

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

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

**REPLY BRIEF IN SUPPORT OF THE CLASS' MOTION TO COMPEL RESPONSES
TO SECOND SET OF INTERROGATORIES FROM HOUSEHOLD DEFENDANTS**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THE HOUSEHOLD DEFENDANTS WAIVED THEIR RELEVANCE AND UNDUE BURDEN OBJECTIONS	1
III. THE HOUSEHOLD DEFENDANTS CANNOT CONTEST THE RELEVANCY OF INFORMATION REGARDING THEIR PREDATORY LENDING PRACTICES	3
IV. THE HOUSEHOLD DEFENDANTS' ASSERTIONS THAT THE RESPONSIVE INFORMATION DOES NOT EXIST OR IS HARD TO OBTAIN ARE FALSE	4
V. THE HOUSEHOLD DEFENDANTS' PARTICULAR ARGUMENTS AS TO INDIVIDUAL INTERROGATORIES OR SPECIFIC TYPES OF INFORMATION SHOULD BE REJECTED.....	8
A. Post-Class Period Information	8
B. Interrogatory No. 4.....	10
C. Interrogatory No. 6(a)	11
D. Subpart (b) to Interrogatory Nos. 5 through 8	12
E. Interrogatory Nos. 9 and 10	13
F. Interrogatory Nos. 11 and 12	13
G. Interrogatory No. 18.....	14
VI. THE HOUSEHOLD DEFENDANTS SHOULD BE ORDERED TO PRODUCE RESPONSIVE INFORMATION WITHIN 20 BUSINESS DAYS.....	14
VII. THE COURT SHOULD AWARD THE EXPENSES ASSOCIATED WITH THIS MOTION.....	15
VIII. CONCLUSION.....	15

TABLE OF AUTHORITIES

Page

CASES

Cahela v. James D. Bernard, D.O., P.C.,
155 F.R.D. 221 (N.D. Ga. 1994).....3

Cardenas v. Dorel Juvenile Group, Inc.,
230 F.R.D. 611 (D. Kan. 2005).....3

Control Data Corp. Sec. Litig.,
Master Dkt. 3-85-1341, 1987 U.S. Dist. LEXIS 16829
(D. Minn. Dec. 10, 1987).....8, 9

Folding Carton Antitrust Litig.,
83 F.R.D. 260 (N.D. Ill. 1979).....3

Hobley v. Chicago Police Commander Jon Burge,
Case No. 03 C 3678, 2003 U.S. Dist. LEXIS 20585
(N.D. Ill. Nov. 10, 2003).....2, 3

In re Brand Name Prescription Drugs Antitrust Litig.,
No. 94 C 897, 1995 U.S. Dist. LEXIS 8281
(N.D. Ill. June 15, 1995)7

In re Providian Fin. Corp. Sec. Litig.,
152 F. Supp. 2d 814 (E.D. Pa. 2001)3, 4

In re Sulfuric Acid Antitrust Litig.,
231 F.R.D. 351 (N.D. Ill. 2005).....8, 12

Pommer v. Medtest Corp.,
961 F.2d 620 (7th Cir. 1992)9

Safeco Ins. Co. of Am. v. Rawstrom,
183 F.R.D. 668 (C.D. Cal. 1998)2, 3

RULES

Federal Rules of Civil Procedure

Rule 30(b)(6)12, 13

Rule 333

Rule 37(a)(3).....15

Rule 37(a)(4).....15

I. INTRODUCTION

The Class' motion concerns the refusal of defendants Household International, Inc., Household Finance Corporation (collectively, "Household" or the "Company"), William F. Aldinger, David A. Schoenholz, Gary Gilmer, and J.A. Vozar to provide basic information regarding the Company's predatory lending practices in response to Lead Plaintiffs' Second Set of Interrogatories ("Interrogatories"), Interrogatory Nos. 4, 5, 6, 7, 8, 9, 10, 11 and 12. The Household defendants' opposition to this motion is without merit. They cannot rest their refusal on any valid, timely objections. Nor can they base their opposition on the legally erroneous contention that the Class' predatory lending practice allegations cannot form the basis of the Class' federal securities law claims. This contention is also procedurally incorrect, given the extensive predatory lending allegations in the operative complaint and the history of this case, particularly Judge Guzman's denial of the Household defendants' request for a discovery stay.

