

**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.)	
_____)	

THE CLASS' MOTION FOR CLARIFICATION OF THE AUGUST 10, 2006 ORDER

I. INTRODUCTION

On August 10, 2006, the Court entered an Order regarding four discovery motions pending before the Court. The Class respectfully requests clarification and/or reconsideration on six specific aspects of the Court's Order. Specifically, the Class requests clarification and guidance on the following five issues: (1) the due dates for various discovery responses due under the Order; (2) the Court's ruling on Interrogatory No. 42; (3) the number of interrogatories; (4) the Court's ruling on document request Nos. 13 and 16; and (5) inconsistencies in the Court's current ruling on identifying documents prior to depositions and the Court's March 17, 2006 Order requiring defendants to produce documents seven days prior to depositions. The Class also requests reconsideration of one issue, namely the Court's finding that the Class failed to indicate the exact amount of additional time required for the Lisa Sodeika deposition.

The Class addresses each of these issues in turn below.

II. DESIGNATING DUE DATES FOR DISCOVERY RESPONSES UNDER THE ORDER

Although the Order designates specific due dates for certain of the rulings, there are no such dates by which parties must comply with certain of the Court's other rulings. Currently, the following discovery responses have no due dates:

(1) Defendants' affidavit setting forth efforts they have made to locate documents and confirming that none could be found (Order at 8); (2) defendants' identification of previously produced documents responsive to Request Nos. 1, 2, 6, 9, 11, 12 and 35 (*id.*); (3) defendants' production of all documents responsive to Request Nos. 1, 2 and 6 for the entire Consumer segment (*id.* at 9-15); and (4) defendants' responses to various interrogatories at issue (*id.* at 9-15); and (5) the Class' identification of documents in response to defendants' interrogatories (*id.* at 16).

With respect to the Class' identification of documents for contention interrogatories, the Court held that these must be "answered immediately," without specifying a time frame. *Id.* In the Court's November 10, 2005 Order granting in part the Class' Motion to Compel Responses to the First Set of Interrogatories, the Court gave defendants 26 days by which to identify documents and witnesses responsive to the First Set of Interrogatories. *See* Exhibit A at 5 (all exhibits referenced herein are attached hereto). In light of the stage of discovery, the Class proposes the same time frame, 26 days, and a due date of *September 5, 2006*. The Class needs this time to identify the documents at issue for 13 interrogatories some of which are very broad, while at the same time proceeding with depositions and other discovery. *See, e.g.*, Interrogatory No. 17 (requesting documents supporting the Class' contention that Household's predatory lending practices were widespread).

During a meet and confer on August 16, defendants informed the Class that they do not know when they will provide the Class with responses to the Class' Interrogatory Nos. 40-42. Additionally, they have refused to commit to any date certain by which they can provide responses. Moreover, in light of the January 31, 2007 fact discovery cut-off and the ongoing depositions, it is imperative the Class receive these responses to facilitate the prioritization of witnesses for depositions. Accordingly, the Class proposes that defendants' interrogatories responses, document production and/or affidavits also be due 26 days from the August 10, 2006 Order, or on *September 5, 2006*.

III. DEFENDANTS REFUSE TO RESPOND TO INTERROGATORY NO. 42 DESPITE THE COURT'S ORDER TO DO SO

Defendants have refused to answer Interrogatory No. 42(c) and (d) as outside the Class Period. The Class fails to understand defendants' position since the information at issue is not post-Class Period; rather, it concerns the number of loans originated during the Class Period whose terms were change as a result of the Attorney General settlement and for which refunds were issued as a

result of that settlement. As the Court held, this information is “relevant to whether Household was engaging in the unlawful predatory practices.” Order at 13. Moreover, there is no burden associated with production of this information, a point confirmed by its absence in Dianne Giannis’ affidavit. Defendants should be ordered to respond to all of Interrogatory No. 42.

IV. NUMBER OF INTERROGATORIES AT ISSUE

The Court ordered defendants to respond to Interrogatory No. 56, which the Court considered the Class’ 86th interrogatory. *Id.* at 15. The Court did not explain the basis for this manner of counting interrogatories, but apparently has accepted defendants’ manner of counting interrogatories, including defendants renumbering of certain of the interrogatories, splitting some into as many as five separate questions. This Order squarely contradicts the Court’s previously provided guidance with respect to the counting of interrogatories, that held: “[A]n interrogatory containing subparts directed at eliciting details concerning ‘common theme’ should generally be considered a single question.” Ex. A at 2, n.1 (citing *Swackhammer v. Sprint Corp. PCS*, 225 F.R.D. 658, 664-665 (D. Kan. 2004)).

If the Court adopted defendants’ counting methodology that 56 interrogatories somehow equals 86, the Court must likewise recognize that defendants have propounded 106 interrogatories. Yet, the Court permitted defendants five additional interrogatories because their original interrogatories “as written d[id] not clearly request [the information sought],” in defendants’ motion to compel and gave defendants an additional interrogatory to compensate for the Class’ 56th interrogatory. Order at 17, n.14. The Court has articulated repeatedly that both parties will receive an equal number of depositions and interrogatories. Accordingly, the Class respectfully requests that the Court strike that portion of the Order granting six additional interrogatories because of the inherent unfairness of awarding defendants a far greater number of interrogatories than the Class.

The Class respectfully requests the Court also explain how 56 interrogatories equals 86, which will be relevant to the determination whether the Household defendants have already exceeded their interrogatory limit. With this clarification, the Court will realize that it erred in granting defendants additional interrogatories while at the same time disregarding the fact that defendants have already served ten interrogatories that they contend address class certification, and thus, should not be counted.

