

**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 IN SUPPORT OF THE CLASS' MOTION TO COMPEL HOUSEHOLD  
DEFENDANTS TO PRODUCE RESPONSIVE DOCUMENTS TO THE CLASS' THIRD  
[CORRECTED] REQUEST FOR PRODUCTION OF DOCUMENTS**

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## **I. INTRODUCTION**

In this securities fraud class action, the Class seeks the production of certain documents identified (1) in the testimony of Peter Sesterhenn, the person designated by Household International, Inc. (“Household” or the “Company”) as being the most qualified to discuss defendants’ documents for financial reporting, and (2) in Household’s previously produced documents. These documents were sought through the Class’ Third [Corrected] Request for Production of Documents (“Third Request”), but were not produced. Moreover, the Class believes these documents should have been produced in response to the First or Second Requests, but were not.

Defendants assert that most of the Third Request is duplicative of the previous requests. However, in February 2006, when the Class requested defendants to produce certain documents it believed to be within the scope of the Class’ first two documents requests, defendants took the position that the documents sought were not covered by the earlier requests. Defendants demanded that the Class propound a “formal request” in order to obtain the documents sought by the Class. The only conclusion that can be drawn from such a position is that defendants did not previously search for them.

The Class then propounded the Third Request, which is narrowly tailored to cover the documents defendants initially stated were not covered by the earlier requests. Upon receipt of the Third Request, however, defendants took the opposite position from their earlier stance and refused to perform a comprehensive search for responsive documents because the requests were, they now said, duplicative.

Additionally, defendants assert that the documents do not exist. However, they disregard substantial evidence of the existence of the documents – including the testimony of their own witness and references in their own documents. Moreover, because they refuse to do a

comprehensive search, they cannot reasonably assert anything about the existence or lack thereof, of these documents.

Defendants should be ordered to search for and produce documents sought by the Class immediately. At minimum, defendants should be ordered to file an affidavit, stating that they could not locate documents sought by the Class after a diligent search in order to avoid evidentiary issues at summary judgment.

## **II. ARGUMENT**

### **A. Defendants Have an Obligation to Produce Relevant, Responsive Documents or Provide an Affidavit Stating Such Documents Do Not Exist**

Upon receiving plaintiffs' document requests, defendants have an obligation to produce relevant, responsive documents. Fed. R. Civ. P. 34; *Hobley v. Burge*, 226 F.R.D. 312, 320 (N.D. Ill. 2005) (holding that defendant had an obligation to produce responsive documents in its possession, custody or control); *Japan Halon Co. v. Great Lakes Chem. Corp.*, 155 F.R.D. 626, 628 (N.D. Ind. 1993) (holding that defendants must produce all responsive documents); *Large v. Mobile Tool Int'l, Inc.*, Case No. 1:02-CV-177, 2005 U.S. Dist. LEXIS 31987, at \*\*12-13 (N.D. Ind. Dec. 8, 2005) (same).

Further, under Fed. R. Civ. P. 34(b), plaintiff is entitled to a response when documents do not exist. *Fishel v. BASF Group*, 175 F.R.D. 525, 531 (S.D. Iowa 1997) (ordering defendants to provide a response stating no documents exist); *Westbrook v. Archey*, Case No. 1:05-CV-00057, 2005 U.S. Dist. LEXIS 25614, at \*\*5-6 (N.D. Ind. Oct. 27, 2005) (ordering defendants, who stated that documents sought by plaintiff did not exist, to execute an affidavit, stating that they could not locate any responsive documents after a diligent search and describing their efforts to locate these documents); *Innovative Piledriving Prods., LLC v. Unisto Oy*, Case No. 1:04-CV-453, 2005 U.S. Dist. LEXIS 23652, at \*\*4-6 (N.D. Ind. Oct. 14, 2005) (same).

Defendants in this case have failed to fulfill their discovery obligations. They have refused to produce all responsive documents in their possession and arbitrarily limited their searches to exclude numerous relevant and responsive documents.

