UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

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

MEMORANDUM OF LAW IN SUPPORT OF THE HOUSEHOLD DEFENDANTS' MOTION TO COMPEL RESPONSES TO DEFENDANTS' 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 Defendants" or "Defendants") in support of the Household Defendants' Motion to Compel Responses to Defendants' Third Set of Interrogatories (the "Interrogatories").[1]

INTRODUCTION

Although Defendants regret adding to the Court's workload, Plaintiffs have again refused outright to provide Defendants with information that is central to this litigation. Consistent with their practice of evading interrogatories until Defendants are forced to seek the Court's assistance (thus unfairly making Defendants seem litigious), Plaintiffs now refuse to answer six straightforward questions seeking specifics about how and when — if ever—the "fraud" they allege was revealed to the public.[2]

The relevance of the requested information cannot reasonably be contested (although Plaintiffs do assert lack of relevance among many other frivolous objections). In analyzing the "loss causation" requirement for fraud claims in *Dura Pharmaceuticals, Inc.* v. *Broudo*, 544 U.S. 336 (2005) ("*Dura*"), the Supreme Court discussed three key features of every claim of securities fraud. The first is the alleged fraudulent misrepresentation or omission itself. The second feature is the public discovery of the alleged misrepresentation or omission—*i.e.*, the date the truth became known to the public. The third feature is a decline in the stock price "after the truth became known" to the public. *See id.* at 347; *see also D.E. & J. Limited Partnership* v. *Conaway*, 133 Fed. Appx. 994, 999-1000 (6th Cir. 2005) (dismissing securities complaint which "did not plead that the alleged fraud be-

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1 "Interrogatories" refers to Household Defendants' Third Set of Interrogatories to Lead Plaintiffs served on May 26, 2006, which are annexed as Exhibit 1 to the accompanying Affidavit of Janet Beer. Plaintiffs' "answers" are annexed to the Beer Affidavit as Exhibit 2.

2 The Court may recall that Plaintiffs successfully moved for an extra three weeks to "answer" these interrogatories, after rejecting Defendants' suggestion that they assert any objections on the original return date so that any dispute could be resolved in conjunction with the June 29 motions that were addressed in the Court's August 10 Order. Had they cooperated with that sensible proposal, the Court would have been spared an extra round of motion practice, and the interrogatories would not have been tabled for months beyond the adjourned date on which the Court and Defendants were entitled to expect good faith substantive answers.

came known to the market on any particular day"). The *Dura* decision made clear, *inter alia*, that prior to the revelation of the alleged misrepresentation or omission there can be no injury from the alleged misrepresentation because the public remains unaware of it and the price has yet to decline.

Based upon the reasoning of the Supreme Court, Defendants interposed six interrogatories intended to discover the substance of Plaintiffs' allegations with respect to the second feature discussed by the Court — *i.e.*, the public discovery of the alleged misrepresentation. Instead of providing substantive good-faith answers, Plaintiffs objected on the spurious grounds that the public discovery of the alleged fraud is either "irrelevant" to this case (because Plaintiffs disagree about the meaning of *Dura*) or identifiable only by "expert witnesses." (Beer Aff., Ex. 5 at 13, 20-21, 32; Beer Aff., Ex. 2 at 7).

The flimsiness of these objections betrays Plaintiffs' reluctance to disclose any facts or take any position that may have the effect of limiting or extinguishing their claims in accordance with the Supreme Court's instructions. They evaded these Interrogatories in the first instance by claiming to need additional time in which to "answer" (thus ensuring that their non-answers would not be a focus of the discovery motions the Court authorized in late June), then by serving expansive and unreasonable objections instead of substantive answers, dragging their heels on Defendants' attempts to meet and confer, and rejecting all reasonable efforts to persuade them to disclose the *facts* available to them, whether or not they may later choose to supplement their factual answers after consulting with experts. Plaintiffs have thereby managed to delay compliance for months after the original response date, thus seriously hindering Defendants' ability to prepare their defense. This latest evasion is particularly inexcusable since the cessation of the alleged fraud by revelation of the truth to the market is factual information that Plaintiffs were required to have in hand to file their Complaint, and Plaintiffs have confirmed their access to relevant facts by making representations to the Court on this very subject.

