

**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 TO COMPEL THE HOUSEHOLD DEFENDANTS TO
COMPLY WITH THE COURT'S AUGUST 10 AND 22 ORDERS AND
FOR APPROPRIATE SANCTIONS FOR NON-COMPLIANCE**

1. On August 10, 2006, the Court issued an order on various motions to compel filed by both parties. August 10, 2006 Order (“August 10 Order”) (Docket No. 631). By Order of August 22, 2006 (“August 22 Order”) (Docket No. 649), the Court set September 5, 2006 as the deadline for defendants to comply with those aspects of the August 10 Order that included the following: (1) “submit an affidavit setting forth efforts they have made to locate documents and confirming that none could be found” (August 10 Order at 8); (2) identify previously produced documents responsive to Request Nos. 1-2, 6, 9, 11- 12 and 35 (*id.*); (3) produce all documents responsive to Request Nos. 1, 2 and 6 for the entire Consumer segment (*id.*); and (4) provide responses Interrogatory Nos. 22-23, 26, 28-29, 33-34, 36, 38, 42 and 44 (*id.* at 9-15). August 22 Order.

2. During the August 22 hearing, counsel for defendants Patricia Farren represented to the Court that defendants would indeed provide this information to the Class by September 5, 2006. August 22, 2006 Hearing Transcript at 5. On September 5, 2006, defendants sent a letter to Class Counsel regarding a partial response to Item 2 above for Request Nos. 1-2, 6, 9, 11 and 12, representing that the enclosure purporting to contain the identification of the responsive documents would follow via FedEx. *See* Exhibit A (all exhibits are attached hereto unless otherwise noted). In the September 5 letter, defendants unilaterally stated they would respond to the remainder on September 15.

3. With respect to Item 2, defendants have not complied with the Court’s Order on Request No. 35. In their briefs, defendants disputed the existence of any documents responsive to Request No. 35 requesting a sample of each document to be destroyed in Household International, Inc.’s (“Household”) “blitz purge” campaign. 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 (Docket No. 583) at 7-8. The Class demonstrated

to the Court through Household's own documents that unauthorized sales materials were specifically "*saved*" in order to redraft and incorporate them into continued business operations, even after defendants' admitted "blitz purge." 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 (Docket No. 610), Ex. 1 at HHS 03208099 ("*Jad session to review all sales materials purged and incorporate most effective*") (emphasis added); 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.*") (emphasis added); *see also* 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 (Docket No. 604) at 5-8.

4. Not surprisingly, defendants have completely ignored the Court's Order with respect to Request Nos. 10, 24, 27, 30 and 35.¹ They have neither identified any documents, nor have they "submitted an affidavit setting forth efforts they have made to locate documents confirming that none could be found." August 10 Order at 8. Further, despite the fact that September 5 has come and gone, defendants have failed to comply with Item 3 requiring production of all documents responsive to Request Nos. 1, 2 and 6 for the entire Consumer segment. *Id.* Defendants neither met and conferred with Class Counsel, nor did they seek additional time from the Court to respond to the remaining matters.

5. Defendants were also untimely in complying with the Court's Order in responding to interrogatories. Despite clear orders to do so by September 5, defendants unilaterally decided they

¹ Although defendants pretend to comply with Item 2 regarding identification of previously produced documents, as detailed in ¶¶9-16, defendants' identification of documents is a bad faith "dump" on the Class of hundreds of pages of Bates numbers, tantamount to non-compliance.

would not provide the Class with answers until September 15. The responses provided fall short of compliance. *See* Ex. B. For example, the Court specifically noted in its Order that grouping individuals into groups (*e.g.* Corporate Accounting Department) for Interrogatory No. 38 is insufficient and agreed with plaintiffs that “Defendants should identify specific individuals and not just categories of individuals.” August 10 Order at 10. Despite this explicit order, defendants have not supplemented their answer to Interrogatory No. 38. Ex. B at 16.

