UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

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

THE CLASS' RESPONSE TO HOUSEHOLD DEFENDANTS' MOTION TO COMPEL RESPONSES TO DEFENDANTS' [EIGHTH] SET OF INTERROGATORIES TO LEAD PLAINTIFFS

I. INTRODUCTION

At issue is the Household Defendants' Motion to Compel Reponses to Defendants' [Eighth] Set of Interrogatories to Lead Plaintiffs. On January 29, 2007, Lead Plaintiffs responded to three separate sets of comprehensive contention interrogatories. Defendants move to compel additional responses to four of these interrogatories. The Court should deny this motion in full.

Interrogatory No. 47 asks Lead Plaintiffs to identify a document defendants' claim Class counsel cited during settlement discussions. The Class informed defendants – before they filed their motion – that the Class recalls making no such statement. Furthermore, the information defendants purport to seek with respect to Interrogatory No. 47 – documents related to senior management's approval or involvement in illegal practices – was supplied in response to Interrogatory No. 48. The Court cannot discern this important fact from defendants' filing because they provided the Court a truncated version of Lead Plaintiffs' responses. It is not surprising that defendants omitted Lead Plaintiffs' lengthy and detailed response to Interrogatory No. 48 from its filing as this response seriously undermines their blunderbuss allegations that Lead Plaintiffs have failed to provide specifics regarding senior management's involvement in Household's various illegal activities. The Class has attached a copy of the full responses to the [eighth] set of interrogatories as Appendix 1 to this brief.

The next two interrogatories concern prepayment penalties. One of these, Interrogatory No. 57, ranks among the most extreme examples of defendants' poor draftsmanship. (Or perhaps one of their better ploys to guarantee motion practice.) To further confuse matters, in their briefing defendants make no distinction between Interrogatory No. 57 and Interrogatory No. 56. Lead Plaintiffs answered Interrogatory No. 56 in full, and defendants raised no objection to that answer during the parties' meet and confer. Now defendants contend that both seek branch-level information referenced nowhere in either interrogatory. Further, the additional detailed information

defendants seek from Lead Plaintiffs is information that defendants refused to provide in response to the Class' interrogatories. Finally, defendants object to both the form and content of Lead Plaintiffs' response to Interrogatory No. 45 concerning Household's predatory lending program. Lead Plaintiffs provided a five-page narrative response and painstakingly culled a list of responsive documents from defendants' five-million-page document dump, which identify Household's violations of numerous state laws. The Class urges the Court to deny defendants' motion in full.

II. ARGUMENT

A. Defendants Fail to Inform the Court that the Class Responded to Interrogatory No. 267 [47]

Interrogatory No. 267 [47] seeks identification of a document defendants claim Class counsel referenced during settlement negotiations on August 22, 2005. *See* Defs' Mem. at 9-10 (Dkt. No. 969-2). Putting aside whether this interrogatory directed at information purportedly exchanged during settlement negotiations will lead to admissible evidence pursuant to Fed R. Evid. 408, there are a few additional problems with defendants' complaints on this interrogatory. First, following the parties' meet and confer on February 9, 2007, Class counsel wrote a letter to defendants and told them in good faith that Class counsel does not recall making the statement attributed to them by defendants' interrogatory. Brooks Decl., Ex. A.[1] Class counsel does not know whether defendants' assertion is accurate or whether the document referenced in the interrogatory exists. Defendants do not include the Class' letter in their 123-page declaration or reference it anywhere in their brief.

Second, defendants do not dispute Lead Plaintiffs' point that it has already responded to interrogatories posing the same question. In fact, Interrogatory No. 268-269 [48], the next

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[1] "Brooks Decl." refers to the Declaration of Luke O. Brooks in Support of the Class' Response to Household Defendants' Motion to Compel Responses to Defendants' [Eighth] Set of Interrogatories to Lead Plaintiffs, filed herewith.

interrogatory propounded by defendants, reads: "Identify all facts and documents that Plaintiffs contend show the participation or approval of senior Household management in any allegedly illegal practices." Owen Aff., Ex. 4 at 48. This is the exact same information defendants claim they seek through Interrogatory No. 267 [47]. Defs' Mem. at 9-12. Lead Plaintiffs responded to this interrogatory in full and defendants do not challenge this response in their motion.[2] Significantly, in what appears to be a purposeful omission, defendants did not provide this response to the Court. Despite David Owen's sworn affidavit purporting to attach "a true and correct copy" of Lead Plaintiffs' responses, Exhibit 4 attached to that declaration ***excludes the Class' full response to Interrogatory No. 268-269 [48]***. The full response provides the very information defendants claim they do not have. Owen Aff., Ex. 4 at 48. As Lead Plaintiffs have provided the information defendants purport to seek, there is no dispute for the Court to resolve with respect to this interrogatory.

B. Lead Plaintiffs Have Provided Proper Responses to Interrogatory Nos. 279-281 [56-57]

As an initial matter, prior to filing their motion defendants did not identify any issues with respect to Lead Plaintiffs' response to Interrogatory No. 279 [56]. The interrogatory was not discussed during the February 9, 2007, meet and confer and (for that reason) was not addressed in the Class' February 13, 2007 follow-up letter. Having failed to raise any complaints during the meet and confer, defendants' motion with respect to this interrogatory should be denied.

