

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	6/14/2007
CASE TITLE	Jaffe vs. Household Intl Inc, et al		

DOCKET ENTRY TEXT

For the reasons set forth below, Defendants’ Motion to Compel Responses to Defendants’ Interrogatory Nos. 56 and 64 [Doc. 1061] is granted in part and denied in part.

■ [For further details see text below.]

Notices mailed by Judicial staff.

STATEMENT

1. Interrogatory No. 56

Interrogatory No. 56 asks Plaintiffs to “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.’” In response to a previous motion to compel on this issue, the court ordered Plaintiffs to answer the interrogatory. The court viewed the parties’ dispute as focusing on “the relevance and materiality of information contained in the state and federal regulatory agency communications, as well as the Attorneys General Settlement.” (Minute Order of 3/14/07, Doc. 1019, at 2-3.) The court accepted Defendants’ representation that “these reports can be quantified and distinguished from Household’s reported performance,” and ordered Plaintiffs to do so. (*Id.* at 3.)

Plaintiffs submitted a supplemental response on March 23, 2007, identifying (1) ten types of prepayment penalties they contend were 100% improper; and (2) thirteen ways to distinguish proper prepayment penalties from improper ones. Plaintiffs also clarified that they do not possess the requisite information to calculate the number or percentage of improper prepayment penalties. (Ex. C to Pl. Resp.) By way of example, Plaintiffs note their contention that all loans containing “a provision that called for imposition of a prepayment penalty at any time within the first 5 years of the loan” were improper. The state and federal regulatory agency communications, however, do not reflect all such loans. (Pl. Resp., at 9.) In addition, Defendants have not provided Plaintiffs with the annual monetary value of “refunds or amendments to the terms of a loan, which refunds or amendments resulted from complaints received by Household as to Household-originated loans.” Nor have Defendants identified “the number of mortgage agreements nationwide whose terms were changed”; “the amount of money paid out in [prepayment penalty] restitution” under the Settlement with the Attorneys General; or the total number of loans originated during the Class Period. (*Id.* at 7, 9-10.)

STATEMENT

Recently, the court sustained Defendants' objections to providing Plaintiffs with any non-substantive documents from the Ernst & Young Compliance Engagement, and any substantive documents dated after the Class Period. (Order of 6/13/07, Doc. 1110.) Many of those documents identified individual customer loan information that may have been useful in answering Interrogatory No. 56. Plaintiffs have offered to provide Defendants with an amended response identifying "the number of states that raised issues respecting prepayment penalties and the issues they raised." The court finds this offer reasonable and orders Plaintiffs to provide the stated information by June 22, 2007. Plaintiffs' answer to Interrogatory No. 56 is otherwise sufficient given the information available, and Defendants' motion to compel further response is denied.

2. Interrogatory No. 64

Interrogatory No. 64 states: "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." On March 9, 2007, the court held that this was a proper follow-up question to Plaintiffs' responses to Interrogatory Nos. 31-33. (Minute Order of 3/9/07, Doc. 1018, at 2.) Plaintiffs subsequently submitted their response to Interrogatory No. 64, stating that the identified disclosures "revealed partial information about Household's true financial and operating condition with respect to lending policies and practices."

Defendants argue that this response fails to specify what the relevant "partial information" was, or to draw any connection to a prior misrepresentation alleged in the case. (Def. Mem., at 9.) For example, Plaintiffs assert that a press report about the filing of a lawsuit against Household in February 2002 revealed "partial information" about Household's "true" financial condition. It is not clear, however, whether Plaintiffs contend this press report "revealed the 'truth' about particular Household loans or specific concealed policies," or "exposed a nationwide scheme, or only with respect to particular states, products or years during the class period." (*Id.*) Plaintiffs insist that Defendants did not ask for such information in the interrogatory, and that they are once again "serving interrogatories seeking one thing, only to turn around on a motion to compel and ask for something different." (Pl. Resp., at 5.)

The court agrees that Plaintiffs cannot merely assert that the market obtained "partial information" about improper predatory lending, reaging, and account management practices. Plaintiffs must provide an explanation as to the nature of that "partial information" and how it contributed to the relevant "truth" becoming "generally known" to the marketplace. See *Tricontinental Indus., Ltd. v. PricewaterhouseCoopers, LLP*, 475 F.3d 824, 843 (7th Cir. 2007); *In re Motorola Sec. Litig.*, No. 03 C 287, 2007 WL 487738, at *29 (N.D. Ill. Feb. 8, 2007). The court rejects Plaintiffs' additional objections, and Defendants' motion to compel further response to Interrogatory No. 64 is granted.