At this late stage in discovery, Plaintiffs must not be allowed to rely on the vague allegations and generalizations of their Complaint, and make Defendants wait until or beyond the eleventh hour to know the factual underpinnings of the Plaintiffs' loss causation claims. If Plaintiffs cannot or will not identify such basic facts as the identity and date of the public disclosures that led to their claimed losses, they should be precluded from pursuing their claims.

ARGUMENT

Interrogatories that require a plaintiff to commit to a position and give factual support for that position are appropriate and require a response. *Ziemack* v. *Centel Corp.*, No. 92 C 3551, 1995 WL 729295, at *2 (N.D. Ill. Dec. 7, 1995). The six Interrogatories at issue on this motion ask Plaintiffs to provide basic facts about the loss causation aspect of their case, such as the dates and identity of the disclosures by which Plaintiffs assert the market learned of Defendants' alleged fraud. Even with the additional time granted by the Court, Plaintiffs have refused to answer all but one of these Interrogatories [3] and their lone answer is hardly a model of good faith compliance.[4]

Defendants have met their burden under Fed. R. Civ. P. 37(a)(2)(B) and have in good faith conferred with Plaintiffs in an effort to secure these interrogatory responses without having to burden the Court. (*See* Beer Aff., Ex . 5).

A. Plaintiffs Must Identify The Disclosures That Revealed the Alleged Fraud to The Market (Interrogatories No. 29-33)[5]

Plaintiffs have previously stated that the first day on which the "truth" of Household's alleged fraud was revealed to the market was August 14, 2002. *See* Lead Plaintiffs' Response to Household Defendants' Motion Pursuant to the Seventh Circuit's Decision in *Foss v. Bear, Stearns Co.*, filed August 18, 2005, excerpted. (*See* Beer Aff., Ex. 3) ("*Foss* Brief"). In that brief, Plaintiffs represented to Judge Guzman that August 14, 2002 was "the earliest date that plaintiffs could have

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3 Since Plaintiffs did not answer Interrogatory No. 30 as written, but rather rephrased it and addressed a different, much narrower, question, their response cannot be considered good faith compliance. *See also* note 11 below.

4 Interrogatory No. 34 is the only interrogatory that Plaintiffs purported to answer as written. It asked Plaintiffs to "[i]dentify each of the alleged 'efforts by defendants to bolster the price of Household stock' referenced in ¶ 140 of the Complaint" (which alleges that such efforts took place "[d]uring the trading day on 8/14/02). (Beer Aff., Ex. 1 at 2). In "response" Plaintiffs deluged Defendants with non-responsive information and general references to the Complaint and the document production, including statements made months prior to the day at issue. Refusing to provide any meaningful answer, Plaintiffs brazenly argue that Defendants should research the answer on their own because "Household has greater knowledge respecting its efforts [to bolster the price of Household stock] and documents than Lead Plaintiffs." (Beer Aff., Ex. 2 at 11). Their insistence that *Defendants* identify documents and facts to support *Plaintiffs'* claims of wrongdoing is typical of Plaintiffs' one-sided view of discovery compliance.

