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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>LAWRENCE E. JAFFE PENSION PLAN,</b>	)	
<b>on behalf of itself and all others</b>	)	<b>Lead Case No. 02 C 5893</b>
<b>similarly situated,</b>	)	<b>(Consolidated)</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Judge Ronald A. Guzman</b>
	)	<b>Magistrate Judge Nan R. Nolan</b>
<b>HOUSEHOLD INTERNATIONAL, INC,</b>	)	
<b>et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**ORDER**

This matter is before the court on *Lead Plaintiff's Motion to Compel the Household Defendants to Produce Electronic Evidence in Native Electronic Format* ("motion to compel"). In March 2005, before the motion to compel was filed, Lead Plaintiffs and the Household Defendants reached an agreement regarding the production of electronic documents in native format (the "Native Format Agreement"). Under the Native Format Agreement, the Household Defendants agreed, among other things, to search and produce emails from Lotus Notes. The Native Format Agreement did not, however, resolve which custodians' (*i.e.*, employees) email would be searched, and which search terms would be used. The issue presented in the instant motion relates to which custodians' mailboxes should be searched and which search terms should be used. After meeting and conferring, the parties have agreed on 119 custodians and 219 search terms; there remains a dispute regarding 165 custodians and 18 search terms. Regarding the disputed custodians and search terms, the court grants the motion to compel in part and denies it in part, for the reasons that follow.

### **DISPUTED CUSTODIANS**

The Household Defendants object to searching the 165 disputed custodians' emails, arguing that the list is overly broad because those custodians are not relevant to the litigation.<sup>1</sup> According to the Household Defendants, the 119 *undisputed* custodians consist of the four individual defendants in this case, the individuals identified in Defendants' Rule 26(a) disclosures as those individuals most likely to have discoverable information, the individuals listed on Defendants' production log as individuals whose "hard copy" documents have been produced to plaintiffs, additional individuals that Lead Plaintiffs insisted upon or expressed particular interest in, high level employees, and other individual mentioned in the Amended Complaint and/or whose positions within the company indicate they would be likely to have relevant documents. The 165 disputed custodians, on the other hand, are lower level employees who, according to the Household Defendants, almost certainly had no interaction or communication with the four senior executives who are named defendants in this case, and who could not possibly have played any role in the alleged fraud orchestrated by those four senior executives. The Household Defendants have documented their objections by creating a chart that identifies each disputed custodian and provides the basis for their objection. (*See generally* chart entitled "Custodians Still in Dispute," attached as Appendix A to Mem. Opp. Lead Pls.' Mot. Compel.) The objections generally fall into the following categories: (1) certain proposed custodians did not have a sufficiently high-level position that they might reasonably be expected to have documents relevant to Plaintiffs' fraud claims; (2) for some of the proposed custodians

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<sup>1</sup>The Household Defendants do not argue that it would be unduly burdensome to search the 165 disputed custodians' emails.

who did not have a sufficiently high-level position, the Household Defendants nevertheless have agreed to search the emails of the individuals' managers and/or supervisors, as a compromise, which should be sufficient; and (3) certain proposed custodians were employed in divisions, departments and/or units that did not appear to have a significant connection to Plaintiffs' claims.

Lead Plaintiffs counter that they "carefully selected custodians who, from the documents produced by defendants, appeared to have knowledge regarding issues in this case." (Lead Pls.' Reply at 10.) In support of their position, like the Household Defendants, Lead Plaintiffs prepared a chart in which they identify each disputed custodian and provide their reasons for wanting each custodian's email searched. (*See generally* Lead Pls.' Reply, Appendix 1.) In their chart, Lead Plaintiffs specify which subject(s) each disputed custodian appears to have knowledge about (*e.g.*, re-aging of loans, predatory lending, charge-off practices, delinquency statistics, collections, etc.), and cite to examples of documents produced by defendants that support Lead Plaintiffs' position.<sup>2</sup> Lead Plaintiffs also point out that Household's in-house counsel instructed approximately 40 of the disputed custodians not to delete their emails, and that the selection of those individuals demonstrates the Household Defendants' own belief that the selected individuals likely possess relevant, responsive documents.