In any event, defendants' protests regarding Interrogatory Nos. 279-281 [56-57] ring hollow. Defendants' memorandum is yet another instance of their general practice: they poorly draft the

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[2] Defendants also asked the Class to "[i]dentify all documents Plaintiffs contend, support, refute, or otherwise concern the allegation set forth in ¶156 of the Complaint that '[t]he Officer Defendants were both highly motivated and had ample opportunity to perpetuate the fraud complain of herein.'" Brooks Decl., Ex. B at 7. The Class also answered this question in full. *Id*. at 7-13.

interrogatories, dislike the substantive responses (as they always undercut defendants' substantive defenses), and repeatedly seek to alter the original questions posed via motion practice. For example, although Interrogatory 279 [56] seeks quantification of "the percentage and/or number of Household's loans which included prepayments penalties which plaintiffs contend were not disclosed or whose imposition was misrepresented" defendants now contend that "Plaintiffs should have provided answers that would have allowed defendants to determine ***when*** (under Plaintiffs' theory) ***an employee did or did not 'conceal' a prepayment penalty.***" Defs' Mem. at 8 (emphasis added). This is not the question defendants asked.

As the Court is well aware, moreover, defendants have successfully resisted branch-level discovery, significantly hampering the Class' ability to quantify a specific number of loans where prepayment penalties were allegedly or improperly used. They also have refused to provide corporate-level information on prepayment penalties that would inform this analysis. The Court denied the Class' motion to compel responses to the Class' interrogatory seeking "(c) the number of mortgage agreements nationwide whose terms were changed pursuant to provision III.5 [prepayment penalties] of the AG Consent Decrees; and (d) the amount of money paid out in [prepayment penalty] restitution pursuant to provision III.5.A of the AG Consent decrees." August 10, 2006 Order. Defendants also refused to respond to Interrogatory No. 31, contained in Lead Plaintiffs' Third Set of Interrogatories, which reads: "State the annual monetary value for each year during the period 1999 through and including 2002 of all refunds or amendments to the terms of a loan, which refunds or amendments resulted from complaints received by Household as to Household-originated loans." Owen Aff., Ex. 4 at 128.[3] Having refused to provide discovery directed toward the

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

prevalence of defendants' misuse of prepayment penalties, defendants cannot now demand more detailed answers to the very question they successfully and completely ignored. The Court should either permit the Class to obtain the branch-level and corporate-level discovery referenced above or deny defendants further response to Interrogatory Nos. 279-281 [56-57].

Defendants' real objection is to the evidence Lead Plaintiffs cite in response to their interrogatories, and their real objective is to redraft and rephrase the same questions over and over again to drag out discovery and harass Lead Plaintiffs. It is no secret that the Class intends to rely in part on government reports, customer complaints, and information relating to the Attorneys General Settlement to corroborate the predatory lending claims. The Class cites such data in response to Interrogatory No. 279 [56]. Owen Aff., Ex. 4 at 126-129. Defendants have repeatedly sought to persuade the Court to ignore this evidence. For example, defendants claim that the AG Settlement information is "inadmissible internal settlement calculations which on their face do not even relate to any particular claim of illegality." Defs' Mot. to Compel Suppl. Interrogs. at 2 (Dkt. No. 858). However, defendants' distaste for the underlying facts does not render the Class' response deficient.

As to Interrogatory Nos. 280-281 [57], Lead Plaintiffs stand on its response and objections. This interrogatory is compound and hopelessly vague and ambiguous. Even in their motion, defendants fail to identify the information sought by this poorly drafted interrogatory. The interrogatory certainly does not, as defendants suggest, seek information regarding "how or when management directed the allegedly illegal version of an otherwise legitimate practice." Defs' Mem. at 9. Indeed, neither Interrogatory No. 279 [56] nor Interrogatory No. 280 [57] makes any mention whatsoever of senior management. To the extent defendants seek information regarding the manner in which Household improperly used prepayment penalties, that information is contained in Lead Plaintiffs' response to Interrogatory No. 279 [56], which is specifically incorporated by reference into the response to 280 [57]. The Class respectfully urges the Court not to redraft this interrogatory

for defendants (as the Court has graciously and generously done in the past) and to find no further response is necessary.

C. The Class' Response to Interrogatory No. 146-265 [45] Is More Than Adequate

Defendants' arguments regarding Interrogatory No. 146-265 [45] likewise fail. The current response is more than adequate, but defendants object both to its content and form. The Class disagrees. In its response, the Class provided a lengthy explanation of defendants violations of state and federal laws. Owen Aff., Ex. 4 at 10-13. The Class directs defendants to documents that are clearly probative of the fact that defendants' engaged in a widespread practice of illegal predatory lending. Defendants disagree with the Class' interpretation of the documents, contending the Class cited documents that are "irrelevant state and federal regulatory agency communications" that do not "substantiate Plaintiffs' assertion of a widespread illegal scheme." Defs' Mem. at 5. Again, although defendants dislike what Lead Plaintiffs' response reveals, the response itself is perfectly adequate.