6. Additionally, the Individual Defendants persist in their bold refusal to answer any interrogatories. *See* Exs. C-D for Gary Gilmer and David Schoenholz. Individual Defendants William Aldinger and Joe A. Vozar have not yet provided any responses. Based on their pattern of non-responsiveness, plaintiffs expect them to serve responses similar to those served by Gilmer and Schoenholz. The Individual Defendants’ refusal to answer is particularly egregious given Household’s response that each of the Individual Defendants “supplied information either contained in or used in preparing responses to Interrogatory Nos. 19 through 55.” *Compare* Ex. B at 20-21 to Exs. C-D. Under Rule 33, a party to whom interrogatories are propounded must answer with the information known to that party. *Hanley v. Como Inn, Inc.*, Case No. 99 C 1486, 2003 U.S. Dist. LEXIS 7130, at *12 (N.D. Ill. Apr. 25, 2003); *see also Bell v. Woodward Governor Co.*, No. 03 C 50190, 2005 U.S. Dist. LEXIS 4451, at *6 (N.D. Ill. Feb. 7, 2005) (“interrogatories must be answered fully and include all information within the party’s control” even “[i]f only some information is available”). Thus, defendants have “a duty to answer interrogatories with whatever information” they have. *Audiotext Commc’ns Network, Inc. v. US Telecom, Inc.*, No. 94-2395-GTV, 1995 U.S. Dist. LEXIS 15396, at *5 (D. Kan. Oct. 5, 1995). Such gamesmanship only underscores defendants’ hide the ball litigation tactics. Sanctions can be awarded against a party who refuses to answer interrogatories after being compelled to do so by court order. *GFW Constr. v. Chao*, 107 Fed. Appx. 661, 662 (7th Cir. 2004). In light of the January 31, 2007 fact-discovery cut-off,

defendants' flouting of the Court's Orders in order to stall the Class' discovery progress, must not be countenanced.

7. The Class is spending significant resources taking depositions and moving forward with its discovery program. Defendants' conduct in blatantly ignoring the Court's Orders is not only an insult to the work done by the Court with respect to ongoing discovery disputes, but also an immense burden on the Class in having to file multiple motions in order to get defendants to comply with the Court's Orders to obtain the information necessary for summary judgment. As recognized by this Court, the Class is "entitled to some reasonable assurance that Defendants have in fact conducted a full and diligent search." August 10 Order at 8. The Court should no longer countenance defendants' pattern of disobedience.

8. Moreover, even their identification of documents for Request Nos. 1-2, 6, 9, 11 and 12 pursuant to Item 2 demonstrates defendants' lack of good faith.² Their identification of documents was not designed, as ordered by this Court, to identify "previously-produced documents they believe are responsive" (August 10 Order at 8), but rather to "dump" on the Class hundreds of pages of single-spaced identification of Bates numbers that have no connection with the document request at issue.

9. For example, for Request No. 9, defendants identified 810 pages of single-spaced Bates ranges that defendants claim "may be within the scope of Plaintiffs' Third Request." *See*

² Significantly, despite the fact that parties have been exchanging communications and documents via email, defendants did not email the enclosures to the September 5 letter until September 7. The real reason became apparent – because defendants never actually sent a FedEx to plaintiffs. Rather than being forthcoming and informing plaintiffs of this fact, defendants only admitted that the FedEx was never sent after Class Counsel requested a FedEx tracking number from defendants. *See* Ex. E. Defendants' conduct further underscores their lack of good faith in timely complying with the Court's Orders.

Ex. F.³ This is not in compliance with the Court's order which required defendants "to direct plaintiffs to the previously-produced documents *they believe are responsive*." August 10 Order at 8 (emphasis added). Defendants have not complied with the Court's Order.