Further, while the Household defendants claim that the information responsive to the Interrogatories at issue is not available or unduly burdensome to obtain, the Class has submitted in support of this brief documents demonstrating that this information is available and could be produced without undue burden. Indeed, even the affidavits submitted by the Household defendants, when taken on their face, fail to establish any undue burden in providing this information. The Household defendants, thus, fail to meet their burden of proof to establish an objection based on undue burden.

II. THE HOUSEHOLD DEFENDANTS WAIVED THEIR RELEVANCE AND UNDUE BURDEN OBJECTIONS

In their opposition, the Household defendants suggest that the Class' discussion of the procedural and substantive merit of the objections raised in response to the Interrogatories is a "red herring." Memorandum of Law in Opposition to Lead Plaintiffs' Motion to Compel Responses to Second Set of Interrogatories from the Household Defendants ("Opp.") at 2. To the contrary, in a

motion to compel, whether Household's objections were timely and properly raised is determinative. As Household has, indeed, failed to timely raise any valid objections, this motion should be granted without further consideration.

This case closely parallels that of *Hobley v. Chicago Police Commander Jon Burge*, Case No. 03 C 3678, 2003 U.S. Dist. LEXIS 20585 (N.D. Ill. Nov. 10, 2003) and *Safeco Ins. Co. of Am. v. Rawstrom*, 183 F.R.D. 668 (C.D. Cal. 1998). In *Hobley*, the court condemned a party for raising new, untimely objections after initially raising what it characterized as *faux objections*. 2003 U.S. Dist. LEXIS 20585, at *10. In *Safeco*, the court held "interrogatory objections not included in a timely response are waived even if the objections are contained in a later untimely response, absent a showing of good cause."¹ 183 F.R.D. at 671.

The objections raised in the Household defendants' October 24, 2005 initial response are "placeholder" objections like those asserted in *Hobley*. These objections were not raised by the Household defendants during the meet and confer process. See ¶2 to the Supplemental Declaration of D. Cameron Baker ("Supp. Baker Decl."), filed concurrently herewith. Moreover, each of the general objections contains the phrase "to the extent that" and thus, under the abundant case law cited by the Class in the Class' Memorandum in Support of Motion to Compel Responses to Second Set of Interrogatories from Household Defendants ("Motion"), is invalid. Motion at 5 (citing numerous cases). The Household defendants do not contest the invalidity of their October 24, 2005 general objections.

As to the December 16, 2005 objections, the Household defendants impliedly concede these objections are untimely, but argue that a party may raise new objections after an initial response,

¹ The Household defendants have not and could not advance any good cause argument in the circumstances.

citing two cases, *Cahela v. James D. Bernard, D.O., P.C.*, 155 F.R.D. 221 (N.D. Ga. 1994) and *In re Folding Carton Antitrust Litig.*, 83 F.R.D. 260, 264 (N.D. Ill. 1979). The Household defendants' reliance on *Folding Carton* is improper because that case predates the 1993 amendment to Fed. R. Civ. P. 33 mandating that a party raise all objections with specificity in the initial 30-day response. *See* Advisory Committee Notes, 1993 Amendment (paragraph (b)(4) was added in 1993). Moreover, the flaws in *Cahela* are thoroughly addressed in *Safeco*, which was ignored by the Household defendants in their opposition. *Safeco*, 183 F.R.D. at 671 (*Cahela* gives "insufficient attention to the language and purposes of Rule 33," including this 1993 amendment and fails to consider policy implications.).

Because the Household defendants have no valid objections to these Interrogatories, they have no basis to oppose this motion and the Court should, therefore, grant it, including the award of the Class' expenses as a sanction. *See Hobley*, 2003 U.S. Dist. LEXIS 18363; *Cardenas v. Dorel Juvenile Group, Inc.*, 230 F.R.D. 611, 622 (D. Kan. 2005).