**1. Defendants Must Produce All Responsive Documents in Their Possession, Custody and Control or Provide Affidavits Outlining Documents that Do Not Exist Anymore**

As stated in the Class' opening brief, Household's own 30(b)(6) witness, Peter Sesterhenn, testified to the existence of documents responsive to the requests sought by the Class. Opening Mem. at 2-5.<sup>1</sup> Similarly, documents produced by defendants reference or otherwise show the existence of the documents sought by the Class. Opening Mem. at 2-5.

When asked in February 2006 to search for reports identified by Mr. Sesterhenn, defendants' counsel argued that many of the requested reports "do not appear to be responsive to any of Plaintiffs' [previous] requests" and said that to get the documents, the Class would have to make a formal request. Ryan Decl., Ex. 7.<sup>2</sup> To move past the dispute, the Class propounded the Third Request. Ryan Decl., Ex. 8. Two months after being informed of the Class' intention to obtain reports identified by Mr. Sesterhenn, defendants filed their Responses and Objections to the Class' Third Request. They did not indicate that documents sought by the Class do not exist. Ryan Decl., Ex. 9. Defendants' lack of candor required the Class to file this motion.

In their opposition to the Class' motion to compel, defendants now assert that reports identified by the person most qualified to discuss their documents, Mr. Sesterhenn, do not exist.

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<sup>1</sup> "Opening Mem." refers to Memorandum of Law in Support of the Class' Motion to Compel Household Defendants to Produce Responsive Documents to the Class' [Corrected] Request for Production of Documents.

<sup>2</sup> "Ryan Decl." refers to the Declaration of Bing Z. Ryan in Support of the Class' Motion to Compel Household Defendants to Produce Responsive Documents to the Class' [Corrected] Request for Production of Documents.

Defs' Opp. at 3.<sup>3</sup> Defendants base this assertion entirely on their reading of Mr. Sesterhenn's testimony, rather than on the results of a reasonable search as required by the Federal Rules of Civil Procedure. *Fisher v. Harris, Upham & Co.*, 61 F.R.D. 447, 450-51 (S.D.N.Y. 1973) (held that Rule 34 requires a diligent or thorough search).<sup>4</sup>

Specifically, for documents responsive to Request Nos. 10, 24, 27 (documents reflecting revenues earned through Household's various sales practices, such as the sales of single premium credit life insurance and the use of excessive loan-to-value ("LTV") ratio, that the Class alleges were predatory) and 30 (documents relating to reaging or restructuring of loans), defendants assert in their opposition that these documents do not exist. Defs' Opp. at 8. Defendants represent that they previously notified the Class of their search results concerning these documents and offered to search for comparable documents. *Id.* Defendants neither informed the Class, nor did they make such an offer. Notably, although the dispute over these documents is well documented in correspondence, defendants fail to cite any correspondence to support their statement. *Id.* Moreover, contrary to defendants' representation that the documents do not exist, Mr. Sesterhenn testified about these documents, including detailed descriptions such as the types, the preparers and how frequently these reports were prepared. Opening Mem. at 3-4. Noticeably, defendants do not even dispute the Class' citation of Mr. Sesterhenn's testimony concerning Request Nos. 10, 24 and

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<sup>3</sup> "Defs' Opp." refers to Defendants' Opposition to the Class' Motion to Compel Household Defendants to Produce Responsive Documents to the Class' [Corrected] Request for Production of Documents.

<sup>4</sup> Defendants ignore the majority of Mr. Sesterhenn's testimony and misinterpret other portions to evade production of responsive documents. Defs' Opp. at 3. The Class does not intend to further dispute the interpretation of Mr. Sesterhenn's deposition transcript as the transcript speaks for itself. *See* Ryan Decl., Ex. 5 at 83:23-85:19 (monthly report concerning prepayment penalties revenue); and Ex. 22 (differentiating origination points and discount points).

27 as they cannot possibly explain away Mr. Sesterhenn's clear descriptions of reports responsive to these requests.