10. Request No. 9 asks for an entire set of documents that track prepayment penalties for every financial quarter. A cursory review of the first ten documents listed for Request No. 9 alone demonstrates defendants' lack of good faith. *None of the ten documents even remotely relates to the tracking of prepayment penalties by quarter*. See Appendix of Exhibits in Support of the Class' Motion to Compel Household Defendants to Comply with the Court's August 10 and 22 Orders and for Appropriate Sanctions for Non-Compliance (filed concurrently herewith), Ex. 1: emails regarding recap of HSBC meetings with ACORN consumer advocates (HHS 00000006-7); Exs. 2-7 multiple duplicative copies of unfilled form agreements with Equifax Credit Information Services (HHS 00000169-175;⁴ HHS 00001430-36; HHS 00001440-46; HHS 00001779-1784; HHS 00001786-91; HHS 00001876-87); and Ex. 8: email regarding Dress Rehearsal Weekend (HHS 00001886-87). Other examples include a 1,643-page long listing of loans (HHS 00001898-3541) and a subpoena by the Arizona Attorney General's Office (HHS 00001391-97). A random review of the remaining documents listed further reinforces that defendants did not undertake a good faith effort to list only those documents that "they believed to be responsive," but rather "dumped" hundreds of thousands of pages of documents on the Class to derail the Class' efforts to streamline discovery and the deposition process to meet the January 31, 2007 deadline. August 10 Order at 8.

³ As with all voluminous documents here, the Class has only provided excerpts of these documents to avoid burdening the Court, but are willing to furnish complete copies upon request.

⁴ Aside from this complete copy, only the first page of the duplicates is being provided to avoid burdening the Court and since the documents are irrelevant to prepayment penalties tracking anyway.

Defendants' tactics only foster distrust and do nothing to streamline and narrow the issues for summary judgment and trial.

11. Similarly, for Request Nos. 1-2, 6, 9, 11 and 12, defendants identified 278, 225, 345, 81, and 344 pages, respectively, of single-spaced Bates ranges that defendants claim "may be within the scope of Plaintiffs' Third Request. *See* Exs. G-K.

12. Request Nos. 1 and 2 request an entire set of documents supporting Household's calculation of credit loss reserves for owned and managed receivables. Again, a random review of documents listed on just the first page of defendants' listings clearly demonstrates defendants' improper objective of "dumping" irrelevant documents on the Class. For example, defendants have listed Forms 10-K, which incidentally are designated "Confidential" despite the obvious fact that these are filed publicly, form interim servicing agreements, marketing contracts, incentive program agreements, and other agreements that have nothing to do with calculation of credit loss reserves. *See, e.g.*, Exs. 9-10 (excerpts from HHS 00034344-499 and HHS 00035295-450 of Household's Forms 10-K); Exs. 11-12 (form interim servicing agreements HHS 00004134-176 and excerpt of HHS 00004185-4227); Ex. 13 (marketing innovator contracts/incentive programs excerpted at HHS 00031280-379); Exs. 14-17 (other documents irrelevant to the calculation of reserves at HHS 00031531-33; excerpts of HHS 00032876-912; HHS 00000219-247; HHS 00000260-289).

13. The Class' Request No. 6 asks for an entire set of documents supporting the accounting related to the securitization of receivables for every financial quarter. Instead, examples of the types of what defendants have identified as "may be within the scope" of this request include, among others, documents relating to the state of Tennessee's examination of Household Finance Corporation (Ex. 18 at HHS 00001830-1834); Director of Finance (Auto Finance) position description (Ex. 19 at HHS 00033313-33314); news articles (Ex. 20 at HHS 00030470-0479); analyst report regarding Banc of America Securities, LLP (Ex. 21 at HHS 00030577-0579); meeting

agenda (Ex. 22 at HHS 00016590-6592); and auto finance incentive program (Ex. 23 at HHS 00034736-4739).

