

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	Nan R. Nolan
CASE NUMBER	02 C 5893	DATE	3/14/2007
CASE TITLE	Jaffe vs. Household Intl Inc, et al		

DOCKET ENTRY TEXT

For the reasons stated below, Defendants’ Motion to Compel Responses to Defendants’ Fifth Set of Interrogatories [Doc. 968] is granted in part and denied in part.

■ [For further details see text below.]

Notices mailed by Judicial staff.

STATEMENT

Defendants served Plaintiffs with a Fifth Set of Interrogatories on December 22, 2006.¹ Plaintiffs responded to the interrogatories on January 29, 2007. Defendants have moved to compel additional responses to four of those interrogatories: Nos. 45, 47, 56, and 57. The court addresses each in turn.

A. Interrogatory No. 45

Interrogatory No. 45 asks Plaintiffs to “[i]dentify each federal and/or state law that Plaintiffs contend Defendants violated, with reference to particular provisions and the Household product, practice or policy that allegedly violated the law and the basis for that contention.” Plaintiffs’ Complaint alleges that senior Household management engaged in a company-wide “illegal predatory lending scheme,” and Defendants posed this interrogatory to determine which of Household’s lending practices Plaintiffs consider to be “illegal.” (Def. Mem., at 1, 4.) In response, Plaintiffs state that Household violated the securities laws which form the basis of this lawsuit, and direct Defendants to some 3,000 documents, consisting primarily of state and federal regulatory agency communications. (*Id.* at 5; Pl. Resp., at 6.) Defendants argue that the response is inadequate because the cited documents “do not even accuse Household of predatory lending much less an undisclosed and illegal lending scheme.” (*Id.* at 6.)

Two things are clear in this case: (1) Plaintiffs base their predatory lending allegations on the state and federal regulatory agency communications; and (2) the parties strenuously disagree as to whether these communications are in fact probative of any practice of illegal predatory lending on Household’s part. The court orders Plaintiffs to provide a list of specific laws Defendants allegedly violated, with statutory citations. Plaintiffs must also direct Defendants to specific documents demonstrating a violation of each law. Any further disputes regarding the import of the communications purportedly addressing these predatory lending laws may be addressed in dispositive motions and/or at trial.

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1 The parties continue to attach difference numbers to the interrogatories. For purposes of this motion, the court adopts Defendants' numbering.

B. Interrogatory No. 47

Interrogatory No. 47 seeks the identification of a document Plaintiffs' counsel apparently referenced during a settlement conference before Judge Guzman on August 22, 2005. The document allegedly shows that senior Household management approved or participated in illegal practices. (Def. Mem., at 10.) Plaintiffs respond that their counsel do not recall stating that they have such a document. Plaintiffs also note that Defendants have not objected to their response to Interrogatory No. 48, which seeks the identical information: "Identify all facts and documents that Plaintiffs contend show the participation or approval of senior Household management in any allegedly illegal practices." (Pl. Resp., at 2-3.)

The court accepts Plaintiffs' representations that their counsel "does not recall making the statement attributed to them in defendants' interrogatory" and that they have no additional documents responsive to Interrogatory No. 47. The court declines to order any further response to this question.

C. Interrogatory Nos. 56 and 57

Defendants finally seek further responses to the following two interrogatories:

56. Identify the percentage and/or number of Household's loans which included prepayment penalties which Plaintiffs contend "were not disclosed or which were actively concealed, or whose existence or imposition was misrepresented in some fashion, as well as prepayment penalties that were in violation of state or federal law."
57. Identify all facts and documents that provide the basis for distinguishing between any Household loans which included alleged prepayment penalties "that were not disclosed or which were actively concealed, or whose existence or imposition was misrepresented in some fashion, as well as prepayment penalties that were in violation of state or federal law" and loans which included prepayment penalties which do not meet that criteria.

(Def. Mem., at 8.) Defendants claim that Plaintiffs' response "muddied the waters further by stating only that: 'government reports and customer complaints, indicate that a substantial percentage and/or number of Household loans included prepayment penalties which were [improper].'" (*Id.*) Defendants insist that they are entitled to know "(a) how prevalent Plaintiffs contend any of the vaguely alleged 'concealment' practices [were] during the Class Period, and (b) how Plaintiffs distinguish between proper uses of prepayment penalties and those that were allegedly part of the illegal scheme." (*Id.* at 9.)

Plaintiffs claim that they are unable to provide such detail because "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." (Pl. Resp., at 4.) Plaintiffs also object that Defendants are attempting to redraft and rephrase a poorly constructed interrogatory to obtain a different response. (*Id.* at 3-4, 5.)

Once again, the parties' dispute appears to focus on the relevance and materiality of information contained

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in the state and federal regulatory agency communications, as well as the Attorneys General Settlement. Defendants argue that “these reports can be quantified and distinguished from Household’s reported performance, and it is Plaintiffs’ burden to do so.” (Def. Reply, at 5.) In Defendants’ view, “[i]f Plaintiffs have no idea whether the alleged illegality occurred 1% or 100% of the time then they should acknowledge as much.” (*Id.* at 6.)

Plaintiffs have accused Defendants of engaging in a widespread predatory lending scheme. The court agrees that Plaintiffs should provide factual support for the allegation, including (1) the percentage or number of Household loans that included improperly imposed or undisclosed prepayment penalties, and (2) unless Plaintiffs allege that 100% of the prepayment penalties were unlawful, the basis for distinguishing between these improper prepayment penalties and any prepayment penalties that were lawful.

Plaintiffs must submit supplemental interrogatory responses in accordance with this opinion by March 21, 2007.