UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED, Plaintiff, *- against -* HOUSEHOLD INTERNATIONAL, INC., ET AL., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

MEMORANDUM OF LAW IN OPPOSITION TO LEAD PLAINTIFFS' MOTION TO COMPEL RESPONSES TO SECOND SET OF INTERROGATORIES FROM THE HOUSEHOLD DEFENDANTS

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This memorandum is respectfully submitted on behalf of Defendants Household International, Inc., Household Finance Corp., William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar (collectively, "Household" or "Defendants") in opposition to Lead Plaintiffs' Motion to Compel Responses to Second Set of Interrogatories (the "Second Interrogatories") from Household Defendants.[1]

INTRODUCTION

Defendants are well aware of, and throughout this litigation have more than complied with, the liberal standard for permissible discovery under the Federal Rules of Civil Procedure. To date, Defendants have produced more than 3.3 million pages of documents to Plaintiffs and continue to provide Plaintiffs with additional documents in response to their specific, follow-up requests. Liberal discovery, however, does not mean *any* discovery, and, by their Second Interrogatories, Plaintiffs disregard this Court's recognition that "[d]iscovery under Fed. R. Civ. P. 26(b) is not without limits; the manner and scope of discovery must be tailored to some extent to avoid harassment or being oppressive." *Ocean Atlantic Woodland Corp.* v. *DRH Cambridge Homes Inc.*, 262 F. Supp. 2d 923, 926-27 (N.D. Ill. 2003) (J. Guzman).

The Interrogatories that are the subject of Plaintiffs' motion purportedly relate to the Complaint's allegations of putative predatory lending practices. Household respectfully submits that all of Plaintiffs' allegations concerning alleged predatory lending practices have no relevance whatsoever to claims arising under the federal securities laws. While Defendants recognize that the Court has sustained Plaintiffs' Complaint, the predatory lending allegations must be read in the context of a securities fraud lawsuit with its requirements of, *inter alia*, material misstatement or omission, scienter, reliance, and damages. Properly framed, Plaintiffs' Second Interrogatories seeking financial information derived from certain of Household's loan products is of marginal relevance at best to the elements that Plaintiffs must ultimately prove. *See* FRCP

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[1] Defendants submit herewith in further support of their opposition to Plaintiffs' motion the Affidavits of Diane E. Giannis, Robert C. Sekany, and Timothy J. Titus. All citations to affidavits are in the form "([last name] Aff. ¶_)". Defendants also submit herewith the Declaration of Landis C. Best "(Best Decl. _)".

26(b)(2)(iii) (court may limit discovery where "the burden or expense of the proposed discovery outweighs its likely benefit, taking into account ... the importance of the proposed discovery in resolving the issues"). Passing for the moment on the hurdle they must clear, Plaintiffs' specific objections to Household's responses to the Second Interrogatories have no merit.

More troubling, however, are Plaintiffs' persistent misrepresentations to this Court, identified below, of the parties' "meet-and-confer" discussions, and specifically of Household's good faith efforts to take under advisement Plaintiffs' never-ending objections regarding more and more remote matters in an attempt to accommodate Plaintiffs' more reasonable requests. This Court has already admonished Plaintiffs for their tactics in this regard. In its December 9, 2005 Order (at p. 7 n.3) denying Lead Plaintiffs' Motion to Compel the Household Defendants to Produce Documents Improperly Withheld on the Basis of Privilege, this Court rejected Plaintiffs' inference that Defendants' decision to turn over previously withheld documents was evidence that Defendants' other privilege assertions were untrustworthy and noted "[t]he court appreciates defendants' efforts to address plaintiffs' concerns ... and resolve some of the disputes." Defendants have again made efforts to resolve disputes with respect to the Second Interrogatories and have fully satisfied their obligations under Rule 33 of the Federal Rules of Civil Procedure. This Court should deny Plaintiffs' motion to compel in its entirety.