5 Plaintiffs have renumbered Defendants' Interrogatories by increasing the number by ten (e.g. interrogatory no. 29 has been renumbered by Plaintiffs as interrogatory no. 39). Reference herein will always be to Defendants' original numbering unless otherwise stated.

discovered the essential facts underlying defendants' fraud" (*id.* at 8), and that "none of plaintiffs' claims arose until at least August 14, 2002." (*Id.* at 1).[6] Plaintiffs made the same representation to the Court in their *Dura* Brief,[7] again stating that "[o]n August 14, 2002, investors began to learn of the true facts about Household's financial and operating condition concealed by the multi-component fraud scheme." (Beer Aff., Ex. 4 at 10).[8] These statements expand on the Complaint's more general allegation that "[i]t was not until mid-2002 that investors began to learn of the true facts about Household's financial and operating condition." (AC ¶ 5).[9]

Interrogatories No. 29 and 30 seek clarification of and factual support for these statements. Interrogatory No. 29 states:

> Identify all documents and alleged facts that Plaintiffs contend support their statement in Plaintiffs' *Foss* Brief that 'plaintiffs' claims did not arise until at least August 14, 2002, the earliest date that plaintiffs could have discovered the essential facts underlying defendants' fraud.'

(Beer Aff., Ex. 1 at 1). Conversely (in the event that Plaintiffs had developed information contrary to their representations to the Court), Interrogatory No. 30 requests that Plaintiffs

> [i]dentify all documents and alleged facts that Plaintiffs contend demonstrate that the market or any member of the class became aware of the alleged fraud on any day prior to August 14, 2002.

(Beer Aff., Ex.1 at 2). Plaintiffs refused to respond. Instead, they objected to these Interrogatories as irrelevant and "not reasonably calculated to lead to the discovery of relevant and admissible evidence" because their fact representations to the Court were asserted in a different context from Defendants' Interrogatories. (Beer Aff., Ex. 2 at 6; *see also id.,* Ex. 5 at 24) ("[Y]ou've taken a quote

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6 Plaintiffs made this factual assertion as the predicate for their legal argument that that "[b]ecause plaintiffs' claims did not accrue until after Sarbanes-Oxley was in effect, the new statute of limitations repose [sic] governs this action, regardless of when defendants' securities violations occurred." (*Foss* Brief, Beer Aff., Ex. 3 at 9).

7 "Dura Brief" refers to the Lead Plaintiffs' Response to Household Defendants' Motion Based on the Supreme Court's Decision in *Dura Pharmaceuticals, Inc. v. Broudo* filed August 18, 2005, excerpted (Beer Aff., Ex. 4).

8 In both their *Foss* Brief and *Dura* Brief Plaintiffs stated that there was only one "multi-component fraud scheme." It is this "fraud scheme" that Plaintiffs claim first began to be revealed to the market on August 14, 2002. (*Dura* Brief, Beer Aff., Ex. 4 at 9-10; *Foss* Brief, Beer Aff., Ex. 3 at 1, 9).

9 "Complaint" or "AC" refers to Lead Plaintiffs' [Corrected] Amended Consolidated Class Action Complaint.

from a brief that we wrote that refers to *Fujisawa*. . . . And we don't think that that particular argument is relevant."). Apparently Plaintiffs only mean what they say when it suits their purposes at the moment.

The context in which Plaintiffs made their factual representations to the Court is not material. Whatever their legal objective, Plaintiffs affirmatively represented to the Court as a matter of fact that August 14, 2002 was the first day that they "could have discovered the essential facts underlying defendants' fraud." (*Foss* Brief, Beer Aff., Ex. 3 at 8). Based on that factual predicate, they attempted to influence the Court to accept their legal argument as to the appropriate statute of repose. That the Court rejected their legal position does not render any supporting factual statements they made "irrelevant" or otherwise outside the bounds of discovery.

Plaintiffs' position on relevance does not even make sense (or reflect a good-faith position) in view of their use of the same factual assertion to persuade Judge Guzman that the loss causation allegations in their complaint were sufficient. In response to Defendants' *Dura* motion, Plaintiffs stated:

> The Complaint also pleads the requisite 'causal connection' between defendants' scheme and plaintiffs' economic loss: On August 14, 2002, investors began to learn of the true facts about Household's financial and operating condition concealed by the multi-component fraud scheme

