

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

<p>LAWRENCE E. JAFFE PENSION PLAN, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>HOUSEHOLD INTERNATIONAL, INC., ET AL.,</p> <p style="text-align: center;">Defendants.</p>	}	<p>Lead Case No. 02-C-5893 (Consolidated)</p> <p>CLASS ACTION</p> <p>Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan</p>
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**DEFENDANTS' MEMORANDUM IN OPPOSITION TO  
PLAINTIFFS' SUBMISSION IN RESPONSE TO THE COURT'S  
JANUARY 16, 2008 ORDER**

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This memorandum is respectfully submitted by defendants Household International, Inc., Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar (referred to collectively herein as “Defendants”) in opposition to Plaintiffs’ Submission in Response to the Court’s January 16, 2008 Order.

### **PRELIMINARY STATEMENT**

On December 10, 2007, Defendants provided Plaintiffs with a Notice Concerning Expert Testimony (“Defendants’ Notice”), a copy of which is attached hereto as Exhibit A, listing 23 persons who may be called to give testimony “as to matters as to which they have specialized knowledge and whose testimony may, at least in part, fall within the purview of the Court’s ruling in *Sunstar, Inc. v. Alberto-Culver Company, Inc.*, 2006 U.S. Dist. LEXIS 85678 (N.D. Ill. Nov. 16, 2006).” Defendants’ Notice stated that “[n]one of these witnesses has been retained or specially employed to provide expert testimony in this case and none is an employee of any entity whose duties regularly involve giving expert testimony.”

In their January 17, 2008 Submission in Response to January 16, 2008 Order (“Plaintiffs’ Submission”), Plaintiffs insist that “all 23 witnesses” disclosed in Defendants’ Notice “should be required to provide their expert opinions and the basis for those opinions”. Plaintiffs’ Submission at 1; *see id.* at 3. As demonstrated below, neither the applicable law construing Rule 26(a)(2)(B) nor Defendants’ instructions during the depositions of the relevant witnesses provide any basis for the Court to depart from the unambiguous language of the Rule.<sup>1</sup> Nevertheless, in view of the Court’s January 16, 2008 Order, Defendants provide, as Exhibit B hereto, additional information about the potential testimony of each of the 23 individuals listed on Defendants’ Notice, information that goes far beyond what is required by Rule 26.

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<sup>1</sup> With the exception of John Nichols, all 23 witnesses were previously deposed in this action. Mr. Nichols’s deposition was sought by Plaintiffs, scheduled by Defendants, but ultimately abandoned by Plaintiffs, presumably as a result of their stated belief that his testimony would be duplicative of others already deposed.

## ARGUMENT

### **I. Fed. R. Civ. P. 26(a)(2)(B) Does Not Require Expert Reports From the Persons Identified in Defendants' Notice**

#### **A. Rule 26(a)(2)(B) Should Be Construed as Written**

Plaintiffs argue in their Submission that “all 23 witnesses now listed as experts [in Defendants' Notice] should be required to provide their expert opinions and the basis for those opinions” (Plaintiffs' Submission at 1). This is precisely the information that, according to Fed. R. Civ. P. 26(a)(2)(B), must be included in a written report for a retained or specially employed expert or an employee of a party whose “duties. . . regularly involve giving expert testimony.” However, none of the 23 individuals on Defendants' Notice falls into either of these categories. What Plaintiffs seek is in direct contravention of the explicit language of Rule 26(a)(2)(B) and the rulings of numerous federal courts applying this provision.

In a decision involving facts similar to those presented here, *Cinergy Communications Co. v. SBC Communications, Inc.* 2006 U.S. Dist. LEXIS 80397 (D. Kan. Nov. 2, 2006), Magistrate Judge David Waxse held that reports were not required of individuals designated as experts who were not retained or were employees of a party who did not regularly provide expert testimony. In *Cinergy Communications*, defendants identified three employees of companies affiliated with the defendants as experts under Rule 26(a), but did not provide written reports by these individuals. Judge Waxse observed:

“Defendants state they do not expect any of these witnesses to provide expert opinions within the meaning of Fed. R. Evid. 702, but the witnesses do have expertise and experience in their fields, which may come into play when they testify as to why matters were conducted by Defendant Indiana Bell as they were. Defendants assert that the employees were designated as potential experts in an abundance of caution to avoid a potential dispute that their testimony involves expertise of an expert not designated.”

*Id.* at \*5-6.

Judge Waxse noted that some courts have construed Rule 26(a)(2)(B) to require reports from all witnesses designated to give expert testimony, while others “have adopted an interpretation that more closely tracks the plain language of the rule . . . imposing a written

report requirement only when an expert is retained or specially employed to provide expert testimony, or when the expert is an employee who regularly provides expert testimony.” *Id.* at \*7. Choosing to give force to the plain language of Rule 26(a)(2)(B), Judge Waxse held that defendants need not provide reports for the three designated witnesses.<sup>2</sup>

Judge Waxse’s conclusion that the language of Rule 26(a)(2)(B) should be given its full force is in accord with numerous rulings of judges in this district. *See, e.g., Zurba v. United States*, 202 F.R.D. 590, 591 (N.D. Ill. 2001) (“The requirement of a written report in Rule 26(a)(2) applies only to experts retained or specially employed to provide such testimony.”); *Cicero v. The Paul Revere Life Ins. Co.*, 2000 U.S. Dist. LEXIS 7165, at \*4-5 (N.D. Ill. Mar. 22, 2000) (“Rule 26(a)(2)(B) only requires a witness ‘who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony’ to provide a report.”); *Sircher v. City of Chicago*, 1999 U.S. Dist. LEXIS 11869 (N.D. Ill. July 27, 1999)(same); *Garza v. Abbott Laboratories*, 1996 U.S. Dist. LEXIS 12506 (N.D. Ill. Aug. 27, 1996)(same).

Other district courts considering this issue have been quite critical of arguments, such as those advanced by Plaintiffs here, suggesting that reports (or something somewhat less than a report) should be required of witnesses not specified in Rule 26(a)(2)(B). In *Adams v. Gateway, Inc.*, 2006 U.S. Dist. LEXIS 14413 (D. Utah Mar. 10, 2006), the court commented:

“Gateway has assembled several trial level cases where the court has simply been unable to live with the language of [Rule 26(a)(2)(B)]. Generally, these cases reject the language of the Rule because the reading proposed . . . would create a distinction seemingly at odds with the evident purpose of promoting full pre trial disclosure of expert information. These cases just refuse to recognize a category of expert trial witness for whom no written disclosure is re-

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<sup>2</sup>

Finding that the record was insufficient for him to conclude that the three witnesses were not employees “specially employed to give expert testimony” — which would have triggered an obligation to provide a report — Judge Waxse directed defendants to provide affidavits from each of the three witnesses confirming that they were not so employed. *Id.* at \*13. Here Defendants’ Notice specifically represented that “[n]one of these witnesses has been retained or specially employed to provide expert testimony in this case and none is an employee of any entity whose duties regularly involve giving expert testimony.” (Ex. A at 4)

quired because they say that result is not justified by any articulable policy. But policy should only be used to construe a rule, not to contravene its language.”