ARGUMENT

1. The Dispute Plaintiffs Raise With Respect To The Objections Interposed By Defendants Is A Red Herring And, In Any Event, Defendants' Objections To Plaintiffs' Second Interrogatories Are Proper

It is telling that the opening points of Plaintiffs' argument do not address the relevance of, or Plaintiffs' putative need for, the information requested by the Second Interrogatories, but are instead devoted to a bootless defense of Defendants' initial position (since abandoned) that Plaintiffs' Second Interrogatories had exceeded the number of interrogatories permissible under Rule 33. (Pls. Br. at 5-8) After conferring with Plaintiffs, Household agreed to extend, on a reciprocal basis, the limitation to 82 interrogatories and serve its Amended Responses to the Second Interrogatories on December 16, 2005. (Best Decl. ¶ 5) As this Court is aware, Plaintiffs initially took the untenable position that, while Plaintiffs were entitled to serve 82 interrogatories, Household was bound by the Rule to a limit of 25 — a position this Court

firmly rejected at the January 6, 2006 status conference awarding each party 85 interrogatories. (*Id.*)

Household served its Amended Responses on December 16 and, like its initial responses, set forth objections to the Second Interrogatories based on, among other grounds, relevance, vagueness, and burden. (*Id.* Exhibit 7) Not once during any "meet-and-confer" have Plaintiffs identified a single objection asserted by Household in any of its responses to the Second Interrogatories that Plaintiffs believe lacks the requisite specificity or causes them prejudice due to its alleged untimeliness. (*Id.* at ¶ 10)

Plaintiffs' position that, because Household further specified the bases for its objections in a supplemental response, Household's objections lack merit or have been waived, is not supported by the case law they cite.[2] Indeed, Plaintiffs fail to cite to those decisions where courts have refused to hold supplemental objections to interrogatories to be waived, even if they were not set forth in the initial response. *See Cahela* v. *James D. Bernard*, 155 F.R.D. 221 (N.D. Ga. 1994) (finding no waiver of supplemental, specific objections to interrogatories even though not set forth timely in initial responses); *see also In re Folding Carton Antitrust Litig.*, 83 F.R.D. 260, 264 (N.D. Ill. 1979) (considering supplemental responses, filed after time to respond had run, that contained specific objections to interrogatories even though initial responses only contained broad catch-all objections).

2. Household's Answer To Interrogatory 4 Complies With Rule 33

Interrogatory No. 4: "Identify the department(s) and individuals responsible for training employees in lending practices and policies at Household during the Relevant Period."

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2 *See, e.g., Fonville* v. *District of Columbia*, 230 F.R.D. 38, 42 (D.D.C. 2005) (defendants served both responses and amended responses to discovery outside of time limits under federal rules); *Hobley v. Burge,* No. 03 C 3678, 2003 WL 22682362, at *3 (N.D.Ill. Nov. 12, 2003) (defendant served "faux" response containing all possible objections in order to "buy time" to consider its actual objections); *Ramirez* v. *County of Los Angeles*, 231 F.R.D. 407 (C.D.Ca. 2005) (defendant waived future objections by failing to assert timely initial objections).

In its Third Amended Responses, Household identified 26 individuals and 2 departments in its Consumer Lending business unit primarily responsible for training employees with respect to lending practices and policies for loans secured by real property during the Class Period. (Best Decl. Exhibit 2) Household has satisfied its obligations under Rule 33, and Plaintiffs' motion as to this Interrogatory should be denied.

As has been their practice, Plaintiffs misrepresent the parties' "meet-and-confer" in an attempt to obtain information beyond what Household is obligated to provide. (Pls. Br. at 9) To begin, during the "meet-and-confer", Plaintiffs asked why Lew Walter was not identified in Household's Amended and Second Amended Responses as Plaintiffs understood that Mr. Walter was "involved in training on lending practices." (*Id.*) Household explained that Interrogatory 4 called for individuals *responsible* for training, and thus, to the extent Plaintiffs now sought identification of any person *involved* in training, however tangentially, the request was overbroad because, in a company of Household's size, potentially hundreds of employees were *involved* in training, especially given the five-year Class Period. (Best Decl. ¶ 14)

Household, thus, properly limited its response to identifying individuals *primarily responsible* for training employees in lending practices. *See In re Priceline.com Inc. Securities Litig.*, No. 3:00CV01884, 2005 WL 3160351, at *4 (D. Conn. Nov. 23, 2005) (finding limitation of identifying individuals "primarily" familiar or involved proper because "[t]he slim chance that plaintiffs would discover relevant information outside the core group of persons listed by defendants does not justify the effort necessary to provide this information"). Tellingly, Plaintiffs have failed to cite a single case supporting their view that Household's limitation is improper. (Pls. Br. at 8-9)

