

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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

**LEAD PLAINTIFFS' OPPOSITION TO HOUSEHOLD DEFENDANTS' MOTION TO  
COMPEL RESPONSES TO DEFENDANTS' INTERROGATORIES NOS. 56 AND 64**

## **I. INTRODUCTION**

At issue on this motion is the adequacy of plaintiffs' responses to two contention interrogatories, Interrogatory No. 64 and Interrogatory No. 56. Plaintiffs have provided complete responses to both of these interrogatories. For this reason, defendants' motion should be denied.

Interrogatory No. 64 reads:

For each Disclosure identified in response to Interrogatory Nos. 31-33, set forth the "truth" that you contend was revealed to the market by the Disclosure.

Owen Aff., Ex. 7.<sup>1</sup>

Although this interrogatory is poorly drafted and compound, plaintiffs provided a full and complete response to the question posed by the defendants. In the response, plaintiffs identified and described the disclosures at issue, identified the information revealed to investors by those disclosures and tied each disclosure to one of the three prongs of defendants' fraud. The reward, of course, is yet another frivolous motion to compel, hopefully the last in a long line of such motions filed by defendants. As discussed herein, this motion should be denied because plaintiffs responded to Interrogatory No. 64 fully and completely.

Plaintiffs also provided a comprehensive response to Interrogatory No. 56, which reads:

Identify the percentage and/or number of Household's loans which included prepayments 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" (Plaintiffs' Response to Defendants' Supplemental Interrogatories at 18).

Owen Aff., Ex. 1.

On March 23, 2007, consistent with the Court's March 14, 2007 Order, plaintiffs amended their response to Interrogatory No. 56 to include significant additional substantive information

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<sup>1</sup> "Owen Aff." refers to the Affidavit of David R. Owen in Support of Household Defendants' Motion to Compel Responses to Defendants' Interrogatories Nos. 56. and 64.

regarding their contentions respecting prepayment penalties. Owen Aff., Ex. 5. For example, plaintiffs listed ten types of prepayment penalties they contend were improper 100% of the time and identified more than a dozen ways to distinguish between proper and improper prepayment penalties. *Id.* Plaintiffs also amended their response to clarify that they do not have sufficient information to quantify the total number or percentage of loans with improper prepayment penalties, a clarification defendants specifically sought in their previous motion to compel and the Court included in its order. *Id.* Despite this clarification, defendants have moved to obtain additional information plaintiffs do not have.

Plaintiffs have made efforts to resolve the disputes with respect to these interrogatories and have fully complied with the Court's prior Order and their obligations under the Federal Rules of Civil Procedure. The Court should deny defendants' motion to compel in its entirety.

## **II. ARGUMENT**

### **A. Defendants' Motion to Compel Additional Responses to Interrogatory No. 64 Should Be Denied**

Interrogatory No. 64 seeks the "truth" plaintiffs contend was revealed through disclosures identified by plaintiffs in response to three prior interrogatories. Owen Aff., Ex. 7. This interrogatory is hopelessly vague and ambiguous. Indeed, the term "truth" is quoted in the interrogatory, denoting a defined term, yet the word truth is not defined in the interrogatories. Furthermore, although the interrogatory purports to refer back to plaintiffs' responses to Interrogatory Nos. 31-33, none of those responses contain the term "truth." Instead, plaintiffs' responses to Interrogatory Nos. 31-33 state that "[c]ertain limited facts regarding Household's operational and financial condition began to leak into the market in late 2001," and provide examples of such disclosures and facts. Ex. A attached hereto. Plaintiffs did their best to provide a response despite the ambiguity. Although defendants claim to be dissatisfied with this response, during the meet and confer, they refused to clarify what the quoted term in their interrogatory meant,

what precise information they sought through Interrogatory No. 64 or why they wanted additional information.

Pursuant to the Court's prior instructions, however, and in an attempt to avoid motion practice, plaintiffs amended their responses to this objectionable interrogatory as best they could by clearly identifying their contentions respecting the "truth" revealed through each disclosure. Plaintiffs discuss their substantive responses and additional objections below.