Defendants also do not, and indeed cannot, dispute the Class' citation of Mr. Sesterhenn's testimony regarding documents responsive to Request No. 16 (documents that reflect accounts and subaccounts in Household's general ledger). Mr. Sesterhenn testified that "there is a specific document" that lists the general ledger accounts and identifies "what transactions feed that account." Ryan Decl., Ex. 5 at 122:6-17. Despite defendants' own witness' detailed testimony and the Class' repeated requests, defendants refuse to produce documents in response to Request No. 16. Ryan Decl., Ex. 7.

**a. Examples of Unauthorized Training Materials Collected by Defendants Are Directly Relevant to the Class' Allegations of Predatory Lending – Defendants Cannot Refuse Production Merely Because Such Documents Are Damaging to Them**

Defendants dispute the existence of documents responsive to Request No. 35 requesting a sample of each document to be destroyed in Household's "blitz purge" campaign. Defs' Opp. at 7-8. According to documents produced by defendants, the blitz purge orchestrated by the Company was "complete on June 20, 2001." Declaration of Maria V. Morris in Support of Reply on the Class' Motion to Compel Household Defendants to Produce Responsive Documents to the Class' Third [Corrected] Request for Production of Documents ("Morris Reply Decl."), Ex. 1 at HHS 03208099. Defendants' claim that these documents do not exist is based on their unsupported assertion that all unauthorized sales materials (including samples collected by Household) were destroyed. Defs' Opp. at 7-8. However, defendants' assertions in their opposition are contradicted by their own documents. In addition to discussing the "unauthorized materials," during the Responsible Lending Summit, there were specific "JAD" sessions to analyze what specifically from the unauthorized

materials, was essential and how it could be redrafted, even after the “purge” on June 20, 2001.<sup>5</sup> Morris Reply Decl., Ex. 1 at HHS 03208099 (“*Jad session to review all sales materials purged and incorporate most effective*”); Ex. 2 at HHS 02868135 dated June 21, 2001 (“Copies of unauthorized/unapproved forms that the offices/DSMs/DGMs feel are essential should be *saved* by the DSM/DGM for bring up at next week’s JAD session.”).<sup>6</sup> These documents indicate that unauthorized sales materials were specifically “saved” in order to redraft and incorporate them into continued business operations, even after defendants’ admitted “blitz purge.” *Id.*

Defendants recognized that “unauthorized materials expose [the Company] to significant risk.” Morris Reply Decl., Ex. 1 at HHS 03208099. Defendants cannot simply hide documents from the Class because they expose them to risk. *See Isaacson v. Keck, Mahin & Cate*, 875 F. Supp. 478, 480 (N.D. Ill. 1994) (defendants cannot withhold information when release of certain facts is detrimental to them). For example, the Eleventh Circuit found that where defendants’ objections were “part of their overall plan to obstruct the Plaintiff’s discovery attempts,” including playing word games, unilaterally limiting the meaning or scope of discovery requests, failing to produce documents and deliberately covering up damaging evidence, such objections were an abuse of the discovery process meriting sanctions. *Malautea v. Suzuki Motor Co.*, 987 F.2d 1536, 1540 (11th Cir. 1993).

Another of Household’s document states that samples of unauthorized sales materials were collected, and some were turned into “Handouts 6-7” for the attendees of a Responsive Lending Summit, indicating that all attendees received copies of such examples. *See* Ryan Decl., Ex. 24 at HHS 02868141. At least 31 people appear to have attended the Responsible Lending Summit.

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<sup>5</sup> “JAD” session refers to Joint Application Development session.

<sup>6</sup> Unless otherwise noted, all emphasis is added.