However, as a sign of Household's good-faith, and squarely contrary to ¶13 of the Baker Declaration (Pls. Br. at 9), Household took under advisement Plaintiffs' request that it identify individuals at Lew Walter's level of employment. (Best Decl. ¶ 15) And, in its Third Amended Responses (*id.* at Exhibit 2), Household supplemented its response and identified Lew Walter, as well as several additional individuals, whose lower-level positions exceeded what Household believed to be permissibly called for by Interrogatory 4. In total, Household has

identified 28 individuals or departments in response to Interrogatory 4 and has clearly satisfied its obligation under Rule 33.

Plaintiffs' harassment persists. They further request that Household represent that only the Consumer Lending business unit received training with respect to lending practices and polices during the Class Period. (Pls. Br. at 9-10) Absent this representation, Plaintiffs demand identification of all departments and individuals involved in lending practices and policies training within all of Household's business units, not just Consumer Lending. Nowhere in their brief, however, do Plaintiffs explain why training in lending practices outside of Consumer Lending might have anything whatsoever to do with this case.

Plaintiffs do not dispute, because they cannot, that Plaintiffs' allegations concerning Household's October 2002 settlement with various state attorneys general and banking regulators of purported claims of allegedly unlawful lending practices (Complaint ¶¶ 97-99) only pertained to Consumer Lending — *no other Household business unit had anything to do with the purported claims that were the subject of that settlement.* The attorneys general settlement is the linchpin for Plaintiffs' predatory lending allegations (*see, e.g.,* Pls. Br. at 2, 11) and, not surprisingly, Plaintiffs have failed even to proffer—let alone show—the relevance of lending practices training in any other Household business unit. The predatory lending allegations in the Complaint take aim at Household's retail branch lending network—which is its Consumer Lending business unit. For example, the Complaint alleges that consumers seeking loans were misled with respect to interest rates through a payment option known as EZ Pay. (*See* Complaint ¶¶ 55-60) These allegations are directed against Consumer Lending's retail branch business—not any other business unit none of which had as a core business the origination of loans secured by real property.[3]

Because training with respect to lending practices and policies in business units other than Consumer Lending is not relevant to Plaintiffs' predatory lending allegations, this Court should reject Plaintiffs' request that Household identify individuals responsible for train-

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[3] Other business units not implicated by Plaintiffs' predatory lending allegations include Mortgage Services, Retail Services, Auto Finance and Credit Card Services.

ing employees with respect to lending practices outside of Consumer Lending. *See* FRCP 26(b)(1); *see also Mr. Frank, Inc.* v. *Waste Management, Inc.*, No. 80 C 3498, 1981 WL 2050, at *3 (N.D.Ill. Mar. 27, 1981) (limiting geographical scope of discovery of defendant, which conducted operations across the Central United States, to those states relevant to allegations in the complaint).

3. Household Has Provided Plaintiffs With All Information Responsive To Subpart (a) of Interrogatories 5 Through 8 That Can Be Obtained Without Undue Burden

As has been their strategy from the inception of this litigation, Plaintiffs hope to turn the securities case they filed into a consumer fraud case before the jury. Indicative of this effort, Interrogatories 5 through 8 request Household to provide information concerning finance charges (No. 5), discount points (No. 6), single premium credit life insurance (No. 7), and prepayment penalties (No. 8) for loans secured by real property. (Best Decl. Exhibit 1) Of course, none of these features of Household's loans has anything to do with securities fraud.