Rule 26 of the Federal Rules of Civil Procedure permits discovery "regarding any matter, not privileged, that is relevant to the claim or defense of any party . . ." Fed. R. Civ. P. 26. The parameters for discovery under Rule 26 are broad, allowing discovery of any information "reasonably calculated to lead to the discovery of admissible evidence." *Lakewood Eng. & Mfg.*

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<sup>2</sup>For example, for disputed custodian Jason Bovington, Lead Plaintiffs state "Mr. Bovington appears to have knowledge, *inter alia*, relevant to Household's delinquency statistics and reaging/restructuring. *See, e.g.*, Exs. 21, 22." (Lead Pls.' Reply, Appendix 1.)

*Co. v. Lasko Prod., Inc.*, No. 01 C 7867, 2003 WL 1220254, at \*1 (N.D. Ill. Mar. 14, 2003) (internal quotation marks omitted). A discovery request ““should be considered relevant if there is any possibility that the information sought may be relevant to the subject matter of the action.”” *Id.* (citation omitted). Here, given the breadth of Rule 26, the court cannot conclude that the disputed custodians could not possibly possess relevant information. After the Household Defendants articulated their objections, which were general in nature (as described above), Lead Plaintiffs identified specific subject areas they believe the disputed custodians know about and pointed the Household Defendants to documents that demonstrate why those disputed custodians were chosen. By way of example only, the Household Defendants contend that David Tyra does not appear to have held a sufficiently high-level position in Credit Card Services that he would be expected to have documents relevant to the alleged fraud. But Lead Plaintiffs counter that Mr. Tyra appears to have knowledge regarding Household’s re-aging/restructuring, re-age policy, and charge-off practices. That is sufficient for the court to conclude that Mr. Tyra may have relevant, discoverable information in his email.<sup>3</sup> Likewise, for

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<sup>3</sup>Based on the disputed custodians’ positions at Household, the Household Defendants argue that the disputed custodians almost certainly had no interaction or communication with the four senior executive defendants, and could not possibly have played any role in the alleged fraud orchestrated by the four senior executive defendants. Lead Plaintiffs, however, challenge the Household Defendants’ characterization of the fraud as a fraud orchestrated by the four executive defendants, reminding the court of their allegations that the Household Defendants (i) engaged in a nationwide predatory lending scheme that involved account executives and branch, district, and regional managers across the country, (ii) improperly re-aged and restructured delinquent accounts, and (iii) manipulated Household’s accounting, all in an effort to falsify and manipulate Household’s financial results, to the detriment of investors who were misled. In light of those allegations, the Household Defendants’ characterization seems overly narrow. In any event, Lead Plaintiffs need not directly tie the disputed custodians to the four executive defendants in order to be entitled to search their email. Under the broad scope of Rule 26, the disputed custodians need not have necessarily have been part of the fraud, they need only have information relevant to the fraud.

the 40 or so disputed custodians whom Household's in-house counsel specifically instructed to retain their documents, the court finds it reasonable to conclude that those custodians are likely to possess relevant information. After considering the objections and responses relating to each disputed custodian, the court determines that Lead Plaintiffs have sufficiently demonstrated that the disputed custodians are likely to have information relevant to the claims at issue in this litigation.

Although the parties each included 165 names on their respective charts, there are actually only 162 disputed custodians. Ramon Caulfield (or Cofield) does not belong on the disputed list because Lead Plaintiffs eliminated his name in July 2005. Likewise, Bill Weinstein should not be on the disputed list: Household has no records of having an employee named Bill Weinstein, so there is no email to search. Finally, Sasha Tomlinson should not be on the disputed list because she is the same person as Sasha Guglomo, whose email is being searched by agreement of the parties. In other words, there is no dispute about searching her email. It should go without saying that Household's search should include emails under both last names.

The court orders the Household Defendants to search the emails of the 162 disputed custodians in addition to the 119 undisputed custodians, for a total of 281 custodians. The Lead Plaintiffs have made a sufficient showing of relevance, and searching 281 custodians' emails is not overly broad when one considers that Household employs 31,000+ people.