III. THE HOUSEHOLD DEFENDANTS CANNOT CONTEST THE RELEVANCY OF INFORMATION REGARDING THEIR PREDATORY LENDING PRACTICES

The Household defendants' prime argument is their contention that information regarding their predatory lending practices has "no relevance whatsoever to claims arising under the federal securities laws." Opp. at 1; *see also id.* at 6, 9. As a strictly legal proposition, this argument has no merit: where the core business of a company, such as Household, is making loans and engaging in other lending-related activity for the purpose of growing revenue and net income, misrepresentations and omissions relating to such core business that impact the financial performance and hence the stock price of the company, are, in fact, securities fraud. *In re Providian Fin. Corp. Sec. Litig.*, 152 F. Supp. 2d 814 (E.D. Pa. 2001).

This argument also fails given the specific procedural history of this case. Judge Guzman's denial of the Household defendants' motion to dismiss on March 19, 2004, under the Private Securities Litigation Reform Act, entitles the Class to discovery on all of its allegations, including its predatory lending allegations. On December 3, 2004, Judge Guzman certified the Class, which includes 1997 and 1998. Docket No. 198. Moreover, on July 7, 2005, Judge Guzman specifically denied the Household defendants' motion to stay discovery while their most recent motion to dismiss were under consideration. Docket Nos. 249, 261. In the face of Judge Guzman's rulings, defendants cannot argue about the relevancy of discovery relating to the Class' detailed allegations of predatory lending and should not suggest that this Court in effect overrule Judge Guzman's prior orders by deferring discovery into the 1997 and 1998 information. *See Opp.* at 8.

This relevancy argument makes even less sense in the context of this motion as the Household defendants concede the materiality of these practices is an element that the Class must prove. *See Opp.* at 1; *see also id.* at 9 (admitting the relevance of the bottom-line revenue numbers). The interrogatories at issue focus on basic information about these practices relating to their materiality. While the Household defendants might wish otherwise, under the liberal scope of discovery, the Class is entitled to their information.

IV. THE HOUSEHOLD DEFENDANTS' ASSERTIONS THAT THE RESPONSIVE INFORMATION DOES NOT EXIST OR IS HARD TO OBTAIN ARE FALSE

The Household defendants have submitted three affidavits in support of their opposition that generally state the information sought in these interrogatories is not available or would be difficult to obtain. For example, Robert Sekany asserts that there is no information available regarding EZ Pay. Affidavit of Robert C. Sekany ("Sekany Aff."), ¶5. However, documents obtained by the Class and submitted with this brief undercut the Household defendants' sweeping conclusions of undue burden or unavailability.

These documents confirm the availability of revenue and loan information regarding prepayment penalties, single premium credit life insurance, discount points, side loans (personal home loans issued within 15 days after issuance of a real estate loan) and EZ Pay. Certain of these documents show that the Household defendants voluntarily collected and compiled much of the information at issue for the Attorneys General in 2002.² *See, e.g.*, Supp. Baker Decl., Exs. 1-3. Having voluntarily provided this information to the Attorneys General, the Household defendants have no basis asserting either that the information is unavailable or that it is too difficult to obtain.

The Class has also submitted financial reports prepared by Household relating to some of the predatory lending practices, including EZ Pay, discount points and side loans. *See* Supp. Baker Decl., Exs. 6-14 & 19. Collectively, the documents and the Attorney General documents demonstrate that despite the Household defendants' assertion, the information responsive to the Interrogatories exists and could be easily provided by the Household defendants.

The affidavits submitted by the Household defendants are not to the contrary. The ultimate conclusion based on those affidavits is that the Household defendants could have produced all of the information described in the Affidavit of Diane E. Giannis ("Giannis Aff."), ¶¶5, 8-13, at a cost of \$50,000 and within 52 business days. This 52-business day estimate is inflated as it assumes that Household would assign only a single individual to perform this task. Giannis Aff., ¶5. Ms. Giannis does not explain why only a single person should be assigned to this important task.³ In any event, a more realistic estimate would be 20 days, which is about the length of the longest individual task when assigned to a single individual. *See* Giannis Aff., ¶5(f).

² During his deposition, Peter Sesterhenn confirmed that special reports were prepared as part of those discussions. Supp. Baker Decl., Ex. 4 at 127:12-22.

³ By contrast, there was a team involved in compiling the information in response to an early 2003 request for the Attorneys General. *See* Supp. Baker Decl., Ex. 15 (email describing "call" among individuals working on that project).