(*Dura* Brief, Beer Aff., Ex. 4 at 10). Having affirmatively suggested to the Court that the timing of investors' learning the "truth" is key to their burden on loss causation, Plaintiffs cannot simply argue, now that the requested facts no longer suit their litigation purposes, that the substance of their representations is suddenly irrelevant. *See also Feldman* v. *American Memorial Life Insurance Co.*, 196 F.3d 783, 791 (7th Cir. 1999) (Courts "cannot permit litigants to adopt an alternate story each time it advantages them to change the facts."). Without question Defendants are entitled to know the basis for Plaintiffs' factual representations about the level of information available to the market on August 14, 2002, as requested in Interrogatory 29. If Plaintiffs have any contrary information, or if they have departed from or modified their earlier allegations on point, they should be ordered to provide this information in response to Interrogatory 30. [10]

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[10] Plaintiffs should also be ordered to answer Interrogatory 30 as written, and not as narrowly and artificially interpreted by them to apply only to their restatement-related theory of fraud. In response to In-

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Plaintiffs likewise have refused to respond to Interrogatories No. 31-33, claiming that they too are "irrelevant." These three Interrogatories ask Plaintiffs to clarify when and how the market first learned of each of three discrete theories of the alleged fraud, including: (1) illegal predatory lending policies, (2) improper reaging of delinquent loans, and (3) improper credit card accounting practices. (*See* AC Part VI.A, VI.B, and VI.C). Although Plaintiffs have at times claimed that the three theories are all part of a "multi-component fraud scheme," the allegations relating to each of the three are separately alleged in a distinct section of the Complaint. (*Id.*). Interrogatories 31-33 seek to establish the timing of the public discovery of each theory separately. For example, Interrogatory No. 32 requires Plaintiffs to

> [i]dentify the Disclosure(s) that Plaintiffs contend revealed to the market or any member of the class that Household was allegedly engaged in a 'Fraudulent Scheme' involving 'Improperly 'Reaging' or 'Restructuring' Delinquent Accounts,' as set forth in Part VI.B of the Complaint. (AC ¶¶ 50, 107-133).[11]

(Beer Aff., Ex. 1 at 2). Providing no substantive response of any kind, Plaintiffs asserted that the entire issue of when the alleged fraud was revealed to the market is "irrelevant" to their claims of securities fraud, because, according to Plaintiffs, "the applicable legal standard regarding loss causation does not require a corrective disclosure." (Beer Aff., Ex. 2 at 7-10).[12]

Putting aside Plaintiffs' disregard of the plain words of *Dura* as to the importance of the timing of the disclosure of the alleged fraud relative to a plaintiff's alleged losses, Plaintiffs have

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terrogatory No. 30, Plaintiffs illogically announced that they would "interpret that the fraud at issue as being Household's improper accounting for its credit card contracts," even though the Interrogatory itself is not so limited and Plaintiffs' Complaint emphasizes alleged omissions regarding Household's reaging of accounts and alleged "predatory lending." As their answer to that severely narrowed interrogatory, Plaintiffs stated that they "do not contend that the market was aware of the identified fraud [*i.e.,* fraud in connection with accounting card contract accounting] prior to August 14, 2002." (Beer Aff., Ex. 2 at 7). They neither answered the Interrogatory with respect to the other categories of alleged fraud emphasized in their complaint, nor gave any reason for ignoring this broader aspect of the question. Plaintiffs refused to cure this unauthorized omission when Defendants asked for good faith compliance at the parties' meet and confer. (*See id*, Ex. 5 at 25-32.)

11 "Disclosure" is defined in the Interrogatories as "any statement by or about Household or any of the Defendants or any of their agents relating to the subject matter of Plaintiffs' Complaint." (Beer Aff., Ex. 1 at 3).