Morris Reply Decl., Ex. 1 at HHS 03208097. Thus, it is very likely that at least some summit attendees kept sample of the unauthorized sales materials disseminated at the summit. Further, the administrative staff who helped organize this summit likely kept summit-related materials, including handouts, in their files. A reasonable search would involve, at the very least, determining who attended or organized the summit and finding out whether any of them kept whatever materials were distributed at the summit. *Treppel v. Biovail Corp.*, 233 F.R.D. 363, 374 (S.D.N.Y. 2006) (holding that a reasonable search included searching for any files that are likely to contain relevant documents); *McPeck v. Ashcroft*, 202 F.R.D. 31, 32-33 (D.D.C. 2001) (holding that a reasonable search involved searching for requested documents within all files). Defendants have not indicated that they have done such a search either in their Responses and Objections to the Class' Third Request or in their opposition. Ryan Decl., Ex. 9; Defs' Opp. at 7-8.

Further, the Responsive Lending Summit document appears to be PowerPoint slides. *See* Ryan Decl., Ex. 24. The presentation, and likely "Handouts 6-7," would have been created and saved on a computer. It is also likely that the unauthorized sales samples collected were scanned in preparation for the summit. Again, defendants have not made any representations about whether they looked for the summit documents in the computer system.

Even if the samples collected were yet again destroyed after the blitz purge (as defendants will presumably argue), the Class is entitled to obtain an affidavit from defendants, describing in detail what types of documents were destroyed, when they were destroyed, and why.

Another example of defendants' attempts to conceal damaging evidence is their failure to even search for responsive evidence. The Class has sought for some time now, a videotape prepared by the Southwestern Region Division General Manager Dennis Hueman, in which he trained his division employees on the use of sales practices that were predatory. During Regional General Manager Robert O'Han's deposition on May 24, 2006, he testified that he received a copy of the

videotape, viewed it and retained it. Morris Reply Decl., Ex. 3 at 150-56. Mr. O'Han testified, however, that he had not even looked for this tape as part of the document production in this litigation. *Id.* at 156-57. Defendants cannot avoid searching for responsive documents or cover up damaging information - the Class is entitled to these documents.<sup>7</sup> Additionally, none of these documents should be designated "Confidential" as they do not fall under any protected category of documents under the Protective Order. Defendants' attempts to "blitz purge" documents that "expose [them] to significant risk" should not be kept confidential. *See Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 945 (7th Cir. 1999).

Because defendants are obligated to produce responsive documents in their possession, custody or control and the Class demonstrates the existence of the responsive documents, defendants must produce responsive documents that they possess immediately.

## **2. Defendants Should Produce Documents as They Are Kept in the Regular Course of Business**

Defendants are obligated to produce documents "as they are kept in the usual course of business." Fed. R. Civ. P. 34(b); *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 351, 362 (N.D. Ill. 2005); *Board of Educ. v. Admiral Heating & Ventilating, Inc.*, 104 F.R.D. 23, 36 (N.D. Ill. 1984). Defendants fail to satisfy this requirement and have made a piecemeal production of the types of documents sought through the Third Request.

In November 2005, the Class provided a list of responsive documents (to the First Request) to defendants that it believed had not been produced. *See* Ryan Decl., Ex. 16. Most of the documents identified were financial reports or other documents that, on their face, indicate they were

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<sup>7</sup> Only minutes before the filing of this reply brief, Class counsel received a letter stating that this videotape had been located, with production to occur at some future date. This only reinforces the Class' efforts to continue to obtain responsive documents, which defendants purportedly claim do not exist, and only begin to look for when the Class continues to press production or is forced to file a motion to compel.

created on a monthly basis, which had been produced to the Class for some months, but not others. *Id.* Common sense indicates that monthly reports are created every month. Common sense further indicates that monthly reports would be maintained by a single custodian, probably a recipient or an author of the reports, or a designated file custodian, and kept together in the same files. This organization would be particularly essential to a Fortune 200 public company such as Household, which was required to file financial statements with the Securities and Exchange Commission (“SEC”) and undergo annual audits as well as quarterly reviews. Plaintiffs are entitled to these documents in this securities fraud action that challenges, *inter alia*, the integrity of the financial statements filed with the SEC during the Class Period. Had defendants produced documents as they were kept, *i.e.*, produced all documents from certain files that contain a complete set of these reports, defendants would not have failed to locate a large number of these reports. *See* Ryan Decl., Exs. 16, 18. The fact that defendants can locate only some of these regularly prepared reports demonstrates that defendants’ manner of searching for, collecting and producing documents was haphazard and not designed to produce documents “as they are kept in the usual course of business.” Fed. R. Civ. P. 34.