**V. PRODUCTION OF DOCUMENTS RESPONSIVE TO THE CLASS'
THIRD REQUEST NOS. 13 AND 16**

The Court's Order lists, but does not address two specific document request Nos. 13 (documents regarding second loans with interest rates of more than 20% and revenues generated from this practice) and 16 (documents describing the accounts and subaccounts in Household's general ledger). *Id.* at 7-8. Defendants refuse to investigate or produce documents responsive to these requests, citing lack of relevancy and undue burden. Memorandum of Law in Opposition to Lead Plaintiffs' Motion to Compel Household Defendants to Produce Responsive Documents to Plaintiffs' Third [Corrected] Request for Production of Documents (Dkt. No. 583) at 7.

As detailed in the Class' briefing, documents responsive to request Nos. 13 and 16 are highly relevant to prove the Class' claims. Indeed, request No. 13 seeks documents relating to one of the predatory lending practices alleged by the Class, Household's charging excess interest rates to its customers. Complaint, ¶¶75-82. Request No. 16 seeks the foundation on which any business builds its accounting system, *i.e.*, the chart of accounts. A chart of accounts is a listing of all the accounts for a specific company in the general ledger. Each account is accompanied by a reference number or code for use within the company's accounting system. Ultimately, information recorded with an account code from the chart of accounts will be recorded into financial reports. The accuracy, integrity, and completeness of a company's financial statements are central to securities fraud claims, such as what the class alleges here. Memorandum of Law in Support of the Class' Motion to

Compel Household Defendants to Produce Responsive Documents to the Class' Third [Corrected] Request for Production of Documents (Dkt. No. 556) at 6. Defendants' undue burden contention is similarly erroneous. In this Circuit, to resist production on burden grounds, defendants "must provide affirmative proof in the form of affidavits or record evidence." *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 351, 360 (N.D. Ill. 2005). To date, defendants have not done so with these document requests, and their burden argument must be rejected as a matter of law. *Id.* Moreover, at a recent deposition of Household's outside auditor KPMG, LLP, KPMG testified that they had electronic access to the general ledger and all related entries for the Class Period. Ex. B at 40-41. The Court should order defendants to produce the responsive documents.

VI. IDENTIFICATION OF DEPOSITION EXHIBITS ONE WEEK PRIOR TO CERTAIN DEPOSITIONS

The Court's Order requires the Class to identify for defendants "no later than one week prior to each deposition date the documents they intend to use during questioning." Order at 6. However, in its March 17, 2006 Minute Order, the Court ordered that "responsive documents should be produced seven days prior to the noticed deposition." *See* Ex. C. Understandably, if the Class does not even receive responsive documents for a witnesses one week prior to the deposition, it cannot also review, evaluate and identify for defendants the documents the Class intends to use at the deposition. The Court's ruling is, thus, inconsistent with its prior order and the Class seeks clarification on this issue.

While the Court provides this clarification, the Class respectfully requests the Court reconsider its Order requiring the Class to identify documents one week prior to the relevant deposition because the Class believes that the Court's Order infringes upon Class counsel's work product by demanding that counsel disclose to its adversary the opinions and mental impressions evident in its selection of documents. *See Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947). In light of the Court's broad construction of work product with respect to defendants' documents, the

Court's finding in this instance seems misplaced. Moreover, given the fact that the Class is providing the Court and the defendants with a proposal of the specific topics and the proposed time, the Class intends to spend on each of these topics, the Class believes that the order requiring identification of proposed deposition exhibits is unnecessary and prejudicial to the Class.

VII. THE COURT'S FINDING THAT THE CLASS FAILED TO INDICATE THE EXACT AMOUNT OF ADDITIONAL TIME REQUIRED

In the Order, the Court found that both parties had acted unreasonably with respect to extending the Sodeika deposition. Order at 4. According to the Order, the Class acted unreasonably in "fail[ing] to indicate the exact amount of additional time they need to complete the examination – one seven-hour day – until filing their reply brief." *Id.* This finding is incorrect and contrary to the evidence before the Court. Accordingly, the Class respectfully requests that the Court strike this finding.

As shown in the uncontradicted evidentiary record, the Class had made clear its position that Ms. Sodeika's deposition required two full days. In April, the Class informed the Household defendants of the need for an additional day and the parties rescheduled the deposition for June 6 and held June 7 open as an additional day for the deposition. *See* Ex. A attached to the Declaration of D. Cameron Baker in Support of the Class' Motion for Additional Deposition Time Pursuant to Federal Rule of Civil Procedure 30(d)(2) (attached hereto as Ex. D); *see also* Ex. D, ¶4. Further, in its opening brief on page 7, the Class expressly stated: "[G]iven the scope of the topics to be addressed at the depositions identified by the Class, a fair examination will require two days for each of these witnesses." Ex. E at 7.

Given these points, particularly the clear statement in the opening brief as to seeking an additional day for each witness, there is no basis for the Court to adopt the accusation made by Household in a footnote that the Class did not "say how much additional time they are seeking . . . per witness." The Household Defendants' Memorandum of Law in Opposition to Lead Plaintiffs'

Motion for Additional Deposition Time Pursuant to F.R.C.P. 30(d)(2) (Dkt. No. 586) at 1 n.2. Thus, the Court should strike the finding that the Class acted unreasonably with respect to the Sodeika deposition.

VIII. CONCLUSION

For the reasons set forth above, the Class respectfully requests clarification and/or reconsideration of the August 10, 2006 Order.

DATED: August 17, 2006

Respectfully submitted,

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