In its Third Amended Responses (*id.* at Exhibit 2), Household supplemented its prior responses to subpart (a) of Interrogatories 5, 6, and 8 and provided 1997 and 1998 information. During the meet and confer process, Household informed Plaintiffs that it was not refusing to provide such information, but that it would provide it if it could be obtained without undue burden. (Best Decl. ¶ 21) Therefore, with respect to subpart (a) of Interrogatories 5, 6, and 8, this issue raised by Plaintiffs is moot. (Pls. Br. at 10)

(a) Plaintiffs did not request 2003 information in the Second Interrogatories

As an initial matter, in their brief, Plaintiffs request post-Class Period information in response to subpart (a) of Interrogatories 5 through 8, and specifically request year 2003 revenue. (*See* Pls. Br. at 11) Plaintiffs' purported belief in the relevance of post-Class Period information is of recent vintage because they demonstrably did not hold this view when they served the Second Interrogatories. Plaintiffs fail to inform this Court that they expressly limited the "Relevant Period", as defined in their Second Interrogatories, from January 1, 1997 through *De-*

cember 31, 2002, and nowhere requested 2003 information in the Second Interrogatories, including, without limitation, in Nos. 5 through 8. (Best Decl. Exhibit 1, at p. 2)

Household provided the information requested in subparts (a) of Interrogatories 5, 6, and 8 through the end of the Class Period, *i.e.* October 2002. Household further provided the information requested in subpart (a) of Interrogatory 7 through the second quarter of 2002, after which time single premium credit life insurance was no longer sold in connection with loans secured by real property. (*Id.* at Exhibit 2) Plaintiffs argue that "[a] comparison of pre-settlement and post-settlement revenues (2003) relating to these practices will reveal much about the impact on revenues associated with Household's predatory lending practices ... ." (Pls. Br. at 11) Plaintiffs' reasoning is flawed as this has nothing to do with the elements of the securities fraud claims they must prove, such as materiality and scienter with respect to statements at the time of disclosure; not after the fact. Whether or not revenue from the alleged lending practices declined or dissipated after Household's October 2002 settlement with the state attorneys general, *i.e. after* the October 2002 Class Period cut-off, does not evidence the materiality of revenue information *during* the Class Period. *See Pommer* v. *Medtest Corp.*, 961 F.2d 620, 625 (7th Cir. 1992) ("[t]he truth (or falsity) of defendants' statements and their materiality, must be assessed at the time the statements are made, and not in the light of hindsight"). Plaintiffs improperly seek to compare apples to oranges. Plaintiffs' request for 2003 information is without merit and should be rejected by this Court.

(b) 1997 and 1998 information responsive to subpart (a) of Interrogatory No. 7 cannot be obtained without undue burden

Plaintiffs take no issue, because they cannot, with respect to the information Household provided in response to subpart (a) of Interrogatory 7 for the first quarter of 1999 through the second quarter of 2002. That Interrogatory requests Household to identify revenue derived from the sale of single premium credit life insurance in conjunction with loans secured by real property. (Best Decl. Exhibit 1)

Plaintiffs additionally request this information for the years 1997 and 1998. As an initial matter, Plaintiffs fail to acknowledge Household's pending motion to dismiss Plaintiffs' claims that arose prior to July 30, 1999 as time barred under the three-year statute of repose the

Supreme Court adopted for Section 10(b) claims. Should the Court grant Household's motion under recent controlling Seventh Circuit authority, *see Foss* v. *Bear, Stearns & Co.*, 394 F.3d 540 (7th Cir. 2005), it is indisputable that pre-1999 information would have no relevance to Plaintiffs' remaining claims.

Despite Household's pending motion to dismiss, Household has in good faith investigated whether information for years 1997 and 1998 exists and, if so, can be obtained without undue burden. (*See* Titus Aff. ¶¶ 3-8) Unlike for years 1999 through 2002, information responsive to subpart (a) of Interrogatory 7 is not available electronically for 1997-1998. (*Id.* at ¶¶ 3-4) As explained in detail by Mr. Titus in his affidavit, "[p]rior to 1999, Household Insurance Group's proprietary software for information management did not organize revenue by various products, for example, by single premium credit life insurance." (*Id.* at ¶ 4)

In order to obtain this information, Household Insurance Group would be required to examine manually the hard copy loan documents and insurance records archived separately for hundred of thousands of real property secured loans originated in years 1997 and 1998 to identify the income derived from the sale of single premium credit life insurance. (*Id.* at ¶¶ 6-8) According to Mr. Titus, "I cannot even begin to provide a reasonable estimate of the substantial time and cost that would be incurred to provide the [1997 and 1998] information requested by Plaintiffs. I can state it would be a monumental task that could not be completed in the foreseeable future." (*Id.* at ¶ 8) Given that the Court may shortly conclude that Plaintiffs' claims that arose prior to July 30, 1999 are time-barred, the burden and expense that would be imposed on Household to obtain 1997 and 1998 information responsive to Interrogatory 7(a) is not justified. Thus, this Court should deny Plaintiffs' request.