This expense and time are not unduly burdensome in the context of this complex case. Moreover, these interrogatories have been pending since September 16, 2005. If the Household defendants had commenced the process of gathering this information then they would have already had the data in hand. Similarly, as to the expense, the Household defendants will likely pay more than \$50,000 in legal fees alone associated with the prolonged meet and confer and the motion. In these circumstances, the Household defendants cannot argue undue burden.

Moreover, the burden, if any, in responding to these interrogatories is largely self-imposed. As noted above, the Household defendants would have completed this process if they had commenced in a timely manner. Additionally, the affiants do not affirmatively state that the responsive information never existed or was never readily available – only that it does not now exist or is hard to obtain. *See* Affidavit of Timothy J. Titus (“Titus Aff.”), ¶59 (discussing whether any electronic or hard copy documents exist that would reflect number of loans carrying single premium credit life insurance); Giannis Aff., ¶¶6-7 (on-line data pertains to active accounts or those paid off since February 2002 while other data exists on off-line AMMO database). Mr. Sekany’s affidavit is the most telling on this point. He twice states that he “investigated whether Consumer Lending maintained electronic data or hard copy records” and that “upon investigation, I learned that no records exist within Consumer Lending.” Sekany Aff., ¶4. Mr. Sekany pointedly does not state what his investigation concluded regarding whether Consumer Lending formerly maintained such records. The Household defendants cannot affirmatively use their own failure to maintain records and information as a basis for an undue burden objection. *In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897, 1995 U.S. Dist. LEXIS 8281, at *6 (N.D. Ill. June 15, 1995) (the plaintiffs should not have to bear the burden of production “where, as here, ‘the costliness of the discovery procedure involved . . . is a product of the defendant’s record-keeping scheme over which the [plaintiffs have] no control’”) (ellipses and brackets in original); *Brown v. Sheahan*, No. 93 C

5779, 1994 U.S. Dist. LEXIS 5223, at **5-6 (N.D. Ill. Apr. 20, 1994) (undue burden objection overruled where burden was self-imposed through failure to timely commence responding to the discovery requests).

Finally, there are a number of troubling aspects to the affidavits submitted by the Household defendants. First, when asked to designate a person most knowledgeable as to financial information maintained by the Consumer Lending business unit, Household designated Peter Sesterhenn and not any of the individuals who submitted affidavits on this motion. During his deposition, Mr. Sesterhenn asserted that he was most familiar with a number of the financial data at issue. *See* Supp. Baker Decl., Ex. 4 at 22:11-20 (he was aware of no one more knowledgeable regarding data and reports concerning prepayment fees and points). Mr. Sesterhenn did not mention Mr. Sekany during this deposition. *See, e.g., id.* at 10:1-11:13 (discussing his superior and direct reports); *id.* at 17:5-26:11 (discussing who else was knowledgeable about topics of deposition and with whom he met to prepare for deposition).

Second, the affidavits are vague and omit key information. None of the three affiants states that they were in their current positions during the Class Period or even employed by the Company between 1997-2002. The affidavits do not cover all possible sources of this information or all alternative means for deriving it. For example, there is no affidavit from the Company accounting or legal departments indicating that they do not have this information. Similarly, Ms. Giannis' unit does not have access to all relevant databases. According to a Securities and Exchange Commission filing, her unit was formed on January 1, 2004, but did not take custody or control of "[t]echnology related assets owned by Household prior to January 1, 2004." Supp. Baker Decl., Ex. 17. Other gaps are discussed with respect to the specific interrogatory at issue. *See infra* at 11-12 (discussing gap regarding discount point calculation).

These gaps in the affidavits undercut the Household defendants' undue burden arguments. "Whether these omissions were inadvertent or purposeful need not be determined. Any uncertainties go against the defendants, not the plaintiffs, since the former have the responsibility to demonstrate undue burden." *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 351, 361 (N.D. Ill. 2005).

V. THE HOUSEHOLD DEFENDANTS' PARTICULAR ARGUMENTS AS TO INDIVIDUAL INTERROGATORIES OR SPECIFIC TYPES OF INFORMATION SHOULD BE REJECTED

The Class now turns to discussion of the arguments raised as to specific interrogatories or specific information.

