

The Household Defendants respectfully submit this Status Report to summarize the steps Defendants have taken with respect to the approximately 400 boxes of Ernst & Young (“E&Y”) work papers in accordance with recent orders of the Court and the discussion that was held on this matter during the March 20, 2007 telephonic status conference. In addition, during the March 30 conference Defendants would like to raise two matters, discussed below, pertaining to Plaintiffs’ March 23 responses to Defendants’ interrogatories.

1. Review of the Boxes of E&Y Work Papers

a. On March 23, Defendants submitted to Plaintiffs and the Court proposals for the Court’s *in camera* review of a subset of the approximately 278 boxes containing the data validation and sampling materials that E&Y collected and/or prepared in the preliminary stages of the Compliance Study engagement. Defendants made two proposals: (i) a random selection of one or two boxes of data validation documents and three or four boxes of sampling documents, or (ii) a random selection of one or two boxes of data validation documents and, with respect to E&Y’s sampling materials (the far larger of the two categories), seven boxes broken down by loan attribute and state. In a March 27 letter, Plaintiffs rejected these proposals. Defendants believe that either of their proposals will enable the Court to achieve its desired objective of gaining a “feel” for the contents of the 278 boxes of E&Y’s data validation and sampling work papers. And since the Court now has the work papers index, with the data validation and sampling boxes identified by letter (*see* paragraph (b) below), it can pick any number and combination of these boxes to review in the first instance and at any time can instruct that additional boxes be provided for its review.

b. On March 23, Defendants provided the Court, for its *in camera* review, with a copy of the index prepared by E&Y in 2004 or 2005 of the boxes of its work papers. Defendants annotated this index by adding the codes “DV” for boxes containing data validation and “S” for boxes with sampling materials. As Defendants noted in their March 28 letter to the Court (see paragraph (c) below), that index is part of the material prepared under the privileged Compliance Study, and is entitled to protection under the attorney-client privilege and attorney work product doctrine insofar as it necessarily reveals the focus of that Study.

c. On March 28, in response to the Court’s request during the March 20 conference, Defendants provided the Court with authority to support a finding that the boxes of E&Y work papers assembled and created by E&Y in the course of their privileged engagement for Household’s General Counsel to assist him in rendering legal advice, are privileged in their entirety, without the necessity of a document by document examination. Household recognizes the Court’s need to understand the nature of E&Y’s output, but respectfully suggests that the substantial privilege log already created (which was provided to Plaintiffs today and is attached for the Court’s information at Tab A) may suffice for this purpose. Nevertheless, Household continues to log such documents as set forth below.

d. Defendants have been and are continuing to prepare, as expeditiously as possible, a privilege log of the approximately 115 boxes of remaining E&Y work papers. We have arranged to have all of the materials in these boxes copied and bates-stamped and have devoted substantial time and resources to stay current with logging the content of boxes as soon as they are returned by the copy vendors. To date approximately one-half of the boxes have been returned and logged. Unless the Court instructs otherwise, we will continue to review and log additional materials from the E&Y boxes as they become available from the copy vendor as

expeditiously as possible. While the Household Defendants have made best efforts to complete the logging work by Friday, March 30, we respectfully request a one week extension until Friday, April 6 to complete the log. We will continue to make a rolling production of installments of the privilege log during this time.

2. Plaintiffs' Responses to Defendants' Interrogatories

a. Plaintiffs agreed in a February 13, 2007 letter, after a meet and confer, to amend their response to Interrogatory No. 44, which asks Plaintiffs to “[i]dentify the person, document or other source which is the basis of any quoted material contained in the Complaint.” Plaintiffs agreed to “review the Complaint to identify unattributed quotes and provide further information regarding the source of such quotes where appropriate.” On March 23, 2007, in their Supplemental Responses to Defendants’ Fifth Set of Interrogatories, Plaintiffs provided some of this information but continued to withhold information to which Defendants are entitled. One of the unattributed quotes was from paragraph 59 of the Complaint: “Characterized internally as ‘one of Household’s biggest scams,’ the EZ Pay Plan resulted in customers being misled into thinking they were receiving low-interest loans when, in reality, they were not.” Plaintiffs did not identify the source of this purported quote in their March 23 responses, but rather attributed the quote to an unidentified “Confidential witness, former Household Branch Manager from 1996-2000.”

Plaintiffs mention, but not identification, of this “confidential witness” in response to Defendants’ interrogatory at this late stage in the litigation is improper for several reasons, including its defiance of Federal Rule of Civil Procedure 26(a)(1)(A) which requires Plaintiffs to provide to Defendants “the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to

support its claims or defenses . . . identifying the subjects of the information.” Plaintiffs did not identify any former Household branch managers in the over 200 individuals identified by Plaintiffs in their initial disclosures.

Moreover, the case law is clear that when a party asks for the identification of the source of facts alleged in the Complaint, the opposing party must comply even if the sources happen to be “confidential witnesses.” *Plumbers & Pipefitters Local 572 Pension Fund v. Cisco Systems, Inc.*, No. C 01-20418 JW, 2005 U.S. Dist. LEXIS 43648, at *21 (N.D. Cal. June 21, 2005) (holding that interrogatories that request plaintiffs to identify all persons who they contend to have information supporting particular allegations are proper even if it happens to result in the identification of “confidential witness” or persons interviewed by plaintiffs).

Defendants have been considerably prejudiced by Plaintiffs’ willful withholding of information they were required to disclose at the outset of this litigation. Plaintiffs not only presumably relied on this “confidential witness” to set forth the facts in the Complaint but also directly quoted him or her in the Complaint without disclosing that individual’s identity to Defendants. As a result, Defendants have not had the opportunity to depose this “confidential witness” or conduct any discovery to determine the accuracy and basis of the stated assertion or any bases for impeachment, such as bias. Plaintiffs should be required to disclose immediately the name and address of this “confidential” source. And, the Court should allow Defendants to depose this individual (as Defendants’ first merits deposition in this action) despite the close of fact discovery. Furthermore, given Plaintiffs’ deception, they should be required to identify any other “confidential witnesses” that were sources for facts alleged in the Complaint. (Defendants are still reviewing the 160-page responses received on March 23, and the hundreds of pages of

attachments containing two-column, single space lists of documents, and may have to seek the assistance of the Court as to other matters contained in these responses.)

b. In their letter of February 13, 2007, Plaintiffs also agreed to provide supplemental responses to, *inter alia*, Interrogatories Nos. 41-43 which sought the identification each alleged affirmative misrepresentation for each of the three frauds alleged in the Complaint. While Plaintiffs had initially provided a list of alleged affirmative misrepresentations, they did not identify the source of these misrepresentations. In their February 13 letter, Plaintiffs agreed to “amend their responses to these Interrogatories to identify the source of the quoted material where appropriate.” At the March 12, 2007 status conference, Plaintiffs represented that they would provide answers by March 22 to all the interrogatories that they agreed to supplement in their February 13 letter. On March 23, Plaintiffs provided supplemental responses to many of these interrogatories, but not to Interrogatory Nos. 41-43. Defendants request that the Court set a date by which Plaintiffs will supplement their responses to Nos. 41-43 as they agreed to do.

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Respectfully submitted,

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