#### **DISPUTED SEARCH TERMS**

Regarding the disputed search terms, the parties have done an admirable job narrowing the scope of the dispute. Only 18 search terms are now disputed. The Household Defendants object to those 18 search terms, stating that the terms are insufficiently focused to warrant

inclusion. In other words, the Household Defendants contend that the 18 disputed search terms are too general, and that a search employing such general terms will yield a large number of completely irrelevant emails. The Household Defendants further argue that the 18 search terms are unnecessary in light of the 219 undisputed search terms, which were selected to focus on the issues in the litigation. Lead Plaintiffs respond that each of the 18 disputed search terms are necessary because the terms are relevant and there are no other more adequate, narrow terms. As explained below, the court finds that some, but not all, of the disputed search terms should be included in the search terms.

**Accusation, Allegation, Complaint, Self Serving, Subpoena and Trainer**

The Household Defendants objections to the following disputed search terms are sustained because the court concurs that the terms are so general that searches utilizing the terms are likely to yield a significant amount of irrelevant information: accusation, allegation, complaint, self serving, subpoena and trainer. “Accusation,” “allegation” and “complaint” are common terms that could arise in any number of contexts. Although Lead Plaintiffs contend the terms will only arise in limited situations involving purported wrongful conduct, it does not follow that these terms would only be used in the context of the wrongful conduct at issue in this case (*e.g.*, predatory lending practices and improperly re-aging loans). As a large company, Household is likely involved in hundreds of lawsuits which would involve accusations, allegations and complaints that are wholly unrelated to this case (*e.g.*, employment discrimination matters, contract disputes, etc.). Further, there are hundreds of other search terms that will be utilized and that are more narrowly focused on the issues in the instant litigation. These three terms shall be excluded from the search terms.

It is likewise unnecessary to include “self serving” in the search terms. According to the Household Defendants, the term bears no discernible connection to the litigation, and thus is unlikely to lead to the discovery of admissible evidence. Lead Plaintiffs respond that the term is narrowly tailored, will only arise in the context of some alleged wrong or accusation, and that the term was used regarding Elaine Markell, a former Household employee who notified the SEC about Household’s re-aging practices. Specifically, Markell was accused of making self-serving statements and offering biased personal opinions. But the fact that Markell was accused of making self-serving statements does not persuade the court that “self-serving” needs to be searched, particularly since the Household Defendants are already searching more narrowly tailored terms, such as “Markell,” “re-age,” and “SEC.” Just as there is no need to search “bias” (another term used to describe Markell) there is no need to search “self-serving.”

The term “subpoena” is also too general to warrant inclusion in the search terms. Lead Plaintiffs argue that the SEC and various attorneys general have issued subpoenas to the Household Defendants, and Lead Plaintiffs are entitled to discover facts relating to the issuance of those subpoenas, as well as compliance with and discussion of those subpoenas. The court does not dispute Lead Plaintiffs’ right to discover facts relating to the subpoenas, but finds no need to include “subpoena” in the search terms. As noted above, Household is a large company that is likely involved in hundreds of lawsuits nationwide, so searching for “subpoena” is likely to yield a significant number of irrelevant emails. Moreover, the Household Defendants have agreed to search for terms such as “SEC” and “attorney general”—which should locate any emails that discuss subpoenas issued by the SEC and any attorneys general. “Subpoena” shall not be included in the search terms.

Lead Plaintiffs also want the search to include “trainer,” based on their allegations that Household trained its employees to engage in predatory lending tactics. Lead Plaintiffs contend that there is no other more narrow term that will lead to discovery of relevant emails. The court cannot agree. In a company as large as Household, training occurs in countless contexts, so a search of the word “trainer” is likely to yield a significant amount of irrelevant information. Moreover, the Household Defendants will be searching for terms that are directly focused on the issues in the litigation—such as “aging,” “auto re-age,” “backdate,” “charge off,” “fraud,” “manipulation,” “predatory,” and “re-age,” to name a few examples. Searching for “trainer” is unnecessary.