### **3. Defendants Should Produce Responsive Documents Without Arbitrary Limitations**

Defendants have unilaterally imposed several limitations upon the document production. They have limited their production to only specified Household business units, despite the likelihood that responsive documents exist in other business units.<sup>8</sup> They further refuse to produce complete sets of documents, such as monthly financial reports. *See* Ryan Decl., Ex. 10. Defendants’ arbitrary

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<sup>8</sup> Defendants also refuse to produce any documents that were created outside the Class Period (July 30, 1999 to October 11, 2002). The Class addresses this issue separately in its Memorandum in Support of the Class’ Objections to Magistrate Judge’s June 15, 2006 Order on Post-Class Period Documents, filed on June 29, 2006.

limitations are without justification. *Malautea*, 987 F.2d at 1540 (unilaterally limiting the meaning or scope of discovery requests and delaying discovery deemed abusive meriting sanctions by the court). They should be ordered to produce all responsive documents.

In their opposition, defendants assert that the Class seeks documents responsive to certain requests for which defendants have already agreed to produce.<sup>9</sup> Defs' Opp. at 7. Defendants, however, improperly limited their agreement to produce. First, defendants have agreed to produce responsive documents only from certain business units. *See* Ryan Decl., Ex. 9. Specifically, for Request No. 10 (single premium credit life insurance), defendants limit the production to the Consumer Lending business unit only. *Id.* For Request Nos. 9 (prepayment penalties), 12 (EZ Pay Plan); 24 (excessive loan-to-value ratio), and 30 (documents relating to reaging or restructuring of loans), defendants agree to produce responsive documents only from the Consumer Lending and the Mortgage Services business units. *See* Ryan Decl., Exs. 9, 12. For Request No. 27 (single premium credit life insurance), defendants agree to produce responsive documents only from the Consumer Lending and the Insurance Services business units. *See* Ryan Decl., Ex. 9. As discussed in the Class' motion to compel, the Class needs relevant information from all business units within a certain reporting segment, *i.e.*, the Consumer Segment, to be able to understand and fully assess Household's financial situation on the consolidated level. Opening Mem. at 13. Defendants also refuse to produce an entire set of documents responsive to Request Nos. 1, 2 (documents evaluating Household's credit loss reserves), 6 (reaging or restructuring of loans), 9 (prepayment penalties), 10 (single premium credit life insurance), 12 (EZ Pay Plan), 24 (excessive loan-to-value ratio), 27

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<sup>9</sup> In their opposition to the Class' motion, defendants state that they agreed to produce responsive documents with certain limits as to Request Nos. 7-8, 10-15, 22, 24-26 and 29 of the Class' Third Request. Defs' Opp. at 7. Defendants' reference to document requests is erroneous. The requests they agreed to produce with limitations are Request Nos. 1-2, 6, 9-10, 12, 24, 27, 30 and 35. *See* Ryan Decl., Ex. 9.

(single premium credit life insurance) and 30 (reaging or restructuring of loans). Ryan Decl., Ex. 9. As the Class explains in its opening brief, sets of documents that contain financial data, but have gaps for certain business units or certain time periods, lead to possible misinterpretation of Household's overall financial picture. Opening Mem. at 13-14. Therefore, the incomplete production of financial data is not only improper under the discovery rules, but actually diminishes the usefulness of the documents that actually are produced. *Id.*

Because defendants' arbitrary limitations unjustifiably exclude important documents that are responsive to the Class' requests, their attempt to unilaterally limit discovery should be rejected.