*Id.* at \*13-14 (internal quotations omitted; ellipses in original). And in *Bowling v. Hasbro, Inc.*, 2006 U.S. Dist. LEXIS 58910 (D.R.I. Aug. 10, 2006), the court said:

“All of the cases relied upon by Plaintiff have unnecessarily stretched to find a reason that [Rule 26(a)(2)(B)] requires a report for an employee expert witness who is not specially employed and does not regularly testify, when the Rule clearly says otherwise. If the drafters had intended [Rule 26(a)(2)(B)] to impose a report obligation on all employee-experts, they could have and would have done so. While a Rule requiring full disclosure by report for all experts may be desirable from a policy standpoint, the plain language of the Rule provides otherwise. . . . Parties should have the certainty that the Court will construe the Federal Rules as written and not have to guess as to which line of conflicting authority the Court might follow in construing an unambiguous procedural rule.”

*Id.* at \*5-6 (internal quotations and citations omitted). See also *Bank of China v. NBM LLC*, 359 F.3d 171, 182 n.13 (2d Cir. 2004) (“Where the witness is not specially retained or employed to give expert testimony, or does not regularly give expert testimony in his or her capacity as an employee, no expert report is required.”); *GSI Group, Inc. v. Sukup Manufacturing Co.*, 2007 U.S. Dist. LEXIS 18764, at \*5 (C.D. Ill. Mar. 16, 2007)(same).

**B. The Authorities Cited by Plaintiffs are Distinguishable**

The three cases cited by Plaintiffs in their January 14, 2008 letter to the Court<sup>3</sup> do not compel a different result as each is factually distinguishable from the situation here.

In *Funai Electric Co. v. Daewoo Electronics Corp.*, 2007 U.S. Dist. LEXIS 29782 (N.D. Cal. Apr. 11, 2007), an engineer employed by the defendant was proffered to testify about matters as to which he had “direct personal knowledge” within “the scope of his employment” as well as “matters that [were] outside the scope of his employment as an engineer

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<sup>3</sup> The fourth case mentioned by Plaintiffs in their letter is Judge Guzman’s November 2006 decision in *Sunstar*.



at Daewoo, such as, technical evaluations of documents reviewed solely in preparation for litigation, and opinion testimony on the merits of the case or on matters with which he has no direct and personal knowledge.” *Id.* at \*2-3. The court concluded that, to the extent that witness was to offer testimony based on personal knowledge within the scope of his employment, no report would be required under Rule 26. As to matters that were outside the scope of the engineer’s employment, the court concluded that a report was required. Because the 23 witnesses identified by Defendants are only being proffered to testify about matters within the scope of their employment, the decision in *Funai* defeats rather than advances Plaintiffs’ argument.

In *B.H. v. Gold Fields Mining Corp.*, 2007 U.S. Dist. LEXIS 2309 (N.D. Ok. Jan. 11, 2007), a professor of environmental science with “no knowledge of the facts of the underlying cases,” *id.* at \*5 (unlike all 23 individuals on Defendants’ Notice) was offered as a non-retained expert because he was not being paid and because he would only would be discussing opinions formed in the course of scientific research he had previously conducted independent of the litigation at issue. The court held that no expert report was required Under Rule 26 because the professor was not retained or specially employed to testify as an expert in the case at issue. Notwithstanding that ruling, the court went on to find that a report “would be helpful for it to carry out the gatekeeper function under *Daubert*,” *id.* at \*14, primarily because the professor’s testimony would be about a study that had not been published or peer reviewed. The court specifically distinguished the professor’s situation from that of a physician witness who was to testify based on medical records, tests and examinations available to both parties, for whom no report was required. Unlike the professor in *Gold Fields*, the 23 witnesses identified in Defendants’ Notice *do* have direct and personal knowledge of the facts. They are on-the-ground, real time, first-hand participants in and observers of the events at issue, whose testimony is informed by specialized knowledge in their respective fields, all of which was available for Plaintiffs to pursue in the course of their 55 depositions in this case.

In *Osterhouse v. Grover*, 2006 U.S. Dist. LEXIS 30904 (S.D. Ill. May 17, 2006), the plaintiff listed, among 45 non-retained and non-deposed expert witnesses, certain fact witnesses and other employees of the defendant. The court refused to require a report from any

of these individuals because “[n]one of these persons have been retained by the plaintiff or specially employed by the plaintiff such that an expert report is due.” *Id.* at \*16. The court observed, in language applicable to Defendants’ 23 identified witnesses here:

“[I]t appears that any opinions that they may express are a result of their involvement in the underlying facts of this case and their own observations and actions. As such, the plaintiffs are not required to provide an expert report and are only required to identify the persons.”

*Id.* The court, however, held that the information normally included in a Rule 26 report would be required for 22 treating physicians listed by plaintiffs, none of whom had been deposed in the case. The court was concerned that unless these witnesses provided reports “lengthy and expensive depositions [would be required] in order to determine what opinions these doctors might express and background information as to what qualifies any of them to be experts.” *Id.* at \*12. Here, of course, Plaintiffs have already taken the depositions of 22 of the 23 witnesses in Defendants’ Notice, six of them for a two-day period.

None of the three cases relied on by Plaintiffs lends credence to their demand that the 23 individuals identified in Defendants’ Notice “should be required to provide their expert opinions and the basis for those opinions.” Plaintiffs’ Submission at 1.

## **II. The Additional Information Provided by Defendants Is More Than Sufficient Under Rule 26**

Defendants’ Notice has already gone beyond the plain language of Fed. R. Civ. P. 26(a)(2)(A), which for non-retained experts requires nothing more than disclosure of “*the identity of a witness it may use at trial . . .*” Fed. R. Civ. P. 26(a)(2)(A) (emphasis added). None of the individuals identified in Defendants’ Notice is a retained expert or an employee of a party whose job regularly involves giving expert testimony. Rather, all were designated because they have specialized knowledge that “may come into play when they testify as to why matters were conducted by [Defendants] as they were” (*Cinergy*, 2006 U.S. Dist. LEXIS 80397, at \*5-6) and because Defendants wanted to “avoid a potential dispute that their testimony involves expertise of an expert not designated” (*id.*). Any “opinions” expressed by these individuals would “result [from] their involvement in the underlying facts of this case and their own observations and actions” (*Osterhouse*, 2006 U.S. Dist. LEXIS 30904, at \*16-

17) as to matters as to which they “ha[ve] direct personal knowledge of that are within the scope of [their] employment.” *Funai*, 2007 U.S. Dist. LEXIS 29782, at \*3.

Nonetheless, as directed by the Court, Defendants have attached hereto as Exhibit B “a more detailed summary of each witness’s potential testimony into areas of specialized knowledge that may fall within the purview of *Sunstar, Inc. v. Alberto-Culver Co.*, No. 01 C 736, 2006 U.S. Dist. LEXIS 85678 (N.D. Ill. Nov. 16, 2006).” January 16, 2008 Order. This summary includes each individual’s areas of specialized knowledge, the qualifications that form the basis for such knowledge, as well as the areas in which each may be called to testify about their knowledge, actions, interactions, judgments and decisions. This information need not be more specific under Rule 26, and in fact cannot be because, as discussed during the January 16 conference with the Court, Defendants’ evidence offered at trial necessarily will depend upon the case put forth by Plaintiffs (the specifics of which are still emerging and will not be fully disclosed until the pretrial order stage). In any event, Plaintiffs are already well aware (or could have been) of this information through, *inter alia*, the resumes, job descriptions and other documents that were provided them, and the full and fair opportunity Plaintiffs had to explore each of these areas during depositions.