**Negative Amortization, EITF 93-1, Red Flag & Headline Risk**

Regarding the terms “amortization,” “EITF,” “flag,” and “headline,” Lead Plaintiffs have agreed to limit the searches to “negative amortization,” “EITF 93-1,” “red flag,” and “headline risk” to narrow the scope of the search results. For the reasons that follow, “negative amortization,” “EITF 93-1,” and “headline risk” shall be included in the search terms, but “red flag” shall not.

“Amortization” is a term that would be widely used in a company like Household, and thus is so broad that it is likely to yield a significant amount of information irrelevant to this litigation. “Negative amortization,” on the other hand, is sufficiently narrowly tailored to be relevant because Lead Plaintiffs have alleged that without disclosure to its customers, Household used lending practices that led to negative amortization (which means that a customer’s loan balance increased over time rather than decreased, even though the customer was making payments).



Likewise, because “EITF” would capture all references to the Emerging Issues Task Force which issues statements regarding financial reporting, a search of “EITF” could be expected to yield a lot of irrelevant information. “EITF 93-1”, on the other hand, is limited to accounting for individual credit card acquisitions, and Lead Plaintiffs have alleged that the Household Defendants manipulated Household’s accounting by failing to apply EITF 93-1 to accounting for certain credit card expenses despite knowing that EITF 93-1 applied. The search term is relevant, and as narrow as it can get.

As for “headline risk,” Lead Plaintiffs argue that the term is important because discovery to date has shown that the Household Defendants were very concerned with “headline risks” that would result from discovery of Household’s predatory lending and re-aging schemes. Because “headline risk” does not seem to be an overly general or common term, it shall be included on the search term list.

“Red flag,” however, is not sufficiently narrow. Lead Plaintiffs contend that “red flag” will only appear in the limited context of allegations of wrongful conduct. But even if that is true, the term will not necessarily appear only in the limited context of the types of wrongful conduct alleged in the Amended Complaint. Moreover, considering the hundreds of other search terms that will be utilized and that are more focused on the issues in the litigation, adding “red flag” to the list would be superfluous.

**Cahill, Drury, Hueman, Rutland & Wilmer Cutler**

Lead Plaintiffs also want to include several names in the search terms: Cahill, Drury, Hueman, Rutland and Wilmer Cutler. For the following reasons, each of those names shall be included in the search terms.

Lead Plaintiffs want to include “Cahill” and “Wilmer Cutler” because Household engaged the law firms Cahill, Gordon & Reindel LLP and Wilmer Cutler & Pickering to investigate the allegations made by Elaine Markell to the SEC regarding improper re-aging practices. The Household Defendants, however, argue that they engaged both Cahill, Gordon and Wilmer Cutler for numerous matters unrelated to this litigation, so searching “Cahill” and “Wilmer Cutler” will likely yield a large number of emails that are not relevant here. Additionally, regarding the name “Cahill,” they argue that such a search will also yield any references to anyone named Cahill. Given Cahill, Gordon’s and Wilmer Cutler’s investigations into Markell’s allegations, both “Cahill” and “Wilmer Cutler” must be searched. The court expects that the Household Defendants will conduct a privilege review of any emails that mention their attorneys. In conducting the privilege review, they can also filter out emails regarding unrelated matters that Cahill, Gordon and/or Wilmer Cutler worked on for Household as well as emails that relate to other people named Cahill (unless those emails are responsive).

Regarding “Drury” and “Rutland,” Lead Plaintiffs want those names searched because Melissa Rutland-Drury was an account executive at one of the Household branches alleged to have been involved in predatory lending practices. Ms. Rutland-Drury evidently has testified that she was trained to utilize predatory lending practices, and that Household made her a scapegoat after its predatory lending practices were revealed to the public. Rutland-Drury is thus a particularly relevant employee. The Household Defendants have agreed to search Rutland-Drury’s emails, but argue that searching for her name will produce all references to Drury or Rutland (including others named Drury or Rutland), and will also produce any emails that include Rutland-Drury’s signature block. Although the Household Defendants suggest that it