(c) Interrogatory 6(a) does not make sense as drafted by Plaintiffs and, in any event, Household provided responsive information

Interrogatory 6(a) asks Household to identify "the amount of revenues and net income derived from discount points for both owned and managed real property secured loans." (Best Decl. Exhibit 1) Robert C. Sekany, who is the Director-Financial/Business Analysis supporting Household's Consumer Lending finance department and responsible for the monthly close process, explained:

> "I do not understand what Plaintiffs mean by 'the amount of revenues and net income derived from discount points', however, Consumer Lending only maintains records that reflect the *amortization* of prior discount points and origination fees charged to customers." (Sekany Aff. ¶ 3)

In its Third Amended Responses, Household provided Plaintiffs for each month from January 1997 to October 2002 (with the exception of November and December 1998 for which it is not available) the amortization of discount points and origination fees recorded by Consumer Lending for loans secured by real property. (Best Decl. Exhibit 2) Plaintiffs assert that "Defendants should provide the discount point information by itself" (Pls. Br. at 12) In a good faith effort to accommodate Plaintiffs' request, Household investigated whether such information could be provided (Best Decl. Exhibit 17), but "Consumer Lending does not maintain any records that would enable it to provide discount point information by itself." (Sekany Aff. ¶3)

4. The Information Requested By Subpart (b) Of Interrogatories 5 Through 8 And Interrogatories 9 Through 12 Cannot Be Obtained Without Undue Burden And Expense And Should Be Stricken By The Court

Subpart (b) of Interrogatories 5 through 8 request Household to identify "the number of loans" from which the revenue identified for: finance charges (No. 5); discount points (No. 6); single premium credit life insurance (No. 7); and prepayment penalties (No. 8) was derived. (Best Decl. Exhibit 1)

Plaintiffs only perfunctorily address the relevance of and need for information concerning "the number of loans," claiming it will show the "pervasiveness" of the alleged predatory practices. (Pls. Br. at 13) This is a non sequitor. Plaintiffs assert claims for alleged violations of the federal securities laws; this is not a class action on behalf of consumers to recover for alleged lending violations no matter how much Plaintiffs wish it were so, and thus pervasiveness has nothing to do with this case. For purposes of Plaintiffs' federal securities claims, the only claims in the Complaint, it matters *not* how many loans in a given month resulted in, for example, finance charges. Rather, the only information possibly relevant to Plaintiffs' securities claims is the "bottom-line" revenue to Household from finance charges—setting aside for the moment whether such revenue was material to Household's financial results or investors.

Household provided Plaintiffs with such revenue information as requested in subpart (a) of Interrogatory Nos. 5 through 8 and Plaintiffs should be entitled to no more.

Plaintiffs argue that the revenue information Household provided in response to subpart (a) of Interrogatories 5 through 8 "can be used to determine the average revenues attributable to a particular predatory lending practice." (Pls. Br. at 13) Plaintiffs are incorrect. As explained in ¶ 4 of the Sekany Affidavit, "Consumer Lending does not analyze income from particular sources of revenue, *i.e.* finance charges, discount points, life insurance or prepayment penalties, on a per loan basis" and Mr. Sekany further confirms that no hard copy or electronic records exist that show the total number of loans, by month, from which each of the sources of revenue specified by Plaintiffs was derived. Similarly, Mr. Titus explains that Household Insurance Group "did not track the number of loans secured by real property that carried single premium credit life insurance for the period 1997 through the 2002 second quarter." (Titus Aff. ¶ 9) In short, as the affidavits of Messrs. Sekany and Titus make clear, Household does not maintain, in the manner sought by Plaintiffs, the information requested in subpart (b) of Interrogatories 5 through 8.