### **III. Plaintiffs’ Assertions About Counsel’s Instructions During Depositions Are Inaccurate, Incomplete and Unpersuasive**

In an effort to suggest that Plaintiffs were denied the opportunity to explore matters within the specialized knowledge of the 23 witnesses identified in Defendants’ Notice, Plaintiffs insist that many of those witnesses were instructed not to answer relevant questions during the course of their depositions in this case. The claim is meritless and the chart submitted by Plaintiffs to the Court in support of it is both inaccurate and misleading.

Plaintiffs’ chart (attached as Exhibit A to Plaintiffs’ Submission) purports to identify portions of depositions of Defendants’ witnesses where witnesses were instructed not to answer on the ground that the question called for expert opinion. At the outset we note that Plaintiffs have not limited themselves to a discussion of the depositions of the witnesses identified in Defendants’ Notice — the only relevant universe — but have offered their observa-

tions as to many other witnesses who were deposed in this case. We will confine ourselves to a discussion of the relevant witnesses.

Plaintiffs have identified seven individuals who were identified in Defendants' Notice and go on to claim that these witnesses were improperly instructed not to answer questions calling for relevant testimony. As to five of these witnesses, the actual record reveals that the witnesses were in fact permitted to answer questions Plaintiffs cite to the Court. This is not apparent from Plaintiffs' chart because in most instances Plaintiffs did not include the witness' answer in their submission, choosing instead to cut off the quoted testimony after an objection was lodged but before the answer was given. In view of these serious and misleading omissions, Defendants have provided an accurate chart (attached hereto as Exhibit C) which includes all of the disputed passages challenged by Plaintiffs as well as the answers omitted by Plaintiffs. The Court is respectfully referred to the passages concerning Clifford Mizialko (Ex. C at p. 3-5), James Kaufmann (Ex. C at p. 8), Daniel Anderson (Ex. C at pp. 5-6), James Connaughton (Ex. C at pp. 12-13) and David Schoenholz (Ex. C at p. 13) which confirm that questions asked of these five witnesses were in fact answered.

In reality, only three witnesses identified in Defendants' Notice were instructed not to answer questions calling for expert opinion and another was instructed not to answer a wholly hypothetical question. Those witnesses are Lisa Sodeika (*see* Ex. C at p. 1), Lawrence Bangs (*see* Ex. C at p. 2-3), Clifford Mizialko (*see* Ex. C at pp. 2-4) and Daniel Anderson (*see* Ex. C at pp. 6-7).<sup>4</sup> As the pertinent testimony reveals (all of which is quoted in its entirety in Exhibit C), none of the witnesses was instructed not to answer any question concerning opinions formed during the course of the witnesses' duties during the events in question. They were instructed not to answer questions calling for them to give an opinion "as you sit here today",

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<sup>4</sup> The reason that Clifford Mizialko and Daniel Anderson appear on both lists is that Plaintiffs challenged more than one passage from their depositions. *See* Ex. C at pp. 2-5 and 5-7. Two portions of James Kaufmann's deposition were also cited by Plaintiffs, but the second (*see* Ex. C at pp. 7-8) concerned an objection to a question to Mr. Kaufmann seeking his testimony as to the purpose of a state law, a question calling for a legal conclusion.

or an opinion about wholly hypothetical facts, both the province of the classic “retained expert.” The following excerpt from the deposition of Clifford Mizialko is illustrative:

Q. Is it your position that under 93-1, if someone were able to feasibly bifurcate, that they would be allowed to account for that?

MR. SLOANE: He’s not going to answer that question. He’s not here as an expert. ***It is — whatever his position is today is not what you are entitled to ask him about. Ask about what his recollection of events were, what happened during the time period. All that is fair game.*** But he’s not here as an expert witness.

MR. BROOKS: Are you instructing him not to answer that question?

MR. SLOANE: Yes, I am.

BY MR. BROOKS:

Q. Is it [your] understanding that EITF 93-1 allows for bifurcation so long as the allocation is feasible?

MR. SLOANE: Again, I’m just trying to — he’s not here as an expert. ***He’s here to tell you what he thought, what he believed, what his view was, what the company’s view to the extent that he knows it was during the relevant time period. Ask him those questions.*** (Ex. C at pp. 2-3)(Mizialko, 8/10/06, 52:10-53:9)

\* \* \*

As the Mizialko passage makes clear and the testimony of the other witnesses included in Exhibit C confirms, Plaintiffs certainly understood — and were repeatedly told by defense counsel — that they were free to ask questions calling for opinions formed by the witness at the time of the facts and occurrences in question and most often did. Because the 23 witnesses identified in Defendants’ Notice were identified only to ensure that any of them who may be called at trial would be able to testify about judgments made and opinions formed at the time of the facts and occurrences in question, Plaintiffs’ effort to cite these deposition ex-

cerpts in support of a claim that Defendants should be required to provide more disclosure than Rule 26 requires fails of its own weight.<sup>5</sup>

Defendants do not intend to call the 23 identified witnesses as experts in the classic sense. None has been asked to formulate any new opinion or to opine on hypothetical facts. If each were deposed tomorrow and were asked what opinions they have been asked to render in this case, the question would uniformly be met with bewilderment. These witnesses have been identified as witnesses with specialized knowledge who had opinions at the time of the events in question and each was permitted to testify fully and accurately about them to the extent they were asked. Plaintiffs had a full opportunity at depositions to explore these witnesses' backgrounds, qualifications, areas of knowledge, decision making and judgments during the relevant time period. There is simply no basis in law or in fact to require these witnesses now to provide the equivalent of Rule 26 reports or any other additional information.

### CONCLUSION

For the reasons set forth above, the Court should reject Plaintiffs' demand for an expert report, or for any information in addition to that set forth in Exhibits A and B hereto, for any of the persons included on Defendants' December 10, 2007 Notice Concerning Expert Testimony.

January 25, 2008  
New York, New York

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<sup>5</sup> In a related vein, Plaintiffs urge that the 23 identified witnesses "should be required to provide their expert opinions and the basis for those opinions" because Defendants' continued objections to questions calling for expert testimony during the course of fact discovery led Plaintiffs' counsel to believe that "[none] of these 23 witnesses would be called as experts and [to] tailor[] their questions accordingly to use efficiently the limited deposition time." Plaintiffs' Submission at 1. If Plaintiffs are suggesting that they were somehow intimidated by defense counsel's objections from continuing to ask inappropriate questions more properly posed to a retained expert, the record does not bear them out. As Exhibit C demonstrates, defense counsel objected to Plaintiffs' efforts to elicit classic opinion testimony throughout fact discovery and Plaintiffs kept asking nonetheless. *See* Ex. C at p. 1 (Sodeika, 6/06/06); *id.* at pp. 5-7 (Anderson, 11/16/06). Plaintiffs' counsel well know how to make a record and had an obligation to do so.