12 Plaintiffs mischaracterize Defendants' Interrogatories. Defendants' Interrogatories do not use the term "corrective disclosure." Instead, Defendants only ask for Plaintiffs to identify statements made by or about Household that revealed the alleged fraud to the market. (Beer Aff., Ex. 1 at 2).

no business unilaterally decreeing what is relevant based on their preferred interpretation of the law. Plaintiffs' supposed disagreement with Defendants' understanding of *Dura* does not excuse their refusal to respond to Defendants' discovery requests. *See Union Carbide Corp.* v. *State Board of Tax Commissioners*, 161 F.R.D. 359, 366 (S.D. Ind. 1993). "The Federal Rules of Civil Procedure contemplate liberal discovery, and 'relevancy' under Rule 26 is extremely broad." *For Your Ease Only, Inc.* v. *Calgon Carbon Corp.*, No. 02 C 7345, 2003 U.S. Dist. LEXIS 20267, at *4 (N.D. Ill. Nov. 10, 2003) (Nolan, M.J.). *See also Trading Technologies International, Inc.* v. *eSpeed, Inc.*, No. 04 C 5312, 2005 U.S. Dist. LEXIS 10686, at *2 (N.D. Ill. Apr. 28, 2005) (citing *Oppenheimer Fund, Inc.* v. *Sanders*, 437 U.S. 340, 351 (1978)) ("Discovery encompasses matters that actually or potentially affect any issue in the litigation."). Specifically, when the merits of a claim or defense are contested on a discovery motion "discovery should not be denied because it relates to a claim or defense that is being challenged as insufficient." *Union Carbide Corp*, 161 F.R.D. at 366 (granting motion to compel discovery despite opposing party's objection that the information sought was irrelevant because the moving party was misinterpreting the applicable statute) quoting, 8 Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure* § 2008, p. 44 (1970).

Plaintiffs' relevancy objections are baseless in any event. *Dura* and its progeny make clear that the information that Defendants request is not only relevant to a securities fraud case, but is integral to its outcome. To demonstrate loss causation if this case ever came to trial, Plaintiffs would have to prove that the "share price fell significantly after the truth became known." *Dura*, 544 U.S. at 347. Were Plaintiffs' contrary position to be accepted, then loss causation could be established merely by proving that the stock price on the date of purchase was inflated due to the alleged misrepresentations. However, that was the very position that the Supreme Court rejected in *Dura*. As the Supreme Court noted: "The complaint's failure to claim that Dura's share price fell significantly after the truth became known suggests that the plaintiffs considered the allegation of purchase price inflation alone sufficient." *Id.* The Court held that this was inadequate to satisfy loss causation. *Id.* at 346-348. Instead, the fraud must also become known to the market at some point and the stock price must significantly decline as a result. *Id.* at 342-343. The Supreme Court reasoned:

> "For one thing, as a matter of pure logic, at the moment the transaction takes place, the plaintiff has suffered no loss; the inflated purchase payment is offset by ownership of a share that *at that instant* possesses equivalent value. Moreover, the logical link between the inflated share purchase price and any later economic loss is not invariably strong. Shares are normally purchased with an eye toward a later sale. But if, say, the purchaser sells the shares quickly before the relevant truth begins to leak out, the misrepresentation will not have led to any loss."

Id. at 342 (emphasis in original). "Thus to establish loss causation, a plaintiff must allege . . . that the misstatement or omission concealed something from the market that, *when disclosed*, negatively affected the value of the security." *Lentell* v. *Merrill Lynch & Co.*, 396 F.3d 161, 173 (2d Cir. 2005) (emphasis added) (citations and internal quotation marks omitted). Simply put, if "plaintiffs do not allege that the scheme was ever disclosed, they fail to allege loss causation." *In re Initial Public Offering Securities Litigation*, 399 F. Supp. 2d 261, 266 (S.D.N.Y. 2005). Given the analysis of the Supreme Court in *Dura*, it is clear that the details of when and how the "truth" was revealed to the market are central to Plaintiffs' claims of securities fraud. This information plainly is not "irrelevant" to the case as Plaintiffs have asserted.