**1. Plaintiffs Provided a Complete Response to Interrogatory No. 64**

At issue is whether plaintiffs properly responded to defendants' Interrogatory No. 64. Although the answer is a resounding "yes," defendants, as is their habit, now seek to change the interrogatory. Interrogatory No. 64 as drafted seeks plaintiffs' *contentions* regarding the "truth" that was disclosed by certain statements previously identified by plaintiffs. In response, plaintiffs provided exactly what defendants asked for.

First, plaintiffs stated their contention that the disclosures identified in response to Interrogatory Nos. 31-33 identify partial information regarding Household's true financial and operating condition, *i.e.*, that Household's operating and financial condition was worse than defendants publicly claimed. Plaintiffs further discussed each disclosure separately, including identification of the disclosure, a description of what was disclosed, and information regarding how plaintiffs contend each disclosure related to the fraud committed by Household. Owen Aff., Ex. 8-9.

For example, the first response describes two November 15, 2001 articles in the *Associated Press* and *Los Angeles Times* reporting that the California Department of Corporations had sued Household for \$8.5 million, alleging the Company engaged in predatory lending practices. *Id.* Plaintiffs contend that these articles revealed to investors partial information about Household's improper lending practices and clearly stated this in response to the interrogatory. *Id.* Similarly, plaintiffs stated their contention that December 2001 articles in *Barron's* and *BusinessWeek* revealed

partial information about Household's improper reaging and account management policies and practices. *Id.* Plaintiffs' response also identifies their contention regarding the Company's August 12, 2002 partial disclosure respecting the third prong of defendants' fraud, their improper credit card accounting. *Id.* These contentions are both fully responsive to Interrogatory No. 61 and perfectly consistent with *Dura* which states that investors' economic loss may occur as the "relevant truth begins to leak out" or "after the truth makes its way into the market place." *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 342 (2005).

Although plaintiffs have responded with the exact information defendants asked for in their interrogatory, defendants, consistent with their *modus operandi*, seek to change their interrogatory through a motion to compel. Defendants now demand that plaintiffs respond to various questions not included in their interrogatory, such as "Do Plaintiffs claim that the allegations in the lawsuit revealed the 'truth' about particular Household loans or specific concealed policies?" and "Do Plaintiffs claim the allegations in the lawsuit revealed exposed a nationwide scheme, or only with respect to particular states, products or years during the class period?" Defs' Mem. at 9.<sup>2</sup>

However, the Court expressly precluded defendants from propounding additional interrogatories when it permitted defendants to propound this and numerous other "follow-up" interrogatories on the last day of fact discovery. In the March 9, 2007 Order the Court stated: "***The Court will not permit any additional 'follow-up' questions***, with the expectation that Plaintiffs will answer the interrogatories in full." March 9, 2007 Order at 2. (emphasis added) Plaintiffs have answered defendants' interrogatory in full and should not be forced to respond to defendants new questions propounded via motion.

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<sup>2</sup> "Defs' Mem." refers to Memorandum of Law in Support of the Household Defendants' Motion to Compel Responses to Defendants' Interrogatories Nos. 56 and 64.

Defendants have taken this course of serving interrogatories seeking one thing, only to turn around on a motion to compel and ask for something different several times before. In its August 10, 2006 Order, this Court denied defendants' motion to compel because the information sought in defendants' motion was not clearly requested in the "interrogatories as written." August 10, 2006 Order at 17. In the January 10, 2007 Order, the Court re-wrote defendants interrogatories to comport with what defendants later claimed they sought. Further, at the January 24, 2007 status conference the Court admonished defendants that the information they purported to seek was different than what they asked for. Ex. B at 90:17-21 attached hereto. Defendants should be precluded from going down this road yet again.