Respectfully submitted,

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# Exhibit A



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

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

**NOTICE CONCERNING EXPERT TESTIMONY**

PLEASE TAKE NOTICE that, pursuant to Rule 26 of the Federal Rules of Civil Procedure and Magistrate Judge Nolan’s Order of October 25, 2007, Defendants herewith serve the reports of the following experts retained by Defendants to give expert testimony in this action:

- Expert Report of Dr. Roman Weil;
- Expert Report of Dr. Mukesh Bajaj;
- Expert Report of Dr. Robert Litan; and
- Expert Report of Mr. John Bley and Mr. Carl LaSusa.

Plaintiffs are further advised that Defendants may call the following witnesses to give testimony in this action as to matters as to which they have specialized knowledge and whose testimony may, at least in part, fall within the purview of the Court’s ruling in

*Sunstar, Inc. v. Alberto-Culver Company, Inc.*, 2006 U.S. Dist. LEXIS 85678 (N.D. Ill., Nov. 16, 2006):

- William Aldinger may be called to provide testimony regarding Household's corporate governance and management practices that is informed by his specialized knowledge of corporate governance practices and policies, and management practices and policies.
- Dan Anderson may be called to provide testimony regarding the securitization of Household's loans that is informed by his specialized knowledge of loan securitizations.
- Edgar Ancona may be called to provide testimony regarding the securitization of Household's loans that is informed by his specialized knowledge of loan securitizations.
- Larry Bangs may be called to provide testimony regarding Household's corporate governance and lending operations that is informed by his specialized knowledge of corporate governance practices and policies and lending practices and policies.
- Christopher Bianucci may be called to provide testimony regarding Household's accounting practices and methodologies that is informed by his specialized knowledge of accounting.
- James Connaughton may be called to provide testimony regarding Household's credit and charge-off policies that is informed by his specialized knowledge of account operations policies.
- Curt Cunningham may be called to provide testimony regarding Household's credit policies, lending operations and compliance that is informed by his specialized knowledge of account operations practices and policies, lending practices and policies and compliance.
- John Davis may be called to provide testimony regarding Household's internal auditing practices and methodologies that is informed by his specialized knowledge of internal auditing practices and methodologies.
- Tom Detelich may be called to provide testimony regarding Household's lending operations that is informed by his specialized knowledge of lending practices and policies.
- Gary Gilmer may be called to provide testimony regarding Household's corporate governance and lending operations that is informed by his specialized knowledge of corporate governance practices and policies and lending practices and policies.

- James Kauffman may be called to provide testimony regarding various regulatory framework and compliance issues of the banking and consumer finance industries that is informed by his specialized knowledge of banking and consumer finance regulation and compliance.
- John Keller may be called to provide testimony regarding Household's accounting practices and methodologies that is informed by his specialized knowledge of accounting.
- Louis Levy may be called to provide testimony regarding Household's accounting practices and methodologies and corporate governance that is informed by his specialized knowledge of accounting and corporate governance practices and policies.
- William Long may be called to provide testimony regarding Household's accounting practices and methodologies and credit and charge-off policies that is informed by his specialized knowledge of accounting and account operations practices and policies.
- Cliff Mizialko may be called to provide testimony regarding Household's reserves, credit and charge-off policies, and accounting practices and methodologies that is informed by his specialized knowledge of reserves, account operations practices and policies and accounting.
- John Nichols may be called to provide testimony regarding Household's accounting practices and methodologies and corporate governance that is informed by his specialized knowledge of accounting and corporate governance practices and policies.
- Daniel Pantelis may be called to provide testimony regarding Household's credit policies that is informed by his specialized knowledge of account operations practices and policies.
- Walt Rybak may be called to provide testimony regarding Household's credit policies that is informed by his specialized knowledge of account operations practices and policies.
- David Schoenholz may be called to provide testimony regarding Household's corporate governance and management practices, credit and charge-off practices, reserves, and accounting practices and methodologies that is informed by his specialized knowledge in corporate governance practices and policies, management practices and policies, account operations practices and policies, reserves and accounting.
- Peter Sesterhenn may be called to provide testimony regarding Household's reserves and accounting practices and methodologies that is informed by his specialized knowledge of reserves and accounting.

- Lisa Sodeika may be called to provide testimony regarding Household's corporate governance and management practices and lending operations that is informed by her specialized knowledge of corporate governance practices and policies, management practices and policies, and lending practices and policies.
- Brian Stephens may be called to provide testimony regarding various credit and charge-off policies and accounting practices and methodologies that is informed by his specialized knowledge of account operations practices and policies and accounting.
- Joseph Vozar may be called to provide testimony regarding Household's lending operations, reserves and credit and charge-off practices that is informed by his specialized knowledge of lending practices and policies, reserves and account operations practices and policies.

None of these witnesses has been retained or specially employed to provide expert testimony in this case and none is an employee of any entity whose duties regularly involve giving expert testimony.

December 10, 2007

Yours, etc.

By: \_\_\_\_\_

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Corporation, William F. Aldinger, David A.  
Schoenholz, Gary Gilmer and J. A. Vozar*

# Exhibit B

EXHIBIT B

William Aldinger, an individual defendant, joined Household International as President and Chief Executive Officer in 1994. In 1996, Mr. Aldinger became Chairman of the Board and Chief Executive Officer. Upon Household's merger with HSBC in 2003, Mr. Aldinger was named Chairman and Chief Executive Officer of HSBC North America Holdings Inc., and he served in that capacity until his retirement in April 2005. Prior to joining Household he was a senior executive with Wells Fargo. As such, he has specialized knowledge in, *inter alia*, corporate governance practices and policies, and management practices and policies. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar*<sup>1</sup> include his knowledge, actions, interactions, judgments and/or decisions regarding Household's operations, administration and business model; strategy and development; communications with analysts, investors, rating agencies and/or government entities; review of financial statements; and other matters related thereto. Mr. Aldinger was deposed by Plaintiffs for two days on January 30 and 31, 2007.

Edgar Ancona became Treasurer of Household International in 1994 and was subsequently named Vice President, Managing Director, and Senior Vice President. As such, he has specialized knowledge in, *inter alia*, loan securitizations. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding the funding of Household, its subsidiaries and business units; securitization of Household's loans and related disclosures; capital management and financing; communications with investors and rating agencies; and other matters related thereto. Mr. Ancona was deposed by Plaintiffs on April 18, 2006.

Dan Anderson worked in the securitization group of Household's Treasury Department from 1991-1994. Since 1994, he has been the business liaison between Treasury and Consumer Lending. As such, he has specialized knowledge in, *inter alia*, loan securitizations. Areas of his

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<sup>1</sup> See *Sunstar, Inc. v. Alberto-Culver Company, Inc.*, 2006 U.S. Dist. LEXIS 85678 (N.D. Ill. Nov. 16, 2006).

potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding the funding of Household, its subsidiaries and business units; securitization of Household's loans and related disclosures; capital management and financing; communications with investors and rating agencies; and other matters related thereto. Mr. Anderson was deposed by Plaintiffs on November 16, 2006.