A. Post-Class Period Information

The Household defendants refuse to provide any post-Class Period information, *i.e.* information after October 2002, based on relevancy. Given the broad scope of discoverable information, the Household defendants' objection is not valid.

In the opening brief, the Class cited case law, indeed case law previously cited by the Household defendants, *In re Control Data Corp. Sec. Litig.*, Master Dkt. 3-85-1341, 1987 U.S. Dist. LEXIS 16829 (D. Minn. Dec. 10, 1987), for the proposition that post-Class Period information was discoverable. In that case, the court squarely rejected what the Household defendants contend here as "too cramped a view of what is discoverable in [a securities fraud class action] such as this." *Id.* at *5. After noting the "numerous instances in securities fraud litigation where post-offering statement[s], documents or conduct have been treated as admissible evidence on the issue of scienter, intent, and knowledge" and without even cursorily concerning the nature of any of the pending discovery requests, the court held "there cannot be a time-frame limit on discoverable facts" and overruled "all of [the opposing party's] objections . . . on the grounds that they seek materials . . . after [the Class Period.]" *Id.* at **7-8; *see also In re Seagate Tech. II Sec. Litig.*, No. C-89-2493(A)-VRW, 1993 U.S. Dist. LEXIS 18065 (N.D. Cal. June 15, 1993).

Rather than address or rebut *Control Data*, the Household defendants proffer *Pommer v. Medtest Corp.*, 961 F.2d 620 (7th Cir. 1992). *Pommer* is inapposite as it addresses whether a particular post-contract letter was admissible in evidence at trial, not a discovery dispute. *See id.* at 625. Moreover, in *Pommer*, the court did not rule that the letter was *per se* inadmissible as the Household defendants seem to argue, but indicated that the letter might be admissible. *Id.* at 626 (leaving admission of the letter to the discretion of the trial judge). Thus, *Pommer*, to the extent applicable, supports the Class.

Under *Control Data*, the Household defendants should provide the post-Class Period information. Any change in the financial revenue and loan numbers associated with the predatory lending practices following the Attorneys General settlement would in fact be relevant as tending to establish that during the Class Period these practices were pervasive and generated substantial revenues for Household. Moreover, there is no burden on the Household defendants in providing this information. Indeed, as part of the Attorneys General settlement, Household has had to provide this information to a monitor.

As a last gasp, the Household defendants contend that the Interrogatories at issue do not cover 2003. However, this is a typographical error and the parties have always treated these interrogatories as calling for 2003 information. *See Baker Supp. Decl.*, Ex. 11 at 3. In the meet and confer process, the Household defendants objected to production of 2003 information based on relevance, not on the language in the interrogatories. *Supp. Baker Decl.*, ¶8. Indeed, not once did the Household defendants contend that this information was not requested in the interrogatories. *Id.* If they had, the Class would have promptly corrected this typographical error by sending a corrected version, which the Class did on February 9, 2006. *Id.* The Household defendants' February 10, 2006 response confirms the foregoing: "As you know from our meet and confer discussions, Household did not and does not agree that the relevant time period for Plaintiffs' Second Set of

Interrogatories was January 1, 1997 through December 31, 2003.” Supp. Baker Decl., Ex. 18. Accordingly, the Court should order the production of all post-Class Period information through December 31, 2003.

B. Interrogatory No. 4

The dispute over this interrogatory relates to whether the Household defendants may limit their response to those “primarily responsible” for training and to that training received only by employees at the Consumer Lending business unit. The Household defendants must justify these limitations in the face of the liberal policy favoring discovery. They have not done so.

As to the first issue, “responsible” vs. “primarily responsible,” the Household defendants cannot argue undue burden because there is no real burden with obtaining the additional information. Moreover, the use of the term “responsible” includes a reasonable limitation as to the scope of people required to be identified. While the Household defendants try to play word games with the Class’ use of “involved,” the term “responsible” is much more restrictive than “involved.”