Defendants also criticize the form of the Class' response. The Class provided a five-page narrative response, and painstakingly assembled a tailored list of documents that enumerate "federal and/or state law[s] that Plaintiffs contend Defendants violated." Owen Aff., Ex. 1 at 1. Defendants cite *In re Sulfiric Acid Antitrust Litigation*, 231 F.R.D. 320, 325 (N.D. Ill 2005) for the proposition that the information defendants seek must "actually be obtainable from the documents." Defs' Mem. at 5. This case does not help defendants as the documents cited by the Class clearly evidence defendants' widespread predatory lending scheme and reference numerous violations of state law. To reach a contrary conclusion, defendants would have the Court believe "documents produced by the various states Attorneys General, including the documents produced by the Washington State Attorney General's Office relating to the negotiations leading up to the $484 million settlement," for example, are not ***evidence*** of defendants' state law violations. *See id.* at 5-6; Owen Aff., Ex. 4 at 13;

see also, e.g., Brooks Decl., Exs. C and D (documents cited in the Class response clearly showing Household lending violations). Defendants also dispute the ***relevance*** of the state agency documents, despite, of course, fighting for months to suppress discovery of those documents. *See* Defs' Mem. at 5. Defendants thus conflate the probative value of the Class' response under Fed. R. Evid. 401 with the adequacy of the response under Fed. R. Civ. P. 33. Again, defendants may argue that Household spent half a billion dollars to settle non-existent legal claims. Again, the Class disagrees. That is exactly the type of disagreement interrogatories are intended to reveal, not resolve.

Next, defendants could have avoided motion practice on this issue altogether. They neglect to inform the Court that following the February 9, 2007 meet and confer, the Class wrote "[w]ith respect to Interrogatory No. 146-265 [45] . . . Lead Plaintiffs maintain their position that the use of Rule 33(d) is appropriate; however, Lead Plaintiffs will supplement their response to include additional information." Brooks Decl., Ex. A. The Class was willing to accommodate defendants for the purpose of avoiding the unnecessary motion practice now before the Court. Because defendants have yet again chosen the path of greatest burden on the Class and the Court, the Class urges the Court to find the responses and objections valid as drafted. They are more than adequate.

This Court has ample discretion to deny Household's motion in all respects. As Judge Guzman has often pointed out, "[r]outine discovery motions are not dispositive" and "[t]he Federal Rules of Civil Procedure grant magistrate judges broad discretion in resolving discovery disputes." February 1, 2007 Order (citing *Adkins v. Mid-Am. Growers, Inc.*, 143 F.R.D. 171, 175 n.3 (N.D. Ill. 1992); *Heyman v. Beatrice Co.*, No. 89 C 7381, 1992 WL 245682, at *2 (N.D. Ill. Sept. 23, 1992)). The Court should exercise that discretion and reject defendants' Rule 33(d) argument. Defendants argue the Class cannot cite summary business records in response to Interrogatory No. 45. *See* Defs' Mem. at 5. The purpose of Rule 33(d) is to allow a party to designate documents in response to an

interrogatory where "the burden of deriving the answer is substantially the same for the party serving as for the party served." 8A Charles A. Wright, Arthur R. Miller & Richard L. Marcos, *Federal Practice and Procedure* §2178, at 329-330 (2d ed. 1994). It is a burden-shifting device. Defendants can just as easily read documents ***they*** produced, which show violations of state and federal laws, as Lead Plaintiffs. That is especially so in this context, where Lead Plaintiffs painstakingly listed document after document showing violations of state and federal law. *See, e.g.*, Brooks Decl., Ex. C at HHS 03442031 (credit life insurance violation) *and* Brooks Decl., Ex. D at HHS 03436267 (prepayment penalty violation).

At bottom, defendants essentially ask the Court to allow them to further harass and burden Lead Plaintiffs by forcing them to summarize documents that defendants produced themselves. Defendants argue "but there are 3,000 documents!" to review. Lead Plaintiffs painstakingly culled this directly responsive list from the 5 million documents defendants dumped on the Class. Defendants have repeatedly ignored the Class' interrogatories aimed both to cull this mass down and force defendants to produce the kind of detailed branch- and corporate-level information they now seek from the Class. Lead Plaintiffs and the Class should not be required to undertake the "make work" defendants seek to impose on Lead Plaintiffs. Defendants' contrary arguments should be rejected in full.

III. CONCLUSION

For the reasons set forth above, the Class urges the Court to deny defendants' motion in full.

DATED: March 2, 2007

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 March 2, 2007, declarant served by electronic mail and by U.S. Mail to the parties the: **THE CLASS' RESPONSE TO HOUSEHOLD DEFENDANTS' MOTION TO COMPEL RESPONSES TO DEFENDANTS' [EIGHTH] SET OF INTERROGATORIES TO LEAD PLAINTIFFS**. 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 2nd day of March, 2007, at San Francisco, California.

s/ Monina Gamboa
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