Even if Plaintiffs intended (and were allowed) to try their case without including information about this key factual issue, Defendants would be and are entitled to disclosure of related facts in Plaintiffs' possession in order to test the merits of Plaintiffs' claims and make appropriate arguments about Plaintiffs' failure or inability to address loss causation in the manner prescribed by the Supreme Court. Moreover, even apart from the loss causation issue, Plaintiffs cannot reasonably deny that the timing of disclosure of each of the three claimed aspects of the alleged fraud is directly relevant to other essential elements of their claim, such as reliance. *See Basic Inc.* v. *Levinson*, 485 U.S. 224, 247 (1988) (noting the critical presumption that springs from the relationship between reliance and truth on the market where "[a]n investor who buys or sells stock at the price set by the market does so in reliance on the integrity of that price. Because most publicly available information is reflected in market price, an investor's reliance on any public material misrepresentations, therefore, may be presumed for purposes of a Rule 10b-5 action").

B. No Expert Opinion is Necessary to Identify the Disclosures Plaintiffs Were Asked to Identify in Interrogatories No. 31-33.

While simultaneously contending that the entire subject is "irrelevant," Plaintiffs also purported to justify their refusal to respond to these Interrogatories by insisting that their expert witness will explain when the alleged fraud was revealed to the public. (Beer Aff., Ex. 2 at 7-9). Plaintiffs' illogical position on this subject betrays their objective of avoiding substantive disclosure by any means possible. The very suggestion that the opinion of Plaintiffs' expert will establish "facts" that Plaintiffs claim to be irrelevant is clearly an evasion.

Providing facts about the public disclosures by which Plaintiffs allegedly learned the falsity of prior statements requires no specialized expertise. Each prong of the alleged fraud was either revealed or it was not. Plaintiffs have provided various indications, including in representations to Judge Guzman, that this revelation "began" to take place on August 14, 2002. Defendants have asked for and are entitled to know what disclosures Plaintiffs assert revealed each prong of the alleged fraud, and when. It is difficult to imagine how Defendants can be expected to prepare their defense without this basic information.

Plaintiffs' invocation of future "expert testimony" is not a substitute for the identification of the key facts that underpin their claims. *See, e.g., Roberts* v. *Heim*, 130 F.R.D. 424, 428 (N.D. Cal. 1989) ("[I]f Plaintiffs possess factual information independent of that to be furnished by their experts, it should be provided in Plaintiffs' responses to Defendants' contention interrogatories. This is required even if Plaintiffs have conveyed this information to their experts.").

Expert testimony is frequently used in securities fraud cases in connection with establishing the third feature of *Dura* discussed above—i.e., the damages actually caused by the alleged fraud. *See, e.g., Law* v. *Medco Research, Inc.,* 113 F.3d 781, 786 (7th Cir. 1997); *Ferguson* v. *Lurie*, No. 89 C 2283, 1991 U.S. Dist. LEXIS 15759, at *7 (N.D. Ill. Oct. 29, 1991). Such opinion testimony is easily distinguished from the simple identification of the disclosures that revealed the fraud to the public. Indeed, the facts and dates of the disclosures are typically provided to the expert witness, who has no special expertise as to the truth or falsity of the disclosure dates he or she is asked to assume.[13]

Litigants have been compelled to answer interrogatories with the facts they have at hand, even if experts will later analyze this information to offer an opinion. *See Ziemac*k, 1995 WL 729295, at *3 (ordering plaintiffs to answer interrogatories about the "*fact* of their [securities] damages" and finding this would not interfere with the domain of experts who may be called in to analyze

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13 Under this mode of analysis, given the date on which a plaintiff alleges the fraud was disclosed to the market, the expert opines on whether the stock price subsequently moved "abnormally," which could be an indication that the alleged disclosure of the fraud *caused* the decrease in stock price. *See Endo* v. *Albertine*, 863 F. Supp. 708, 723-724 (N.D. Ill. 1994). Experts on loss causation help to explain the factual claims of damages by providing their expertise to study and interpret the movement of the Defendant company's stock compared to that of the rest of the market. *See, e.g., id.* at 724; *Medco*, 113 F.3d at 786.