#### **4. According to Defendants' Own Statements, the Third Request Cannot Be Duplicative**

In November 2005, the Class provided defendants a list of reports missing from the production responsive to the Class' First Request. One of the reasons defendants gave for the failure to produce these documents is that "many of the documents Plaintiffs claim 'appear to be missing' . . . *are not responsive to Plaintiffs' First and/or Second Document Demands.*" See Ryan Decl., Exs. 16-17 (emphasis added). In February 2006, defendants again refused to produce reports identified by Mr. Sesterhenn, stating that "many of the alleged 'reports,' . . . *do not appear to be responsive to any of Plaintiffs' requests.*" See Ryan Decl., Ex. 7 (emphasis added). Defendants further stated that they would not produce the documents absent a formal request. *Id.* In light of defendants' position that the documents were not sought through the First and Second Requests, the Class propounded the Third Request, specifically listing reports identified by Mr. Sesterhenn and documents that defendants have refused to produce and argued had not been requested.

Defendants' assertion that many of the Third Requests are duplicative of the Class' First and Second Requests is inconsistent with their prior position that certain documents requested by the Class are not within the scope of the First and Second Requests. Defendants should not be allowed to evade production by claiming that they do not have to produce because the documents are not

covered by the First and Second Requests and then, when faced with the Third Request, saying they need not search for or produce these documents because they were responsive to the First and Second Requests. Defs' Opp. at 5-6.

#### **5. Defendants' Other Objections Also Fail**

Defendants' contention that because they have already produced millions of pages of documents, the sheer volume of their production releases their discovery obligations is also invalid. *Id.* at 5. Defendants must produce all relevant, responsive documents. *Hobley*, 226 F.R.D. at 320 (holding that defendant had an obligation to produce responsive documents in its possession, custody or control); *Japan Halon*, 155 F.R.D. 628 (held that defendants *must produce all responsive documents*); *Large*, 2005 U.S. Dist. LEXIS 31987, at \*\*12-13 (same). This Court should not be deceived by defendants' assertion that they have already produced a large volume of documents. The content of the production is what is really important, not the volume. As explained by Class Counsel on numerous occasions, over 1.3 million pages of defendants' production are useless. *See* Ex. A, attached hereto. Defendants must produce all relevant, responsive documents.

Defendants' further assertion that the Class' Third Request is an effort to expand and prolong discovery is even more problematic. Defs' Opp. at 9-10. Quite the contrary, the Class indicated its intention to move forward. During the July 15, 2006 status conference, Class Counsel informed this Court that it will provide a discovery plan to this Court and defendants for discussion at the August 10, 2006 status hearing. The Class intends to file this document evidencing their intent to move forward expeditiously toward summary judgment.

#### **B. Defendants Have an Obligation to Conduct a Reasonable Search for Documents**

When served with document requests, defendants are obligated to conduct a reasonable search for relevant, responsive documents. *Glover v. Bd. of Educ.*, Case No. 02 C 50143, 2004 U.S. Dist. LEXIS 6358, at \*\*10-11 (N.D. Ill. Apr. 9, 2004) (ordered defendants to perform a reasonable

search and produce responsive documents within their control). A reasonable search requires parties to develop a “reasonably comprehensive search strategy.” *Treppel*, 233 F.R.D. at 374. “Such a strategy might, for example, include identifying key employees and reviewing any of their files that are likely to be relevant to the claims in the litigation.” *Id.* A reasonable search also includes searching for requested documents in files that are traditionally organized by subject or chronology. *McPeck*, 202 F.R.D. 32-33.

Defendants have refused to conduct a “full-blown search” in response to the Class’ Third Request. *See* Ryan Decl., Ex. 10. They offered, instead, to only perform an “additional reasonable search,” without any explanation of what that entails. Defs’ Opp. at 6. Defendants further stated that because they have already spent “much of the time and effort” to respond to the Class’ First and the Second Requests, conducting a search to produce documents in response to the Class’ Third Request necessarily involves duplicative efforts. *See* Ryan Decl., Ex. 9.