Larry Bangs began his career at Household in 1959. Between 1959 and 1990, Mr. Bangs held the titles of Branch Representative; Assistant Manager; Branch Manager; Assistant Vice President, District Manager; Assistant Vice President, Area Manager; Assistant Vice President, Assistant to Senior Vice President, Regional General Manager; Vice President, District General Manager; and Senior Vice President, Regional General Manager. In 1990 he became the Managing Director, Chief Executive Officer, UK, and in 1995 he became a Group Executive, a member of the Board of the UK operation and Chairman of the Board of Household Bank fsb. In January 2000, Mr. Bangs became Vice Chairman of Household International. Upon his retirement at the end of 2001, he acted as a consultant to the Company until the end of 2002. As such, he has specialized knowledge in, *inter alia*, corporate governance practices and policies, and lending practices and policies. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding Household's operations, administration and business model; strategy and development; communications with analysts, investors, rating agencies and/or government entities; Consumer Lending practices and policies, operations and administration; and other matters related thereto. Mr. Bangs was deposed by Plaintiffs on December 14, 2006.

Christopher Bianucci joined Arthur Andersen in 1990, and worked on the Household account as a staff member, and later as audit partner. He left Arthur Andersen in 2002 and joined Ernst & Young shortly thereafter. As such, he has specialized knowledge in, *inter alia*, accounting. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding audit and consulting work performed by Arthur Andersen and Ernst & Young related to, *inter alia*, calculation of Household's reserves; review of financial statements; reaging, credit and charge-off



practices and policies; loan compliance; and other matters related thereto. Mr. Bianucci was deposed by Plaintiffs on August 2, 2007.

James Connaughton began working for Household in November 2000 as the National Director of Credit Policy and Risk Management for Household Retail Services. As such, he has specialized knowledge in, *inter alia*, account operations policies. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding reaging, credit and charge-off policies and practices; underwriting; portfolio performance; and other matters related thereto. Mr. Connaughton was deposed by Plaintiffs on June 21, 2006.

Curt Cunningham joined Household in 1988, and served in various training and management roles until 1990, when he became Customer Service Research Unit Manager. In 1994 he became a Senior Manager in the Career Development Center. In 1997, he became Assistant Vice-President of Compliance at Household Financial Services, and in 1999 he was named Director of Compliance at Household Financial Services and subsequently the Director of Compliance at Household Mortgage Services as well. As such, he has specialized knowledge in, *inter alia*, account operations practices and policies, lending practices and policies, and compliance. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding compliance policy; reaging, credit and charge-off policies and practices; lending practices and policies; underwriting; portfolio performance; and other matters related thereto. Mr. Cunningham was deposed by Plaintiffs on March 8, 2006.

John Davis began his career at Household in 1986, and became the Vice President of Internal Audit in December 1995. In July 2003, he was named Senior Vice President of Internal Audit and became Senior Vice President of Operation Risk in August 2004. As such, he has specialized knowledge in, *inter alia*, internal auditing practices and methodologies. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding Household's internal au-

dit functions; internal audit plans and reports; and other matters related thereto. Mr. Davis was deposed by Plaintiffs on December 1, 2006.

Thomas Detelich began his career at Household in 1997 as Executive Director of Lending. In 1998 Mr. Detelich became Regional General Manager, where he was responsible for Branch Operations. Later that year, he became Managing Director Consumer Finance Sales, and in December 2000 he was named Managing Director of Consumer Lending. In 2002 he became Group Executive, Consumer Lending, and in January 2005 he became Group Executive Consumer/Direct Lending. As such, he has specialized knowledge in, *inter alia*, lending practices and policies. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding Household's operations, administration and business model; Consumer Lending practices and policies, operations and administration; reage, credit and charge-off practices and policies; compliance; compensation; communications with analysts, investors, rating agencies and/or government entities; and other matters related thereto. Mr. Detelich was deposed by Plaintiffs on December 22, 2006 and January 31, 2007.

Gary Gilmer, an individual defendant, was a Household Finance Corporation Branch Representative from 1972 until becoming Branch Manager in 1974. Mr. Gilmer then served in various supervisory positions including District Manager and Regional General Manager before becoming General Manager in 1984. Mr. Gilmer then became President of Household Bank - Maryland in 1985, President of Household Retail Services in 1987, Senior Vice President - Regional General Manager Household Finance Corporation in 1988, and President of Household Retail Services in 1991. In 1995, Mr. Gilmer became Managing Director and Chief Executive Officer of HFC Bank plc in the United Kingdom, and in 1998 was named President - Consumer Lending and Vice Chairman of Household International, the position he held until his retirement at the end of 2002. As such, he has specialized knowledge in, *inter alia*, corporate governance practices and policies, and lending practices and policies. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding Consumer Lending practices and policies, operations and administration; Household's operations, administration and business model; reage, credit and

charge-off practices and policies; compliance; compensation; communications with analysts, investors, rating agencies and/or government entities; and other matters related thereto. Mr. Gilmer was deposed by Plaintiffs for two days on January 11 and 12, 2007.

James Kauffman joined Household in June 2002 as Vice President - Director of Compliance and shortly thereafter became Senior Vice President of Compliance. In approximately 2004, Mr. Kauffman was named Executive Vice President - Policy and Compliance for HSBC North America Holdings, a position he held until his retirement at the end of 2006. Prior to joining Household, Mr. Kauffman served as the Secretary of Banking for Pennsylvania from 2001-2002 (and he was Deputy Secretary, then Acting Secretary from 1999-2001), where his duties included overseeing the regulation, examination and supervision of licensed financial institutions. As such, he has specialized knowledge in, *inter alia*, banking and consumer finance regulation and compliance. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding Household's compliance practices and policies; lending practices and policies, operations and administration; communications with government entities; compliance and regulatory issues within the banking and consumer finance industries; and other matters related thereto. Mr. Kauffman was deposed by Plaintiffs on January 24, 2007.

John Keller joined Arthur Andersen in 1977 and became a partner in 1988. While at Arthur Andersen, he functioned as one of the engagement partners on the Household audit, and in 1995 he became the Arthur Andersen partner in charge of the Household audit. He worked for Arthur Andersen until May 2002, when he left to become a partner at Ernst & Young. As such he has specialized knowledge in, *inter alia*, accounting. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding audit and consulting work performed by Arthur Andersen and Ernst & Young related to, *inter alia*, calculation of Household's reserves; review of financial statements; the restatement of accounting; reaging, credit and charge-off practices and policies; loan compliance; and other matters related thereto. Mr. Keller was deposed by Plaintiffs on July 26, 2007.

Louis Levy joined Household's Board of Directors and Audit Committee in or around 1992. He was appointed Chairman of the Audit Committee in 1994 and retired in or around 2004. Prior to his affiliation with Household, Mr. Levy was Vice Chairman of KPMG Peat Marwick LLP. As such he has specialized knowledge in, *inter alia*, accounting, and corporate governance practices and policies. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding Household's operations, administration and business model; restatement of accounting; reaging, credit and charge-off practices and policies; communications with external auditors and/or government entities; review of financial statements; and other matters related thereto. Mr. Levy was deposed by Plaintiffs on August 25, 2006.