Furthermore, defendants' lengthy (and erroneous) discussion of what plaintiffs are required to show in order to establish loss causation is irrelevant to this motion. Defs' Mem. at 7-11. Defendants seek to confuse the question at hand – whether plaintiffs have provided a complete response to Interrogatory No. 64 – by arguing that plaintiffs' contentions cannot survive on the merits. *Id.* While defendants' discussion may be appropriate for summary judgment or trial, it has no place in a motion to compel. At bottom, the responses to Interrogatory No. 64 are adequate and consistent with applicable case law.<sup>3</sup>

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<sup>3</sup> Although defendants' lengthy discussion of *Tricontinental Indus., Ltd. v. PricewaterhouseCoopers, LLP*, 475 F.3d 824 (7th Cir. 2007), is irrelevant to the question currently before the Court, plaintiffs will briefly address defendants' argument which contain numerous misstatements regarding applicable law. Defendants' contention that in order to demonstrate loss causation plaintiffs must point to facts "that actually revealed a prior fraud" or "allude[] to any [] prior misstatement," simply is incorrect. Defs' Mem. at 9. Neither *Dura* nor *Tricontinental* contains any such requirement. *See, e.g., In re Motorola Sec. Litig.*, No. 03 C 387, 2007 U.S. Dist. LEXIS 9530 (N.D. Ill. Feb. 8, 2007) (*Dura* does not require identification of a "mirror-image prior representation for every disclosure that precedes a share price decline."). In fact, in *Motorola* Judge Pallmeyer specifically rejected the same argument defendants make here and found that *Tricontinental* does not require "that a corrective disclosure invariably must, on its face, specifically identify or explicitly correct a previous representation, or expressly disclose the particular fraudulent scheme the plaintiff alleges." *Id.* at \*118.

Because plaintiffs have responded to the question posed by Interrogatory No. 64, and because defendants' motion to compel is founded on a misstatement of the law, their motion should be denied.

## **2. Interrogatory No. 64 is Objectionable on Its Face**

Plaintiffs objected to Interrogatory No. 64 on several different grounds. During the parties' meet and confer plaintiffs again raised their objections; however, defendants failed to address them in their motion. Although plaintiffs' opposition to this motion rests on their complete response to the interrogatory, plaintiffs briefly discuss their objections which provide additional support for denial of defendants' motion.

As discussed above, Interrogatory No. 64 is poorly drafted, vague and ambiguous. Additionally, Interrogatory No. 64 impermissibly seeks information subject to expert testimony. Defendants concede in their motion that the information they claim to seek relates to loss causation. Defs' Mem. at 7-11. Questions of "loss causation and damages [are] likely [to] involve conceptually difficult economic theories and complex calculations *based on experts* with diametrically opposed opinions." *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 166 (3d Cir. 2006) (emphasis added) (internal quotations omitted); *see also Gebhardt v. ConAgra Foods, Inc.*, 335 F.3d 824, 832 (8th Cir. 2003) (declining "to attach dispositive significance to the stock's price movements absent sufficient facts and expert testimony"). Plaintiffs will rely on expert opinion in establishing loss causation and damages. Expert discovery is imminent and additional information defendants seek with respect to loss causation should be obtained during the expert phase of discovery.

Interrogatory No. 64 also is impermissibly compound. Interrogatory No. 64 seeks additional information regarding fourteen separate disclosures identified in the three prior interrogatory responses (Nos. 31-33). In its November 10, 2005 Order, the Court counted plaintiffs' interrogatory seeking information about defendants affirmative defenses as one interrogatory per affirmative

defense. November 10, 2005 Order at 2. Interrogatory No. 64 which inquires into fourteen discreet disclosures should be treated no differently. *Id.*

**B. Plaintiffs Properly Responded to Interrogatory No. 56**

On March 23, 2007, plaintiffs amended their response to Interrogatory No. 56 to include substantial additional information regarding the pervasiveness of Household's use of improper prepayment penalties. Owen Aff., Ex. 5. Significantly, defendants do not refer to, quote from or acknowledge this new information in their motion. Instead, defendants misconstrue statements made by counsel during the parties' meet and confer, accuse plaintiffs of contempt and demand information they know plaintiffs do not have, *i.e.*, the number or percentage of Household loans which included improper prepayment penalties. Defendants continue to press this question precisely because they know that plaintiffs cannot provide a response.