Defendants’ assertion is without merit. Regardless of the time and efforts they have spent in connection with the First and Second Requests, as discussed above, they failed to conduct a reasonable search that necessarily includes the documents sought through the Third Request, as they did not believe them to be covered by the earlier requests. Defendants’ admitted “considerably less than the full-blown search” is simply “inadequate” in light of their failure to search for and produce the documents previously. *See* Ryan Decl., Ex. 10.

Defendants have an obligation to perform a reasonable search in response to the Class’ Third Request. Defendants should do so at once.

**C. The Class Served the Third Request After Defendants Abandoned the Meet and Confer Process and Clearly Manifested Their Unwillingness to Produce More Documents**

Defendants further assert that the Class prematurely propounded the Third Request before exhausting the meeting and confer process. Defs’ Opp. at 2-4. Quite contrary, defendants were the

ones who deserted the parties' meet and confer process. *See* Ryan Decl., Ex. 6. Beginning from February 2006, the parties wrote to each other back and forth regarding reports identified by Mr. Sesterhenn. *See* Ryan Decl., Exs. 6-7; Declaration of Ira J. Dembrow, Ex. C. The last communication regarding this issue was the Class' March 10, 2006 letter urging defendants to produce the requested documents. Ryan Decl., Ex. 6. Defendants did not reply.<sup>10</sup>

Further, in their February 28, 2006 letter, defendants refused to produce reports identified by their witness "absent a formal request." *See* Ryan Decl., Ex. 7. Defendants thus indicated that the only way to obtain documents was to serve a formal document request, not to continue the informal negotiations. *Id.* The Class did just that.

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<sup>10</sup> In an attempt to expeditiously resolve this issue, the Class served the Third Request on March 13, 2006. Ryan Decl., Ex. 8. Defendants erroneously state that the Class served the Third Request before it wrote to defendants on March 10, 2006. Defs' Opp. at 4.

### III. CONCLUSION

For the foregoing reasons as well as the reasons outlined in the Class' opening briefs, declarations and exhibits in support of these briefs, the Class respectfully requests that this Court grant the Class' Motion to Compel Household Defendants to Produce Responsive Documents to the Class' Third [Corrected] Request for Production of Documents. If the requested documents indeed do not exist, the Class requests that defendants file an appropriate affidavit attesting which documents no longer exist, since when and why.

DATED: July 21, 2006

Respectfully submitted,

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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 July 21, 2006, declarant served by electronic mail and by U.S. Mail the **REPLY IN SUPPORT OF THE CLASS' MOTION TO COMPEL HOUSEHOLD DEFENDANTS TO PRODUCE RESPONSIVE DOCUMENTS TO THE CLASS' THIRD [CORRECTED] REQUEST FOR PRODUCTION OF DOCUMENTS** to the parties listed on the attached Service List. The parties' email addresses are as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of July, 2006, at San Francisco, California.

s/ Marcy Medeiros  
\_\_\_\_\_  
MARCY MEDEIROS

**EXHIBIT A**



SAN DIEGO • SAN FRANCISCO  
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Sylvia Sum  
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May 25, 2005

VIA FACSIMILE

Landis Best, Esq.  
CAHILL GORDON & REINDEL LLP  
Eighty Pine Street  
New York, NY 10005-1702

Re: *Lawrence E. Jaffe Pension Plan v. Household International, Inc., et al.*  
Case No. 02-CIV-5893 (N.D. III)

Dear Landis:

I write to follow up on our meet and confer of Friday, May 20, 2005 regarding the Household Defendants' production of documents to-date and Plaintiffs' Second Request for Production of Documents.

Despite numerous requests, the Household Defendants again refused to produce documents in response to specific categories or to provide plaintiffs with source logs. Further, you have refused to tell us which document requests, if any, have been responded to completely. Finally, responsive documents gathered from over 100 persons and produced en masse clearly are not produced as kept in the usual course of business, as required by Fed. R. Civ. P. 34. Plaintiffs' inability to determine whether production in response to a specific request is complete makes it necessary for us to seek relief from the court.