William Long was a Senior Manager at KPMG in 2002. During the first part of 2002, he was Senior Manager at KPMG's New York office, and he worked in the Risk Management Group within the Department of Professional Practice. During the second part of 2002, he was the Lead Senior Manager on the Household audit. More recently, Mr. Long has become a Partner at KPMG. As such he has specialized knowledge in, *inter alia*, accounting and account operations practices and policies. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding audit and consulting work performed by KPMG related to, *inter alia*, calculation of Household's reserves; review of financial statements; the restatement of accounting; reaging, credit and charge-off practices and policies; and other matters related thereto. Mr. Long was deposed by Plaintiffs as a 30(b)(6) witness for KPMG on August 9, 2006.

Cliff Mizialko joined Household in 1997 as a Director of Accounting Policy and Research. In 2002, Mr. Mizialko became Assistant Controller, and he currently serves as Vice President, Accounting Policy, Research and External Reporting. As such, he has specialized knowledge in, *inter alia*, reserves, account operations practices and policies, and accounting. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding Household's restatement of accounting; calculation of reserves; reaging, credit and charge-off policies; communications with analysts, investors, rating agencies and/or government entities; the drafting and

review of financial statements; and other matters related thereto. Mr. Mizialko was deposed by Plaintiffs as a 30(b)(6) witness for Household on April 5, 2006 and in his individual capacity on August 10, 2006.

John Nichols became a member of the Board of Directors of Household in 1988. He also served as Chair of the Executive Committee of the Board of Directors, and accordingly, as an *ex officio* member of every committee of the Board. As such he has specialized knowledge in, *inter alia*, accounting, and corporate governance practices and policies. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding Household's operations, administration and business model; restatement of accounting; reaging, credit and charge-off practices and policies; communications with external auditors and/or government entities; review of financial statements; and other matters related thereto. The deposition of Mr. Nichols was noticed, prioritized and scheduled (numerous times), but was abandoned by Plaintiffs less than one week before it was scheduled to take place.

Daniel Pantelis was both an Analyst (1981-1985) and a Senior Analyst (1985-1987) in the Research Department at Household Finance Corp., and became an Assistant Vice President of Bank Planning, Research, and Development at Household Bank, N.A. in 1988. From 1990 through 1992, he was a Manager in Business Analysis, and in 1999 he became Vice President of Corporate Credit Card Management. As such, he has specialized knowledge in, *inter alia*, account operations practices and policies. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding Household's reaging, credit and charge-off practices and policies; calculation of reserves; communications with rating agencies and/or government entities; risk management; market research and analysis; and other matters related thereto. Mr. Pantelis was deposed by Plaintiffs for two days on November 8 and 9, 2006.

Walt Rybak joined Household in February 1976 as a Business Analyst. In 1995 he served as the Director of Credit Risk for Consumer Lending, and he later became Vice President of Credit Risk. In August 2003, Mr. Rybak became the Vice President of Credit Policy. As

such, he has specialized knowledge in, *inter alia*, account operations practices and policies. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding Household's reaging, credit and charge-off practices and policies; and other matters related thereto. Mr. Rybak was deposed by Plaintiffs on February 24, 2006.

Dave Schoenholz, an individual defendant, joined Household in 1985 as Director of Internal Audit. He became Vice President and Corporate Controller in 1987, Chief Accounting Officer in 1993 and Senior Vice President - Chief Financial Officer in 1994. He was named Executive Vice President in 1996 and Group Executive in 1999, when he also took the helm of the mortgage services business. In January 2002 he became Vice Chairman and Chief Financial Officer, and in July 2002, he was named President and Chief Operating Officer of the Company. Before joining Household, Mr. Schoenholz spent nine years at Arthur Andersen. As such, he has specialized knowledge in, *inter alia*, corporate governance practices and policies, management practices and policies, account operations practices and policies, reserves and accounting. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding Household's operations, administration and business model; strategy and development; communications with analysts, investors, rating agencies and/or government entities; reaging, credit and charge-off policies and practices; the calculation of reserves; the restatement of accounting; review of financial statements; and other matters related thereto. Mr. Schoenholz was deposed by Plaintiffs for two days on February 28 and March 1, 2007.

Peter Sesterhenn joined Household in 1990 as Manager of Financial Reporting in Consumer Lending. From 1996 through 1999, he served as Director in a strategic initiatives group, and was Controller of Consumer Lending from 1999 through 2003. In 2003 he became Director of Financial Business Analysis. As such, he has specialized knowledge in, *inter alia*, reserves and accounting. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding the calculation of reserves; reaging, credit and charge-off policies; the drafting and review of financial statements; and other matters related thereto. Mr. Sesterhenn was deposed by Plaintiffs

as a 30(b)(6) witness for Household on February 2, 2006. The deposition of Mr. Sesterhenn in his individual capacity was noticed, prioritized and scheduled, but was abandoned by Plaintiffs approximately one week before it was scheduled to take place.

Lisa Sodeika joined Household in 1988 and held various positions including Special Assistant to the President of Household Finance Corp. In 1997, after three years as Vice President of Collections, Ms. Sodeika became the Director of Quality Assurance and Compliance. In January 1999, she became Vice President of Underwriting, and in August 2001 she became Special Assistant to the Vice Chairman. Ms. Sodeika served in this capacity through December 2002, after which she became Vice President of Consumer Affairs. As such, she has specialized knowledge in, *inter alia*, corporate governance practices and policies, management practices and policies, and lending practices and policies. Areas of her potential testimony that may, at least in part, fall within the purview of *Sunstar* include her knowledge, actions, interactions, judgments and/or decisions regarding Household's operations, administration and business model; strategy and development; lending practices and policies; communications with analysts, investors, rating agencies and/or government entities; and other matters related thereto. Ms. Sodeika was deposed by Plaintiffs for two days on June 6, 2006 and November 2, 2006.

Brian Stephens is a partner at KPMG who worked on projects commissioned by Household to "benchmark" Household's accounting, account management and credit policies and to validate certain of Household's account operations methodologies and statistical methods. As such, Mr. Stephens has specialized knowledge of, *inter alia*, account operations practices and policies and accounting. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding the conduct and findings of these studies; and other matters related thereto. Mr. Stephens was deposed by Plaintiffs as a 30(b)(6) witness for KPMG on October 5, 2006.

Joseph A. Vozar, an individual defendant, was a Development Analyst in the Consumer Banking group at Household from 1983 through 1986, when he became the Manager of Business Consulting Systems, and became the Assistant Vice President of Business Consulting Systems in 1987. In 1989, Mr. Vozar was named Deputy Controller of Corporate Finance; in late 1993 he

became Vice President of Data Administration; and in 1997 he became Director of Collections for Household Retail Services. He was named Managing Director and Chief Financial Officer of Consumer Lending, as well as Vice President and Treasurer of Household Finance Corp. in March 1998. In March 2006, he became Senior Vice President of Finance, a position he held until his retirement. As such, he has specialized knowledge in, *inter alia*, lending practices and policies, reserves, and account operations practices and policies. Areas of his potential testimony that may, at least in part, fall within the purview of *Sunstar* include his knowledge, actions, interactions, judgments and/or decisions regarding Household's operations, administration and business model; communications with analysts, investors, rating agencies and/or government entities; Consumer Lending practices and policies, operations and administration; review of financial statements; reaging, credit and charge-off practices and policies; calculation of reserves; and other matters related thereto. Mr. Vozar was deposed by Plaintiffs for two days on February 7 and 8, 2007.