Defendants are well aware, for example, that they have not provided to plaintiffs the total number of loans which contained prepayment penalties. Without this information, which is the denominator in any equation that might be used to calculate a percentage of loans that had improper prepayment penalties, plaintiffs cannot provide the information defendants seek. Indeed, plaintiffs amended their response to Interrogatory No. 56 to clarify this point:

Lead Plaintiffs cannot at this time calculate the precise number of loans which included 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. Also, defendants have not identified the total number of loans originated during the Class Period so as to allow calculation of a precise percentage.

*Id.* at 129.

Plaintiffs included this language specifically because defendants in their prior motion argued that if plaintiffs could not come up with the precise number requested "they should acknowledge as much." The Court also adopted this language in its March 14, 2007 Order. Plaintiffs complied with defendants' request and the Court's order, but still defendants filed a motion.

Defendants' assertion that plaintiffs have not quantified their prepayment penalty allegations in any way is belied by the face of plaintiffs' response, which states "Household derived at least \$161 million in improper revenue from prepayment penalties associated just with the sales of its real estate products during the period 1999 through June 2002." Owen Aff., Ex 5 at 130. The response further provides, "Household also calculated an additional \$2.88 million in monies that had to be returned to customers for the year 2002 also in connection with improper prepayment penalties." *Id.* Additionally, based on their understanding of the information defendants' sought in their prior motion and pursuant to the Court's March 14, 2007 Order, plaintiffs amended their responses to Interrogatory Nos. 56 and 57 to (1) identify ten types of prepayment penalties they contend were 100% improper; (2) identify thirteen ways to distinguish proper prepayment penalties from improper prepayment penalties; and (3) clarify that plaintiffs do not possess the requisite information to calculate the number or percentage of improper prepayment penalties on Household. *See* Ex. C attached hereto. Plaintiffs have provided all of the information that they can in response to Interrogatory No. 56.

Defendants assert in their brief that plaintiffs "conceded" that they could calculate the number or percentage sought by Interrogatory No. 56, but simply refuse to do so. Defs' Mem. at 5. This contention is patently false. In fact, to support this assertion, defendants manipulated several statements made by counsel during the meet and confer to change their meaning. Plaintiffs provide two examples of defendants' manipulations with the portions excised by defendants in bold. "If we were to list the – ***from the state examination documents*** the violations they found on prepayment penalties, that would dramatically understate what we contend the problem was." Defs' Mem at 2 (purporting to cite Owen Aff., Ex. 6 at 36:24-37:5). "What we're not going to do is give you a number. ***We're not going to make up a number, which we don't think we can do properly [and] we're not going to give you a number that understates our contention.***" Defs' Mem. at 6

(purporting to cite Owen Aff., Ex. 6 at 38:23-24). Defendants' manipulation of statements made by counsel to change these meaning is reprehensible and should not be rewarded. As is apparent from the full quotations plaintiffs never stated they could provide the responses defendants now demand. In fact, plaintiffs informed defendants repeatedly that, as stated in their response, they cannot calculate the information defendants seek. *See* Owen Aff., Ex. 6 at 37:23-39:22.

Furthermore, plaintiffs specifically requested guidance from defendants on how to derive the requested information from the documents in plaintiffs' possession. Defendants suggested only that they could be derived from a subset of the state examination documents but did not explain how this could be done. As plaintiffs explained during the meet and confer, however, the state and federal examination documents reflect only a subset of the improper prepayment penalties plaintiffs contend were imposed by Household. Owen Aff., Ex. 6. For example, plaintiffs contend that all "[p]repayment penalties that contained a provision that called for imposition of a prepayment penalty at any time within the first 5 years of the loan" were improper. Owen Aff., Ex. 5 at 129. The state and federal examination reports do not reflect all such loans. Although defendants have never stated the total number of loans which had five year prepayment provisions, the number is substantial. Indeed, internal Household documents indicate that the Company estimated it would lose more than \$200 million if it reduced its prepayment term from five years to two or three years. Owen Aff., Ex. 3 at 20.

