees (and the legal costs in responding to Plaintiffs' inevitable follow-up requests and additional motions to compel) outweighs any conceivable benefits of compiling the information. Defendants should be under no further obligation to provide detailed cost estimates or to respond to such interrogatories.[10]

(b) Subparts (c) and (d) of Interrogatory 42 Are Improper Because They Request Post-Class Information

Interrogatory 42(c) requests "the number of mortgage agreements nationwide whose terms were changed pursuant to provision III.5 of the AG Consent Decrees." Subpart (d) of the same interrogatory requests "the amount of money paid out in restitution pursuant to provision III.5A of the AG Consent Decrees."

Both subparts request information generated after the Class Period. The amount of restitution paid or number of mortgage agreements changed *after* Household's October 2002 settlement with the state attorneys general, i.e. *after* the October 2002 Class Period cut-off, has nothing to do with the elements of the securities fraud claims Plaintiffs must prove. No response is appropriate or required, pursuant to the Court's recent guidance in denying Plaintiffs' Motion to Compel Second Set of Interrogatories with respect to post-Class Period Information. The Court rejected Plaintiffs' argument that "lower post-Class Period revenues resulting from a change in Household's lending practices would demonstrate that the higher revenues achieved during the Class Period had to be the result of fraudulent practices" and noted that these revenues

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[10] If the Court should require Household to provide further information in response to Interrogatories 40-42, Plaintiffs should be ordered to bear all costs of the onerous search that compliance would entail. The court may shift the costs to the non-producing party when necessary to protect the responding party from "undue burden or expense." *Wiginton* v. *CB Richard Ellis, Inc.* 229 F.R.D. 568, 571 (N.D. Ill. 2004), *citing Oppenheimer Fund, Inc.* v. *Sanders*, 437 U.S. 340, 358 (1978).

may reflect, not the earlier misrepresentation, but other facts, conditions, or events. *See* June 15, 2006 Order at 10 (*citing Dura Pharmaceuticals, Inc.* v. *Broudo*, 544 U.S. 336, 343 (2005)); *see also Pommer*, 961 F.2d at 625 (falsity and materiality measured at time statements are made).

6. Defendants' Responses to Interrogatories 49 and 53 Are Proper

Plaintiffs object to the responses to Interrogatories 49 and 53 not because Defendants failed to respond but because the responses lack information that will bolster Plaintiffs' case.

In response to Interrogatory 49, which requests the "time period in which employees of Household utilized an 'effective rate' comparison to promote acceptance of the EZ Pay Plan," Household provided as full an explanation as possible regarding the circumstances under which effective rate comparisons were used. Household explained, *inter alia*, that "on May 24, 2001 and on multiple subsequent occasions all HFC Sales Offices and HFCPS Management were informed via Bulletin Board that the use of 'effective rate comparisons' was expressly prohibited." Household went so far as to offer the Bates numbers for these bulletin boards in order to better illustrate the circumstances under which effective rate comparisons were forbidden at the company.

In order to provide any greater specificity, Defendants would have to somehow determine every instance in which an effective rate comparison was used by a Household employee; only then could it provide the precise beginning and end dates sought by Plaintiffs. Such a determination would require an office-by-office survey of every individual who worked at Household during the Class Period — a search that is "plainly burdensome and oppressive" to demand of Defendants. *Board of Education* v. *Admiral Heating and Ventilating, Inc.*, 104 F.R.D. 23 at *29 (N.D. Ill. 1984) (holding that "expense and inconvenience of assembling information" should exempt party from having to search out every bid or potential bid on piping contracts in the relevant time period).

Interrogatory 53 is another example in which the response demanded by Plaintiffs would require launching a company-wide investigation into the daily practices of thousands of employees. Plaintiffs asked Household to "identify those Household business practices that fall within the definition of 'predatory lending' as it was used during" the Class Period. Defendants responded by stating, *inter alia*, that "Household did not endorse any 'predatory lending'

practices during the Class Period, nor at any other time, as that phrase is defined in the context of Household's business in the response to the previous interrogatory." Plaintiffs inexplicably argue semantics by objecting to the word "endorse" as not identifying "business practices". This is poppycock. "Household's business practices" are those practices that the Company necessarily endorsed. That Plaintiffs raise this issue in a motion to compel sheds more light on the shortcomings of Plaintiffs' case than on any deficiency in the response.