# Exhibit C

## EXHIBIT C

<b>Witness / Date</b>	<b>Testimony</b>	<b>Page:Line</b>	<b>Comment</b>
1. Sodeika, Lisa 06/06/2006	<p>Q. Okay. <u>As you sit here today, do you have any understanding as to whether that was a fair and reasonable amount for Household to settle?</u></p> <p>MR. KAVALER: You are asking her opinion in the year 2006 about that number?</p> <p>MR. BAKER: I will ask her now, and then will I ask if her opinion changed. We will start with that.</p> <p>MR. KAVALER: <u>Well, wait a minute. You want to know as she sits here today if she has an opinion about whether it was a reasonable number, right.</u></p> <p>MR. BAKER: Okay.</p> <p>MR. KAVALER: That is not fact testimony. That's opinion testimony. She is not required to have an opinion on the subject.</p> <p>I instruct her not to venture an opinion on the subject.</p> <p>She's a fact witness. Ask her about facts.</p>	240:11- 241:3	Witness instructed not to answer question calling for an "as you sit here today" opinion (see underlined text).
2. Bangs, Lawrence 12/14/2006	<p>Q. Do you disagree with the OTS' conclusion that Household Bank's loan products were sold to an affiliate at a discount when they became a certain number of days delinquent, primarily to avoid the provisions of</p>	152:24- 153:18	Witness instructed not to answer question calling for an "as you sit here today" opinion (see underlined text).

	<p>URCCAMP?</p> <p>MR. SLOANE: Are you asking did he disagree at the time?</p> <p>MS. WINKLER: Sure.</p> <p>A. I was not aware of this at that time. And had I been made aware, I can't tell you what I would have done.</p> <p>Q. Reading that as you sit here today, do you disagree with that?</p> <p>MR. SLOANE: That's not a proper question. You don't have to answer the question. He's not here as an expert.</p> <p>MS. WINKLER: Are you instructing him not to answer that question?</p> <p>MR. SLOANE: Believe me, I am instructing him not to answer.</p>		
<p>3. Mizialko, Jr., Clifford 8/10/2006</p>	<p>Q. Is it your position that under 93-1, if someone were able to feasibly bifurcate, that they would be allowed to account for that?</p> <p>MR. SLOANE: He's not going to answer that question. He's not here as an expert.</p> <p>It is -- <u>whatever his position is today is not what you are entitled to ask him about.</u> Ask about what his recollection of events were, what happened during the time period.</p> <p>All that is fair game. But he's not here as an expert witness.</p> <p>MR. BROOKS: Are you instructing</p>	<p>52:10-53:9</p>	<p>Witness instructed not to answer question calling for an "as you sit here today" opinion (see underlined text).</p>

him not to answer that question?

MR. SLOANE: Yes, I am.

BY MR. BROOKS:

Q. Is it [your] understanding that EITF 93-1 allows for bifurcation so long as the allocation is feasible?

MR. SLOANE: Again, I'm just trying to -- he's not here as an expert. He's here to tell you what he thought, what he believed, what his view was, what the company's view to the extent that he knows it was during the relevant time period. Ask him those questions.

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Q. Do you agree with the accounting conclusions that are memorialized in this letter?

A. **Yes, I do.**

MR. SLOANE: Did you say "do you" or "did you"?

MR. BROOKS: Does he.

MR. SLOANE: He's answered the question but, again, he's not here as an expert. He's here as to what went on during the time period. So go ahead.

A. **Yes, I do.**

Bolded text indicates the witness answered the question (answer was included in Plaintiffs' submission).

97:8-97:17

	<p>***</p> <p>Q. What precipitated those discussions?</p> <p>A. My opinion — MR. SLOANE: Wait a minute. He's entitled to your facts, your knowledge. That's what he's entitled to. You don't have to speculate on these; you are not here as an expert. If you have knowledge, answer the question. <u>If you have an opinion sitting here today, that's not what he's asking.</u> This is factual inquiry. Any facts relating to that, testify to them. Sorry. Go ahead.</p> <p><b>A. I think the only fact that I would testify to is, as I testified earlier, there was a lot of discussion that occurred in 2001 relating to Household's policies and practices. One topic of those discussions was reage and restructuring. So as a result of those discussions, the company had reason to believe that this was an interest -- of interest to users of Household's financial statements. And because of that, we felt there was a need to say something in our 10-K</b></p>	<p>154:16- 155:22</p>	<p>Bolded text indicates the witness answered the question (answer was omitted from Plaintiffs' submission).</p>
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<p>4. Anderson, Daniel 11/16/2006</p>	<p>about restructures. <b>BY MR. BROOKS:</b> <b>Q. Who ultimately made that decision?</b> <b>A. My recollection is that the language that was put into the 10-K for reage and restructures resulted from the comment process that I discussed with you the last time I was here.</b></p> <p><b>Q. Is hitting a performance trigger a positive or a negative thing for the company?</b> <b>MS. BEER:</b> Objection to form. Again, you can't ask the witness to characterize things. He's not here as an expert witness. <b>THE WITNESS: Could the court reporter repeat that?</b> <b>(Record read.)</b> <b>MS. BEER: My objection stands.</b> <b>BY THE WITNESS:</b> <b>A. A performance trigger would be set through negotiation with the third party, the means to measure the expected performance of a transaction. It doesn't necessarily have to be negative. Rating agencies and other parties by their nature are very conservative and their expectations can be much different</b></p>	<p>46:10- 47:14</p>	<p>Bolded text indicates the witness answered the question (answer was omitted from Plaintiffs' submission).</p>
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	<p>than expected performance, so it's not necessarily a negative event for the company.</p> <p>BY MS. WINKLER:  <b>Q. In any event, would it be characterized as positive?</b></p> <p>MS. BEER: <b>Objection to form.</b></p> <p>BY THE WITNESS:  <b>A. My personal understanding of positive would be no, it wouldn't be positive, but it would not necessarily have any impact. It depends on the specifics of the issue.</b>          * * *</p> <p><b>Q. What effect would holding off on foreclosure proceedings have on securitizations?</b></p> <p>MS. BEER: <b>Objection to form.</b></p> <p>BY THE WITNESS:  <b>A. It could have little to no effect to some effect. This is a speculative question. I don't know the specifics of it.</b></p> <p>BY MS. WINKLER:  <b>Q. <u>Let me give you a hypothetical. If there was a loan account that had been securitized and in the normal course of Household's business that account would have been foreclosed upon, in my hypothetical the company delayed that foreclosure, what effect would that have</u></b></p>	<p>162:14- 163:16</p>	<p>Bolded text indicates the witness answered the question (answer was omitted from Plaintiffs' submission).</p> <p>Witness instructed not to answer purely hypothetical question (see underlined text).</p>
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<p>5. Kauffman, James 1/24/2007</p>	<p><u>had?</u> MS. BEER: I'm directing the witness not to answer hypothetical questions. <u>If you want to ask hypothetical questions and get opinions, you can hire experts.</u> This is a fact witness here to answer factual questions, and I am directing him not to answer this question. MS. WINKLER: We'll take that up with the Judge, and I reserve my right to recall this witness and ask him that question again after we do so. MS. BEER: You can reserve whatever rights you think you have.</p> <p>Q. And I'll ask you to flip to the page Bates marked at the bottom right-hand corner HHS 02943701. And I'll focus your attention, again, on the quoted language and just ask a different question. What was the purpose of this provision? A. What quoted -- where? I'm sorry. Q. In the second paragraph, sir. MR. SLOANE: <u>What was the purpose of a Pennsylvania law at that time?</u> <u>Stop. You're not answering that question. That is -- that is unbelievable harassment. Don't answer that question. Next question, please. You are so far afield from anything having anything to do with this case, you're just harassing</u></p>	<p>40:20-42:4</p>	<p>Witness instructed not to answer question about the purpose of a state law (see underlined text).</p>
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<p>6. Connaughton, James 06/21/2006</p>	<p><u>this witness. I instruct you not to answer that question.</u>  <u>Next question, please. This is pure harassment. Nothing short of it. Any more questions on this document, Exhibit 3?</u>                  MR. DAVIS: I'll try to rephrase the question.                  BY MR. DAVIS:  <b>Q. Was it your understanding as secretary of banking that this provision was enacted to combat predatory lending?</b>  <b>A. No.</b>  <b>Q. You're saying it was not enacted for that purpose?</b>  <b>A. That is correct.</b>                  MR. SLOANE: Don't -- again, just move on, please. You really harassing the witness.                  BY MR. DAVIS:  <b>Q. For what purpose was it enacted?</b>                  MR. SLOANE: <u>I already instructed him not to answer that question, and he's instructed not to answer it again. Move on.</u></p>		<p>Bolded text indicates the witness answered the question (answer was included in Plaintiffs' submission).</p>
	<p>Q. And based on your experience and your knowledge within Credit Risk Retail Services, how would that impact the Two Plus numbers?                  MR. OWEN: Hang on. Does this</p>	<p>83:16-87:22</p>	<p>Bolded text indicates the witness answered the question (answer was omitted from Plaintiffs' submission).</p>