the cause of a stock price drop) (emphasis in original); *King* v. *E.F. Hutton & Co.*, 117 F.R.D. 2, 5-6 (D.D.C. 1987) (finding that plaintiffs should have answered interrogatories about their securities losses because they "must have had some factual basis for concluding they had sustained losses at the time the complaint was filed," and it was "no answer for the plaintiffs to assert that they [needed]. . .to consult with an expert to determine their losses"). "While an expert may be helpful to the plaintiffs, the value of this expert's opinions will depend upon the facts upon which his opinions are predicated. For this reason, it is important to have the facts upon which the plaintiffs personally rely. . .in order to test the factual basis for the expert's opinions." *King*, 117 F.R.D. at 6 n.4. (compelling answers to interrogatories).

Not only *can* Plaintiffs provide the requested information without the aid of an expert, (as they demonstrated by making related date-specific representations to Judge Guzman in their *Foss* and *Dura* briefs), their instigation of this lawsuit presumes such knowledge and their Complaint alleges in general the very information for which Plaintiffs were asked to provide back-up. Plaintiffs acknowledge as much in their objections. For example, in lieu of answering Interrogatory No. 32, Plaintiffs state that "the complaint on file in this proceeding identifies certain instances in which there was public disclosure of Household's engagement in improper reaging of delinquent accounts." (Beer Aff., Ex. 2 at 8-9) Plaintiffs also represented in the Complaint that "[i]t was not until mid-2002 that investors began to learn of the true facts about Household's financial and operating condition." (AC ¶ 5); *see also Dura* Brief at 10 (asserting that Complaint adequately alleges loss causation by indicating that revelations began on August 14, 2002). (Beer Aff., Ex. 4). How is it that Plaintiffs could refer to disclosures of Household's alleged fraud four years ago when they filed the Complaint but are now unable to provide factual support for those allegations except through expert testimony? Defendants are entitled to discover the *factual* basis of these allegations irrespective of any expert gloss Plaintiffs may later provide.

C. Surviving a Motion to Dismiss Does Not Relieve Plaintiffs of Their Obligation to Identify the Disclosures that Revealed the Alleged Fraud to The Market (Interrogatories No. 31-34)

Plaintiffs claim that surviving Defendants' motion to dismiss relieves them of their obligation to respond to Defendants' Interrogatories regarding the factual basis of their allegations. They literally argue that they need not provide any information beyond what is contained in the Complaint because the "complaint has been upheld by the Court as adequately alleging the facts necessary to support the element of loss causation." (Beer Aff., Ex. 2 at 8-9). This frivolous argument

typifies the extreme, bad faith positions on Plaintiffs' part that have generated so much motion practice on discovery issues.

The very purpose of interrogatories is to require a plaintiff to provide *more* than they have alleged in their complaint. *See Schaller Telephone Co.,* v. *Golden Sky Systems, Inc.,* 139 F. Supp. 2d 1071, 1100-1101 (N.D. Iowa 2001) (finding a party's answering an interrogatory with an "almost verbatim restatement of the allegations of the complaint" was "substantially unresponsive"). Indeed, courts routinely sustain bare-bones complaints on the ground that the defendant will be able to flesh out the particulars through discovery. *See generally EMC Corp.* v. *Storage Technology Corp.*, 921 F. Supp. 1261, 1264 (D. Del. 1996) (collecting cases) ("[C]ourts have held that where the allegations are pled with particularity, the parties may then rely upon interrogatories for specific details."). Plaintiffs cannot refuse to clarify and support their claims simply because they have alleged facts sufficient to meet the minimum requirements to state a claim.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that Defendants' motion to compel be granted, that Plaintiffs be ordered to respond forthwith to all Interrogatories that they have refused to respond to, and that Plaintiffs be ordered to provide new and responsive answers to Interrogatories No. 30 and 34.

Dated: August 18, 2006
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