14. Ironically, in an earlier Order, this Court found that defendants need not produce any more post-Class Period documents because they have produced sufficient. June 15, 2006 Order (Docket No. 534). Defendants' production of multiple copies of Senator Jackie Speier's Privacy Bill from February 2003 are some exemplars of the types of Post-Class Period production that defendants dumped onto the Class. *See, e.g.*, Exs. 24-32 at HHS 00030214-0217; HHS 00030218-0237; HHS 00030238-0260; HHS 00030672-0674; HHS 00030675-0697; HHS 00031111-1113; HHS 00031114-1133; HHS 00031134-1156; and HHS 00033296-3311, respectively.

15. Request No. 11 asks for an entire set of documents supporting Household's tracking of discount points for every financial quarter. Instead, examples of the types of documents Household has listed include documents relating to the Auto Finance business units (HHS 00037617-7631 and an exact duplicate at excerpt of HHS 00033649-3663); consumer auto dealer surveys (HHS 00151087-00151121); and other similar irrelevant documents. Request No. 12 asks for an entire set of documents supporting Household's tracking of EZ Pay accounts by financial quarter. Instead, examples of documents that defendants have listed include, among others, documents relating to contacting customers by telephone messages and dialer best practices (Exs. 33-35 at HHS 00010867-10875; excerpt of HHS 00013222-3230 and HHS 00041553-1568); credit policies manual (HHS 00042008-2161); salaries and expenses spreadsheet (Ex. 36, excerpt at HHS 00043980-4004); and the boiler-plate portion of a monthly statement (Ex. 37 at HHS 00014217-220).

16. There can be no explanation for defendants' listing of these obviously non-responsive documents, other than defendants' lack of good faith in complying with the Court's Orders and to harass plaintiffs. Such conduct cannot be lightly dismissed by this Court. Moreover, the Class

should not be burdened by requiring to expend its resources to review the hundreds of single-spaced pages of Bates numbers that defendants have improperly listed. Accordingly, defendants should be compelled to provide lists of “responsive” documents within one week.

17. The Class also requests that the Court impose sanctions upon defendants for their misconduct. Defendants’ conduct demonstrates a pattern of non-compliance with the Court’s orders. *See Royal Maccabees Life Ins. Co. v. Malachinski*, No. 96 C 6135, 2001 U.S. Dist. LEXIS 3362 (N. D. Ill. Mar. 20, 2001) (courts have sanctioned litigants for discovery abuses under their inherent power when the record reflects a pattern of behavior demonstrating a bad faith effort to thwart the other party’s discovery efforts). Sanctions are proper if non-compliance is willful, done in bad faith, or by fault of the noncomplying litigant. *See Melendez v. Illinois Bell Tel. Co.*, 79 F.3d 661, 670-71 (7th Cir. 1996), *r’hrq en banc denied*, No. 94-3496, 1996 U.S. Dist. LEXIS 9838 (7th Cir. Apr. 25, 1996). A party acts in bad faith when, as here, it knew that it was required by the Court’s Order to provide information by date certain, and despite this the party failed to disclose relevant information, and instead intends to force the Class to expend significant resources on a wild goose chase. *Id.* Additionally, defendants’ refusal to provide plaintiffs with crucial information violates a standing Court Order and is part of a purposeful effort to prejudice the Class. *See Chambers v. NASCO*, 501 U.S. 32, 46, *r’hrq denied*, 501 U.S. 1269 (1991). Courts have awarded attorney’s fees and other appropriate sanctions where the party negligently violated discovery proceedings. *See Tamari v. Bache & Co. (Lebanon) S.A.L.*, 729 F.2d 469, 474 (7th Cir. 1984). Here, defendants intentionally

failed to provide information to the Court despite making the representation in open Court that defendants would indeed be able to provide this information by September 5 – the date ordered by the Court in its August 22 Order.

DATED: September 18, 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)
LUKE O. BROOKS (90785469)
MARIA V. MORRIS (223903)
BING Z. RYAN (228641)

s/ Azra Z. Mehdi

AZRA Z. MEHDI

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
110 East 59th Street, 25th Floor
New York, NY 10022
Telephone: 212/883-8000
212/355-6900 (fax)

Attorneys for Plaintiff

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