relate to any facts in connection with this case, or are you simply asking his opinion about what the impacts of a particular policy might be?  
MS. MEHDI: I'm asking if the facts were this, what would the result be.  
MR. OWEN: I'm sorry, could you read the question back.  
(The record was read back as requested.)  
MR. OWEN: I'm going to object to the form of the question insofar as it's asking the witness to express an opinion about a hypothetical situation that the question poses, and ask counsel to ask questions relating to facts that the witness may have witnessed or experienced, or participated in.  
BY MS. MEHDI:  
Q. You can answer the question.  
A. I'm not sure I understand what the question relates to the purpose I'm here today.  
Q. My question is, based on your experience in Credit Risk Retail Services, how would a reage policy change from one in six months to one in four months impact Two Plus numbers.  
MR. OWEN: I'm going to object to the question for the same reason. It's a question properly posed to an expert

	<p>witness. This witness is not sitting here as an expert. He doesn't have to testify as to what he thinks might happen in a particular situation, sitting here today. He's here to respond to factual questions that he witnessed. MS. MEHDI: Are you going to -- I'm sorry, are you instructing him not to answer, because I would like that on the record. So please go ahead and tell me if you are instructing him not to answer. A. I responded that I'm not here as an expert witness, regardless. MS. MEHDI: That's nonresponsive to my question. Mr. Owen, are you instructing your witness not to answer? MR. OWEN: The witness can respond to the question consistent with the objection that I have raised. If you have facts to talk about with respect to any of these things, he can certainly testify about any of those facts. I think it's improper to pose questions about hypothetical scenarios based upon his experience. That's not what he's here to do today. This has come up in the past and we have raised this objection in the past. You guys have understood that's not a</p>		
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	<p>proper use of the witness's time.  Pose questions relating to his facts.  MS. MEHDI: Limit your objections to the Federal Rules of Civil Procedure's guidelines. If you take up time with lengthy monologs like that, I will ask Judge Nolan to extend time for witnesses.  BY MS. MEHDI:  Q. So Mr. Connaughton, based on my question, what would your answer be?  A. I don't believe I'm here today as an expert witness on the question you posed.  Q. I didn't ask if you were an expert witness. My question was based --  MR. OWEN: He responded to your question. If you don't like the answer you can ask another question.  MS. MEHDI: Do not interrupt --  MR. OWEN: You are not allowed to badger the witness.  MS. MEHDI: This is my deposition. Please don't raise your voice.  I am asking the questions.  MR. OWEN: And he provided you an answer.  MS. MEHDI: Keep your objections to objections to form.  MR. OWEN: I will not do that.  MS. MEHDI: You will not do that.</p>		
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	<p>Excellent.</p> <p><b>BY MS. MEHDI:</b></p> <p><b>Q.</b> Okay. Now, so my question is, Mr. Connaughton, based on your duties as National Credit Policy -- or National Director of Credit Policy and Risk Management, during the years 2000 through 2002, would a reage policy change from one in six months to one in four months impact Two Plus numbers?</p> <p><b>MR. OWEN:</b> I object to the hypothetical that you constructed. It's not based upon any events. If the witness has an answer to that question, you can provide it.</p> <p><b>A.</b> Can you restate the question again for me, please, or can you recall the question?</p> <p><b>MS. MEHDI:</b> Will the court reporter please read the question back.</p> <p>(The record was read back as requested.)</p> <p><b>A.</b> I think part of the test we conducted in 2001 with Comp USA was to evaluate that type of question and provide factual data on the results.</p> <p>And I think that was the purpose of responding -- segmenting out one in</p>		
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<p>7. David Schoenholz 03/01/2007</p>	<p><b>four, one in six, or no reage, was to respond to that type of question.</b></p> <p>Q. So, to be clear, you don't think that charging the DSMs with compliance responsibilities created any conflict --</p> <p>MR. OWEN: Objection -- sorry --</p> <p>BY MR. BROOKS:</p> <p>Q. (Continuing) -- with respect to quality assurance?</p> <p>MR. OWEN: I object to the form of the question. That's not what his testimony was, which is related to this document.</p> <p>You have no basis to ask him opinions on these hypothetical situations.</p> <p>He's not sitting here as an expert. He's a fact witness. Let's go to some facts and not misstate his testimony.</p> <p><b>A. I would state my opinion, I guess, slightly differently.</b></p> <p><b>I would say that if the DSM had a certain branch audit requirement, that that requirement could be compatible with their other responsibilities.</b></p>	<p>343:20-344:15</p>	<p>Bolded text indicates the witness answered the question (answer was omitted from Plaintiffs' submission).</p>
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