Plaintiffs' argument that Household "acknowledged" engaging in predatory lending when it referred in reports and conference calls to such generic items as "certain past practices" and "compliance procedures" is spurious and further highlights the degree to which Plaintiffs are stretching in their attempts to make out a case. (Pls. Br. at 14) If Plaintiffs had questions about any of those statements, they have had ample opportunity to serve interrogatories that ask about them. Plaintiffs chose not to do so. Just as "defendants cannot be expected to produce documents which do not exist," *Williams* v. *Schueler*, No. 04-C-65, 2006 U.S. Dist. LEXIS 43007, at *5 (E.D. Wis. June 23, 2006), Household should not be expected to manufacture admissions to so-called "predatory lending" practices that did not exist.

7. Defendants' Count of Plaintiffs' Interrogatories Is Accurate

Although they are limited by this Court's January 6, 2006 order to serving a total of 85 interrogatories, Plaintiffs are trying to do exactly what the Federal Rule Advisory Committee warned against — "evade this presumptive limitation through the device of joining as 'subparts' questions that seek information about discrete separate subjects." Amendments to Fed. R. Civ. P., advisory committee note to Rule 33, *reprinted in* 146 F.R.D. 401, 675-76 (Fed. 1993).

Courts disapprove of multi-part interrogatories because the "[e]xtensive use of subparts, whether explicit or implicit, could defeat the purposes of the numerical limit . . . by rendering it meaningless unless each subpart counts as a separate interrogatory." *Williams* v. *Bd. of County Comm'rs*, 192 F.R.D. 698, 701 (D. Kan. 2000). When counting interrogatories, this Court has stated that "'an interrogatory which contains subparts that inquire into discrete areas should, in most cases, be counted as more than one interrogatory.'" *See* Nov. 10, 2005 Order at p.2 n.1, *quoting Swackhammer* v. *Sprint Corp. PCS*, 225 F.R.D. 658, 664-665 (D. Kan. 2004).

In all, Plaintiffs' Third Set of Interrogatories consists of 37 questions with a total of 59 discrete subparts. Following the Court's guidance, Defendants renumbered only those subparts that inquire into discrete topics. For example, Defendants split up Interrogatory 30 [43-47], which inquires about complaints concerning five completely different aspects of Household-originated loans — (1) failure to disclose loan terms; (2) existence of prepayment penalties; (3) inclusion of life insurance; (4) lack of benefit to the consumer; and (5) the existence of a "Third [sic] loan". Although the interrogatory attempts to group them together in one overarching category of "complaints", each of these loan features is so distinctive that it requires a separate and distinct inquiry, and thus constitutes a separate and distinct interrogatory. In Interrogatory 43 [71-73], Plaintiffs ask about three different calculations that relate to the broad topic of the AG Settlement, but again the categories (and inquiries required) are separate and unique: subpart (a) asks about total settlement costs; subpart (b) asks about the allocation of restitutionary amounts paid under the settlement; and subpart (c) asks about the "fact" [sic] revenues associated with lending practices addressed in the complaint. Plaintiffs should not be allowed to combine discrete interrogatories under the guise of subparts in order to evade the Court's limit on the number of permitted interrogatories.

Because Plaintiffs have used multi-part questions to exceed the maximum number of interrogatories allowed to be served by each party, this Court should order that Defendants are exempt from answering Interrogatory 56 [86][11] and any future interrogatories.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion to compel should be denied in its entirety.

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[11] Furthermore, Defendants object to Interrogatory 56 on the grounds that such information is subject to the attorney-client privilege and the work product doctrine. (Brooks Decl. Ex. K at p. 84) This interrogatory is not a simple request for the identity of individuals with knowledge on a certain topic. Instead, a response would require Defendants to disclose which employees were selected and approached by counsel for specific information and the topics on which they were consulted. This is invasive of the attorney-client relationship and the work product doctrine.

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CERTIFICATE OF SERVICE

Adam B. Deutsch, an attorney, certifies that on July 14, 2006, he caused to be served copies of Defendants' Memorandum of Law in Opposition to Lead Plaintiffs' Motion to Compel Household Defendants' Responses to Third Set of Interrogatories, to the parties listed below via the manner stated.

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