should be sufficient to search Rutland-Drury's mailbox, the court cannot agree. A search of her mailbox will not capture emails other employees may have sent that discuss Rutland-Drury. Further, some of the Household Defendants' concerns can be addressed by not searching "Rutland" or "Drury" when searching Rutland-Drury's mailbox. In other words, those terms need only be searched when searching other custodians' emails. This compromise should exclude many of the emails that might include Rutland-Drury's signature block. (This compromise is not perfect: the search admittedly would still locate emails in other custodians' mailboxes that contain Rutland-Drury's signature block.) "Rutland" and "Drury" shall be included in the search of all custodians' mailboxes except for Rutland-Drury's mailbox.

Lead Plaintiffs also want to include the name "Hueman" in the search terms, explaining that Dennis Hueman, a division manager, created an EZ Pay Plan presentation and trained Household personnel regarding the EZ Pay Plan—which plaintiffs allege was one of Household's biggest scams. Like Rutland-Drury, Hueman is a particularly relevant employee. The Household Defendants make essentially the same arguments regarding Hueman as they raised regarding Rutland-Drury, and for the same reasons, the court rejects those arguments. A search of Hueman's mailbox will not capture emails that other employees may have sent discussing Hueman. "Hueman" shall be included in the search of all custodians' mailboxes except for Hueman's own mailbox.

**Life Insurance, Reward and White Knight**

Finally, the Household Defendants objections to the following disputed search terms are overruled because the court finds that although the terms are general, they are relevant and cannot be more narrowly tailored: life insurance, reward, and white knight.

Lead Plaintiffs argue that “life insurance” should be searched based on their allegations that one of the predatory lending practices the Household Defendants engaged in involved selling customers a single premium credit life insurance policy at the time of closing a home loan, either without the customer’s knowledge or by misleading the customer into believing such insurance was necessary. Further, Lead Plaintiffs explain that although Household employees may use the term “up-selling” (which is an undisputed search term), customers complaining about the tactic would not likely use that term. The court agrees. “Life insurance” is a common term, and is likely to capture irrelevant emails (*e.g.*, emails regarding life insurance benefits offered to Household employees), but the term is relevant to the case and cannot be more narrowly tailored. The search terms shall therefore include “life insurance.”

“Reward” is also a broad term, but the court finds that the term should be searched. Lead Plaintiffs contend that Household offered its employees incentives to encourage them to maximize the number of products sold and the dollar amounts of loans sold and to encourage collections representatives to re-age or restructure delinquent accounts regardless of the benefit to the customer. The Household Defendants have agreed to search “incentive,” “incentivize,” and “MBO” (which apparently was a type of bonus offered), but draw the line at “reward” because it is too broad. Lead Plaintiffs counter that Household used “incentive” and “reward” interchangeably, so both terms should be searched. The decision is a close call, but the court concludes that “reward” should be included in the search terms because the scope of Rule 26 is broad and Lead Plaintiffs have evidence that Household used both “incentive” and “reward” interchangeably.

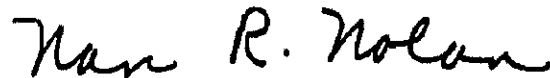
Lead Plaintiffs also want to search for emails that include the term “white knight”

because both Household and the media used the term to describe HSBC Holdings plc, which acquired Household after news of Household's settlement with one of the attorneys general became public, thus saving Household from bankruptcy. According to Lead Plaintiffs, the term goes to the impact of the fraudulent scheme. The Household Defendants object to including the term on the grounds that it is a commonly used financial term, and thus is likely to yield many references unrelated to the claims in this litigation. Although searching for "white knight" may yield some irrelevant emails, the term is relevant to the issues and seems as narrow as it can be. "White knight" shall be included in the search terms.

**CONCLUSION**

*Lead Plaintiff's Motion to Compel the Household Defendants to Produce Electronic Evidence in Native Electronic Format* is granted in part and denied in part. The Household Defendants are directed to conduct the search for responsive emails in accordance with the terms of this order.

ENTERED:



NAN R. NOLAN  
United States Magistrate Judge

Dated: October 31, 2005