Plaintiffs also identify "[w]hether Household issued a refund to the consumer either directly or as a result of the AG settlement" as one of the ways to determine when loans had improper prepayment penalties. Ex. C at 132. However, plaintiffs are unable to quantify this number because Defendants 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. 5 at 128-129. Defendants also refused to identify “(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 have withheld documents from the Ernst & Young, PricewaterhouseCoopers and Jefferson Wells compliance engagements which quantify prepayment penalty refunds. Unless defendants are ordered to respond to this discovery, plaintiffs cannot perform the calculations defendants request.<sup>4</sup>

Accordingly, defendants’ request for additional information in response to Interrogatory No. 56 should be denied. For the same reasons, defendants’ request for sanctions is without merit and should be denied.

### **III. CONCLUSION**

For the foregoing reasons, defendants’ motion to compel and request for sanctions should be denied.

DATED: May 11, 2007

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
AZRA Z. MEHDI (90785467)  
D. CAMERON BAKER (154452)  
MONIQUE C. WINKLER (90786006)  
LUKE O. BROOKS (90785469)  
JASON C. DAVIS (4165197)

s/ Luke O. Brooks  
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LUKE O. BROOKS

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<sup>4</sup> Although plaintiffs are unable to calculate the precise numbers defendants seek, plaintiffs offered to amend their response to identify the number of states that raised issues respecting prepayment penalties and the issues they raised, and thus would provide further information regarding Household’s “widespread employment” of improper prepayment practices, which defendants claim to seek. Ex. D attached hereto. Defendants, however, rejected this offer and instead opted to file their motion.

100 Pine Street, Suite 2600  
San Francisco, CA 94111  
Telephone: 415/288-4545  
415/288-4534 (fax)

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
SPENCER A. BURKHOLZ  
JOHN A. LOWTHER  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)

Lead Counsel for Plaintiffs

MILLER LAW LLC  
MARVIN A. MILLER  
LORI A. FANNING  
101 North Wacker Drive, Suite 2010  
Chicago, IL 60606  
Telephone: 312/525-8320  
312/525-8231 (fax)

Liaison Counsel

LAW OFFICES OF LAWRENCE G.  
SOICHER  
LAWRENCE G. SOICHER  
110 East 59th Street, 25th Floor  
New York, NY 10022  
Telephone: 212/883-8000  
212/355-6900 (fax)

Attorneys for Plaintiff

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 May 11, 2007 declarant served by electronic mail and by U.S. Mail to the parties: **LEAD PLAINTIFFS' OPPOSITION TO HOUSEHOLD DEFENDANTS' MOTION TO COMPEL RESPONSES TO DEFENDANTS' INTERROGATORIES NOS. 56 AND 64.**

The parties' email addresses are as follows:

<a href="mailto:TKavaler@cahill.com">TKavaler@cahill.com</a> <a href="mailto:PSloane@cahill.com">PSloane@cahill.com</a> <a href="mailto:PFarren@cahill.com">PFarren@cahill.com</a> <a href="mailto:LBest@cahill.com">LBest@cahill.com</a> <a href="mailto:DOwen@cahill.com">DOwen@cahill.com</a>	<a href="mailto:NEimer@EimerStahl.com">NEimer@EimerStahl.com</a> <a href="mailto:ADeutsch@EimerStahl.com">ADeutsch@EimerStahl.com</a> <a href="mailto:MMiller@MillerLawLLC.com">MMiller@MillerLawLLC.com</a> <a href="mailto:LFanning@MillerLawLLC.com">LFanning@MillerLawLLC.com</a>
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and by U.S. Mail to:

Lawrence G. Soicher, Esq.  
Law Offices of Lawrence G. Soicher  
110 East 59th Street, 25th Floor  
New York, NY 10022

David R. Scott, Esq.  
Scott & Scott LLC  
108 Norwich Avenue  
Colchester, CT 06415

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of May, 2007, at San Francisco, California.

s/ Marcy Medeiros  
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MARCY MEDEIROS