Plaintiffs make no attempt to explain the relevance to their securities fraud claims of Interrogatories 9 and 10, which concern loan payments made by EZ Pay, and Nos. 11 and 12, which concern instances where a second loan on the same property carried a 20% or higher interest rate, but instead, obscurely refer to the Complaint. In any event, Consumer Lending maintains no information, in either hard copy or electronic format, in the manner requested by Plaintiffs that is responsive to these Interrogatories. (Sekany Aff. ¶¶ 5-6)

Both Messrs. Sekany (¶ 8) and Titus (¶ 9) explain in their affidavits that, because Household does not maintain this information in the manner requested by Plaintiffs, in order to obtain information that may be responsive to subpart (b) of Interrogatories 5 through 8 and Interrogatories 9 through 12, they would be required to consult HSBC Technology & Services (USA), Inc. ("HTS") —Household's information systems management unit.

Diane Giannis, who is Director of Business Systems within HTS and who supports Consumer Lending, explains in detail in her affidavit that information that may be respon-

sive to these Interrogatories could not be obtained without imposing undue burden and expense on Household.

Specifically, Ms. Giannis explains in her affidavit that it would take approximately 52 business days at a cost of $23,000.00 to obtain *some* of this information by developing software, specific to Plaintiffs' requests, to search on-line account data, which is only available for loans that remain *active*, *i.e.* are still being paid off, from the 1997 to 2002 period, as well as for a *fraction* of loans from that period that have been paid off by customers. (Giannis Aff. ¶¶ 4-6) She further explains that limited "snapshot" account information that may be responsive to only certain of these Interrogatories could be obtained for loans that were paid off from 1997 to 2002 at cost of approximately $27,000.00. (*Id.* at ¶¶8-15) Neither of these sources of data, however, would enable Household to provide complete responses to these Interrogatories in the manner requested by Plaintiffs for *all* real property secured loans during the 1997 to 2002 period, and thus any response to these Interrogatories would be of limited utility. (*Id.* at ¶¶ 6-15)

The only way to ensure that all real property secured loans from the 1997 to 2002 period that are no longer active were analyzed is to examine manually, on an account-by-account basis, the account information for hundreds of thousands of customers which is maintained on an off-line database. (*Id.* at ¶7) This off-line database cannot be searched by software. (*Id.*) According to Ms. Giannis, "it would take a person approximately 6,250 business days to examine manually only one hundred thousand real estate secured loan accounts. I can state with certainty that the information requested by Plaintiffs in subpart (b) of Interrogatory Nos. 5 through 8 and Nos. 9 through 12 could not be obtained in any foreseeable time frame by looking up account information manually [off-line]." (*Id.*)

The fact that Household does not track information in the manner requested by Plaintiffs in subpart (b) of Interrogatories 5 through 8 and Interrogatories 9 through 12 further demonstrates the absence of scienter, proof of which is essential to Plaintiffs' securities fraud claims. As Ms. Giannis' affidavit makes clear, in order to respond to these Interrogatories, Household cannot simply "run a computer search" as Plaintiffs suggest (Pls. Br. at 14), but rather would be required to manipulate raw data from multiple sources to create reports of information that Household never analyzed.

Given the attenuated relevance, at best, of this information to Plaintiffs' securities fraud claims, this burden is not justified, and this Court should strike subpart (b) of Interrogatories 5 through 8 and Interrogatories 9 through 12. *See* FRCP 26(b)(2)(iii); *see also Ron Bianchi & Assocs., Inc.* v. *O'Daniel Automotive, Inc.*, No. 1:02-CV-20, 2003 WL 21919186 (N.D. Ind. Feb. 20, 2003) (burden outweighed benefit with respect to interrogatory with limited relevance requiring review of more than 200,000 transaction documents and more than 100 man hours); *Mr. Frank, Inc.*, 1981 WL 2050, at *3 (geographical scope of interrogatories unduly burdensome after weighing "the slim possibility that this broad discovery may prove fruitful" against "the undeniable expense and inconvenience to which defendants will be put in producing...information requested"); *Burger King Corp.* v. *Grais*, No. 90 C 6562, 1992 WL 44406 (N.D. Ill. Feb. 28, 1992) (burden outweighed benefit with respect to interrogatory to large international corporation that had been involved in hundreds of lawsuits subject to the interrogatory). Plaintiffs' manifest belief that, because they have filed suit against Household seeking millions of dollars for alleged securities fraud, they are entitled to whatever discovery they demand, regardless of burden, has no merit and is not supported by the cases they cite.[4]