As to the second issue, the limitation to training on real estate lending practices only to the Consumer Lending business unit, the Class’ allegations are not limited to that business unit. *See, e.g.,* Complaint, ¶¶52 (describing predatory lending practices at issue). Further, Household documents confirm that other business units also engaged in these predatory lending practices, including the EZ Pay Plan.⁴ *See* Supp. Baker Decl., Ex. 5 at HHS02147993-97 (discussing primary functions of Telesales division of Mortgage Services business unit, including new loan originations and cross-selling loan products, such as the EZ Pay Plan). Given this, the Household defendants’ contention that none of its other business units “had as a core business the origination of loans

⁴ Given these documents, it is not surprising that the Household defendants refused to provide a representation that these other units received no training regarding predatory lending practices. *See* Opp. at 5.

secured by real property” is at best a half-truth. In any event, as other business units did engage in predatory lending practices, the Class is entitled to discovery on any training received by those units as to those practices. Discovery into this training will be useful as either confirming the widespread nature of Household’s predatory lending practices and/or by way of comparing this training of these business units to that training received by the Consumer Lending Unit.

C. Interrogatory No. 6(a)

In their opposition, the Household defendants assert that they don’t have records that would enable them to produce discount point information by itself.⁵ Opp. at 9. To the contrary, Household could produce this information if they so desired. However, since it would be harmful to their allegations, the Household defendants would prefer not to provide it.

There are two means by which the Household defendants could produce the responsive information. First, they could take the blended information that they have provided, *i.e.* the discount points and origination fees, and subtract out the origination fees. During the meet and confer process, the Class requested that Household utilize this method. Supp. Baker Decl., ¶2. The Household defendants refused to do so based on burden. *Id.* Significantly, neither Ms. Giannis nor Mr. Sekany addresses this possibility in their affidavits. Given this omission, as the party with the burden of proof on this issue, the Household defendants have failed to establish the validity of their undue burden objection. *Sulfuric Acid*, 231 F.R.D. at 361.

Second, as indicated in Mr. Sekany’s affidavit, the Household defendants could conduct a computer search based on the Company’s loan databases. Sekany Aff., ¶3. During the course of

⁵ Mr. Sekany purports to be confused by this interrogatory. However, during the meet and confer, the Household defendants expressed no such confusion. Instead, the focus of the discussion was on their ability to separate discount point information from origination fee information. Further, the Class has limited these requests to revenue information only and not net income based on Household’s assertion that it did not charge expenses against this particular revenue stream.

their document review, the Class has seen Household documents that segregate discount points from origination fees. Supp. Baker Decl., Exs. 6-8 & 19. As shown in these documents, discount point information is tracked in these databases separately from origination fee information.

Additionally, the Household defendants have offered no affidavit to the effect that this information is not tracked in their general ledger, a position they asserted during the meet and confer. Significantly, the Class has submitted a general ledger document that indicates a number of accounts used tracking discount points and other fees. *See* Supp. Baker Decl., Ex. 8. The Class cannot definitely state the importance of these general ledger accounts because Household's Rule 30(b)(6) witness on Consumer Lending financial information, Mr. Sesterhenn, was unable to testify as to this document. *See* Supp. Baker Decl., Ex. 4 at 114:13-116:17. Further, Household has refused to produce the list of the general ledger accounts despite the Class' efforts to obtain the list. *See, e.g.,* Declaration of Landis C. Best ("Best Decl."), Ex. 18.

D. Subpart (b) to Interrogatory Nos. 5 through 8

These interrogatories call for information regarding the quarterly number of loans associated with the predatory lending practices at issue. As the party opposing discovery, the Household defendants must do more than assert in conclusory fashion that this loan information is not relevant, which is all they do. As previously discussed, the number of loans associated with each predatory practice would, in relevance parlance, tend to prove or disprove whether each practice was widespread and material. Moreover, the trend of the quarterly numbers, growing or shrinking or an abrupt cessation after some event like the Attorney General settlement, would also be relevant.

Further, notwithstanding their present assertion that the number of loan information is not available, Household provided to the Attorneys General responsive information on the number of loans associated with these practices, including the number of loans associated with prepayment

penalties, single premium credit insurance and the EZ Pay Plan, for 1999, 2000 and 2001 as to specific states.⁶ *See* Supp. Baker Decl., Ex. 1 at 3-5; Ex. 3 (data for 15 states).