Your refusal to produce documents responsive to the Second Request on the basis of overbreadth and duplicativeness because you have "already talked to over 100 people" in order to gather documents for the First Request is without merit. Due to the insufficiency of your production in response to Plaintiffs' First Request (the majority of documents are from the SEC production, which was largely unusable because of the format in which the documents were produced), plaintiffs issued a narrowly tailored Second Request to discover additional relevant documents based on discovery to date. Plaintiffs are entitled to receive responsive documents to these requests.

The following documents refer to many of the specific terms included in our request and should eliminate any objection as to vagueness and ambiguity:



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1. Request #4 - Regulatory Compliance Risk Management group: Bates Nos. HHS 01522993 and HHS 02686616;
2. Request #21 - District Sales Manager Audits: Bates No HHS 02483900;
3. Request #22 -Quality Assurance Compliance Reviews or Audits: Bates Nos. HHS 00645856, HHS 00660653-659, HHS 02375979;
4. Request #26 - DAS February 2003 Offsite meeting: Bates Nos. HHS 0064740-745, HHS 00698196-210.
5. Request #27 - Household Corporate Investigations: Bates No. 00085270;
6. Request #34 - Senior Management Meetings: Bates Nos. HHS 00030322-323, HHS 00089210-261.

With this additional information, please inform us whether you intend to produce documents responsive to these Requests. In light of your record of stalling and delaying discovery – it has been over a year since the First Request was served and production is still not complete – and because there are only six months left in discovery, plaintiffs would like an answer by June 3, 2005.

For Requests #6, 21, 22 and 23, plaintiffs are willing to review the audit reports first in order to determine if all documents relating to the reports must be produced, provided, however, that such reports are produced forthwith. Please advise us when the reports can be produced.

Additionally, you agreed to get back to us regarding the following:

- a. whether the production of Andersen and KPMG documents is complete;
- b. when you will produce the exhibits to the declaration of Melissa Rutland-Drury is complete;
- c. whether Wells Notices were sent to Household employees and whether correspondence exist relating to such Wells Notices;
- d. for Request #5, whether you will produce documents created after the Class Period;
- e. for Request #7, whether you will produce documents related to marketing of the EZPay Plan;



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f. whether you will produce documents responsive to Requests #8 (as narrowed to all documents relating to the implementation of and changes to the policy regarding discount points, the legality of discount points and the impact of discount points on Household's financials), 12-14, 16, 17 (as narrowed to all documents relating to the formation and duties of both the Consumer Advisory Board and the Consumer Protection Committee), 18 (as narrowed to all documents relating to the implementation and changes to the Manual Payoff Calculation form), 19 and 28; and

g. for Request #9, 15, 20, 31-33 and 35, whether you will produce documents specifically responsive to these requests.

For Request #11, you claim that the Household Defendants already produced some documents from the ERISA litigation. Again, because of your refusal to provide source logs or identify the specific requests to which documents produced are responsive, plaintiffs are unable to verify this. Please provide the Bates range for the documents produced to plaintiffs from the ERISA litigation, if any. You also agreed to inform plaintiffs whether you will produce deposition transcripts, discovery requests and responses from the ERISA litigation, including document requests, interrogatories and requests for admissions. Your assertion that sealed documents in the ERISA litigation cannot be produced is baseless. As you are aware, a protective order is in place. Please inform plaintiffs whether the Household Defendants will join plaintiffs in moving the ERISA court to unseal documents.

With respect to Request #15, you agreed to identify the Bates-numbers of those documents previously produced in response to Request #27 (of the First Production Request).

We informed you of our objection to your designation of the document Bates labeled HHS01239297 as privileged. You agreed to provide us a detailed letter justifying privilege and reasons why such privilege has not been waived.

Please provide responses to the above outstanding issues promptly. Thank you.

Very truly yours,

Sylvia Sum

SS:jc

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cc: Marvin Miller, Esq.  
Adam Deutsch, Esq.