5. Plaintiffs Misstate The Record Because Household Agreed To (And Did) Supplement Interrogatory 18

Plaintiffs misrepresent to this Court Household's response to Interrogatory 18 and further mislead this Court by recklessly paraphrasing this Interrogatory in their brief. (Pls. Br. at 14) Contrary to Plaintiffs' description in their brief, Interrogatory 18 provides in full: "For each response to Interrogatory Nos. 4 through 16, identify *by Bates number* all documents supporting those responses." (emphasis added) In its Amended and Second Amended Responses, House-

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[4] The cases cited by Plaintiffs at p. 8 of their brief are inapposite. *See FDIC.* v. *Mercantile Nat'l Bank*, 84 F.R.D. 345 (N.D. Ill. 1979) (defendants could simply produce business records in response to interrogatories); *Board of Education* v. *Admiral Heating & Ventilating Inc.*, 104 F.R.D. 23, 29 (N.D. Ill. 1984) (no undue burden where "corporate defendants need only inquire of, and review documents maintained by, its present personnel who have substantial responsibility in the business areas that are the subject of the inquiry"); *Fridkin* v. *Minnesota Mut. Life Ins. Co., Inc.*, No. 97 C 0332, 1998 WL 42322, *2 (N.D. Ill. Jan. 29, 1998) (defendants simply required to identify instances in which they had been found liable by courts or arbitration panels).

hold identified *by Bates number*, as expressly called for, the documents already produced to Plaintiffs used to support its prior responses. (Best Decl. Exhibits 7 & 11)

Plaintiffs claim Household's response is deficient because "it would be impossible to generate the revenue information provided as to Interrogatory No. 5(a) absent reference to documentary evidence whether hard copy or electronic." (Pls. Br. at 14) However, the information to which Household referred in order to provide a response to Interrogatory No. 5(a) had not been produced to Plaintiffs because it was not responsive to any of Plaintiffs' document demands; thus, Household did not believe it was called for by Interrogatory 18, which specifies Bates-stamped documents.

In any event, upon conferring with Plaintiffs as to the intended scope of Interrogatory 18, Household agreed to take under advisement Plaintiffs' request that its response be supplemented. (Best Decl. ¶¶ 22- 25) As a sign of its good faith, in its Third Amended Responses, Household has indeed supplemented its response to Interrogatory 18 and, additionally, despite being under no present obligation to do so, produced to Plaintiffs the information to which it referred in responding to Interrogatories 5, 6, 7, and 8. (*Id.* at Exhibit 2) Plaintiffs' statement that "[d]espite earlier representations on January 10 that they would supplement this response, on January 19, 2006, defendants refused to supplement their response to Interrogatory No. 18" is demonstrably untrue. (*Id.* ¶¶ 24-25)

6. Plaintiffs' Request For Sanctions Is Baseless

Contrary to the misrepresentations Plaintiffs have made to this Court, Defendants have continuously acted in good faith and have fully satisfied their obligations under Rule 33 in responding to the Second Interrogatories. (Best Decl. ¶26) Plaintiffs' request for sanctions has no basis in law or fact and should be denied. (Pls. Br. at 15) *See, e.g., Brandt* v. *Vulcan*, 30 F.3d 752, 756 (7th Cir. 1994) (sanctions may only be imposed "where a party fails to comply with a discovery order and displays willfulness, bad faith or fault"); *Langley* v. *Union Electric Co.*, 107 F.3d 510, 514 (7th Cir. 1997) (same); *Gaytan* v. *Kapus*, 181 F.R.D. 573, 579 n.8 ("Rule 37(d) is not applicable because it involves sanctions for the failure to serve answers to interrogatories . . . [t]he conduct alleged here is not the total failure to respond but rather incomplete responses"); *M. McGee Design Studio, Inc.* v. *Brinson*, No. 94 C 1644, 1994 WL 380613, at *10 (N.D. Ill. July

18, 1994) (denying sanctions because "the correspondence between the parties evinces a good faith effort to resolve these discovery disputes").

CONCLUSION

Defendants respectfully request that Plaintiffs' motion to compel be denied in its entirety and that subpart (b) of Interrogatory Nos. 5 though 8 and Interrogatory Nos. 9 through 12 be stricken by this Court.

Dated: February 3, 2006
Chicago, Illinois

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