As to discount points, Ms. Giannis states that the loan information can be easily provided as to closed-end loans per month from 1997 to October 2002 while as to revolving loans, Household can provide loan number information on a blended discount points/origination fee basis. Giannis Aff., ¶5(b) (six business days and some undisclosed fraction of \$23,000). Given the cost and their obligation to produce all responsive information available, the Household defendants have no basis for refusing to provide this information and should have already done so.

E. Interrogatory Nos. 9 and 10

These interrogatories concern the EZ Pay Plan. Significantly, as reflected in the Attorney General settlement documents, the EZ Pay Plan was not implemented until 1999. Supp. Baker Decl., Ex. 2 at 22. The Household defendants refuse to produce responsive information on the grounds that Consumer Lending does not have the information. *See* Opp. at 10. However, internal Household documents demonstrate the contrary. Indeed, according to those documents, the Household defendants had a monthly report showing EZ Pay loans by state. Supp. Baker Decl., Ex. 9 at 1; *see also* Ex. 10 (state by state analysis) *and* Ex. 11 (excerpts from monthly reports showing EZ Pay loans and non-EZ Pay loans).

F. Interrogatory Nos. 11 and 12

These interrogatories concern the situation where two loans were provided to the same customer within 15 days. Household has in the past tracked this information. Supp. Baker Decl.,

⁶ As to earlier years, it appears that this information was not provided based on the Household Finance Corporation/Beneficial Corporation merger in 1998. *See* Supp. Baker Decl., Ex. 2 at 25. Additionally, the Household defendants may have exaggerated the burden involved as there may be no responsive information for those earlier years as to some of these practices. For example, Household did not commence to write simultaneous first and second loans until 1998. *See id.* at 22.

Exs. 12-14. Indeed, as shown in one of the documents submitted, Household tracked side loans, which are defined as personal home loans originated within 15 days of the real estate loan. *See* Supp. Baker Decl., Ex. 14 at HHS 02820114. Further, as shown from these documents, Household was able to formulate different reports based on the number of days between the loans. The Household defendants can provide the information responsive to these interrogatories without doing the search stated in Ms. Giannis' affidavit. Even if this were the only means to provide the information, there is no undue burden as it would take less than 21 days to provide this information for 1997 through 2002 for "active loans."

G. Interrogatory No. 18

On this interrogatory, Household now disputes that it informed the Class it would not supplement this response and accuses the Class of misrepresenting the facts on this point. Opp. at 12-13. However, Household's denial is not credible. In particular, Household's evidence comes in the form of a declaration by Ms. Best, who was not party to the conversation at issue, and who makes a statement as to its substance based on information and belief. Best Decl., ¶24. This is not competent evidence. Further support for the Class' position comes from the fact that Jason Otto, who was the other party to that conversation, did not submit a contrary declaration. Finally, although the Household defendants had the Class' moving papers since January 20, 2006 neither Ms. Best nor Mr. Otto ever challenged the Class' representation of this discussion until the filing of their opposition.

VI. THE HOUSEHOLD DEFENDANTS SHOULD BE ORDERED TO PRODUCE RESPONSIVE INFORMATION WITHIN 20 BUSINESS DAYS

The Class has waited long enough for this basic information. As this information is the foundational prelude to other discovery and given the May 12, 2006 discovery cut-off, it is imperative that the Household defendants provide this information immediately. Further, to allow the Household defendants more than 20 days to provide this information is to reward them for failing

to commence the process of procuring this information in a timely manner. Finally, the longest task referenced in Ms. Giannis' affidavit would take 21 business days using a single individual. Using more than that number would allow completion sooner.

VII. THE COURT SHOULD AWARD THE EXPENSES ASSOCIATED WITH THIS MOTION

The Court should award the Class its expenses associated with this motion. The Household defendants violated Fed. R. Civ. P. 37(a)(3) and (4) by providing evasive or incomplete answers and by opposing this motion without substantial justification. Further, they have delayed in providing information, such as the 1997 and 1998 information, until after the Class has brought this motion. *See* Fed. R. Civ. P. 37(a)(4)(A). For over two weeks, January 4 through January 19, the Household defendants would not commit to provide this information, instead indicating "we can't commit, but we will give you the information if it is available without undue burden." *See* Best Decl., ¶21. A discovery party need not accept such an amorphous response particularly once weeks have passed without any change in that position.

VIII. CONCLUSION

For the reasons stated above, the Court should grant this motion in its entirety and order the Household defendants to supplement their responses to the interrogatories at issue within 20 days. Further, the Court should award the Class its expenses associated with this motion.

DATED: February 13, 2006

Respectfully submitted,

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
PATRICK J. COUGHLIN (90785466)
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154452)
MONIQUE C. WINKLER (90786006)
SYLVIA SUM (90785892)
LUKE O. BROOKS (90785469)

/s/ D. Cameron Baker
D. CAMERON BAKER

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

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

Lead Counsel for Plaintiffs

MILLER FAUCHER AND CAFFERTY LLP
MARVIN A. MILLER
30 North LaSalle Street, Suite 3200
Chicago, IL 60602
Telephone: 312/782-4880
312/782-4485 (fax)

Liaison Counsel

LAW OFFICES OF LAWRENCE G.
SOICHER
LAWRENCE G. SOICHER
305 Madison Avenue, 46th Floor
New York, NY 10165
Telephone: 212/883-8000
212/697-0877 (fax)

Attorneys for Plaintiff

T:\CasesSF\Household Intl\BRF00028088.doc

DECLARATION OF SERVICE BY EMAIL AND BY U.S. MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on February 13, 2006, declarant served by electronic mail and by U.S. Mail the **REPLY BRIEF IN SUPPORT OF THE CLASS' MOTION TO COMPEL RESPONSES TO SECOND SET OF INTERROGATORIES FROM HOUSEHOLD DEFENDANTS** to the parties listed on the attached Service List. The parties' email addresses are as follows:

TKavaler@cahill.com
PSloane@cahill.com
LBest@cahill.com
NEimer@EimerStahl.com
ADeutsch@EimerStahl.com
sparzen@mayerbrownrowe.com
mmiller@millerfaucher.com
lfanning@millerfaucher.com

and by U.S. Mail to:

Lawrence G. Soicher, Esq.
Law Offices of Lawrence G. Soicher
305 Madison Ave., 46th Floor
New York, New York 10165

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

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of February, 2006, at San Francisco, California.

/s/ Monina O. Gamboa

MONINA O. GAMBOA

HOUSEHOLD INTERNATIONAL (LEAD)

Service List - 2/13/2006 (02-0377)

Page 1 of 2

Counsel for Defendant(s)

Thomas J. Kavalier
Peter Sloane
Landis Best
Cahill Gordon & Reindel LLP
80 Pine Street
New York, NY 10005-1702
212/701-3000
212/269-5420(Fax)

Nathan P. Eimer
Adam B. Deutsch
Eimer Stahl Klevorn & Solberg LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
312/660-7600
312/692-1718(Fax)

Stanley J. Parzen
Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, IL 60606
312/782-0600
312/701-7711(Fax)

Counsel for Plaintiff(s)

Lawrence G. Soicher
Law Offices of Lawrence G. Soicher
305 Madison Avenue, 46th Floor
New York, NY 10165
212/883-8000
212/697-0877(Fax)

William S. Lerach
Lerach Coughlin Stoia Geller Rudman &
Robbins LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
619/231-1058
619/231-7423(Fax)

Patrick J. Coughlin
Azra Z. Mehdi
Monique C. Winkler
Lerach Coughlin Stoia Geller Rudman &
Robbins LLP
100 Pine Street, Suite 2600
San Francisco, CA 94111-5238
415/288-4545
415/288-4534(Fax)

Marvin A. Miller
Jennifer Winter Sprengel
Lori A. Fanning
Miller Faucher and Cafferty LLP
30 N. LaSalle Street, Suite 3200
Chicago, IL 60602
312/782-4880
312/782-4485(Fax)

HOUSEHOLD INTERNATIONAL (LEAD)

Service List - 2/13/2006 (02-0377)

Page 2 of 2

David R. Scott

Scott + Scott, LLC

108 Norwich Avenue

Colchester, CT 06415

860/537-5537

860/537-4432(Fax)