UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

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

MEMORANDUM OF LAW IN SUPPORT OF THE HOUSEHOLD DEFENDANTS' MOTION FOR SANCTIONS INCLUDING A RECOMMENDATION OF DISMISSAL FOR FAILURE TO RESPOND AND TO COMPEL RESPONSES TO DEFENDANTS' COURT AUTHORIZED SUPPLEMENT TO DEFENDANTS' SECOND SET OF INTERROGATORIES

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This memorandum is respectfully submitted in support of the Household Defendants' Motion for Sanctions Including a Recommendation of Dismissal for Failure to Respond and to Compel Responses to Defendants' Court Authorized Supplement to Defendants' Second Set of Interrogatories (the "Supplemental Interrogatories").[1]

INTRODUCTION

Responding to interrogatories served under the Federal Rules of Civil Procedure is not an empty ritual which Plaintiffs may evade with a litany of objections and non-responsive answers. Real answers are required. *See, e.g.*, *Portis* v. *City of Chicago*, No. 02 C 3139, 2005 U.S. Dist. LEXIS 7972, at *9-10 (N.D. Ill. Apr. 15, 2005) (Nolan, M.J.). The interrogatories that are the subject of this motion were interposed upon the Order of this Court that Plaintiffs must provide real answers on these subjects. Unfortunately, after two rounds of revisions, assurances from Plaintiffs and a cautionary instruction from the Court, the latest set of objections and evasive responses from Plaintiffs continue to reflect Plaintiffs' counsel's disregard of these Rules and the Court's orders. Their repeated and deliberate refusal to clearly articulate the scope of the fraud they allege warrants an imposition of sanctions including a recommendation from this Court that Plaintiffs' claims be dismissed.

Plaintiffs Have Repeatedly Failed To Specifically Identify The Alleged Illegal Products and Revenues As Ordered

The Complaint in this securities fraud case principally alleges that Defendants fraudulently established unlawful sales practices that generated illegal revenues. The Complaint does not, however, identify the particular Household products or revenues that were "illegally" generated thereby. Instead, it vaguely asserts that Household was engaged in a "widespread" and "massive" scheme. Plaintiffs' only suggestion that any Household products or policies might be involved comes from their discovery efforts into five generic types of products (*e.g.*, loans containing "prepayment penalties"). Unfortunately, mere identification of these five categories is not helpful because all five general categories of products are: (i) perfectly legal and (ii) widely know to regulators, investors and the public to whom the products were openly sold.

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[1] "Supplemental Interrogatories" refers to Household Defendants' Court Authorized Supplement to Household Defendants' Second Set of Interrogatories to Lead Plaintiffs served on September 15, 2006. (*See* Affidavit of David R. Owen dated December 22, 2006 ("Owen Aff."), Ex. 5).

Defendants have twice requested more detailed information about the particulars of the alleged illegality, including the most basic issue of whether Plaintiffs are actually claiming that *all sales* in *all five categories of products* are part of this "fraudulent" scheme—or only some portion thereof. Rather than identify any specifically "illegal" products, policies or revenues, Plaintiffs continue to reiterate the same generic contentions in the Complaint that the Court already found to be insufficient in response to pointed interrogatories. For example, with regard to prepayment penalties, the following is the progression of information Plaintiffs have provided about the allegedly "massive" scheme:

1) "Failing to disclose that loans contained prepayment penalties that effectively prevented refinancing with another lender" (Owen Aff., Ex. 1 at ¶ 52 (Complaint));[2]
2) "Failing to disclose or actively concealing that loans contained prepayment penalties" (Owen Aff. Ex. 3 at 24-25 (Plaintiffs' First (deficient) response to No. 12));
3) "prepayment penalties that were not disclosed or which were actively concealed, or whose existence or imposition was misrepresented in some fashion." (Owen Aff., Ex. 11 at 18 (Plaintiffs' Second Response to Supplemental No. 12)).

There is no effort to connect any of these vague recitations with any particular product, policy or practice of Household. There is also no meaningful quantification of the allegedly fraudulently obtained revenues, notwithstanding the production of millions of pages of documents and dozens of depositions that have been provided by Defendants and non-parties. Plaintiffs' only effort to quantify the revenues as ordered by the Court comes from inadmissible internal settlement calculations which on their face do not even relate to any particular claim of illegality. The identification of allegedly "illegal" products and/or policies is no better, disclosing, for example, that "such products would include Household's real estate products, such as mortgages, second loans, rewrites and refinances."

Plaintiffs' contempt for their obligations is most clear from the claim that the Court has authorized them to withhold the most basic information regarding the scope of their allegations—i.e., whether all or only some of the products in each of the five general categories are alleged to be "illegal." Plaintiffs' position is directly contradicted by the Court's Order which states that Defendants are entitled to know "which specific products and revenues Plaintiffs claim derived from

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[2] "Complaint" or "AC" refers to the [Corrected] Amended Consolidated Class Action Complaint (Owen Aff., Ex. 1).

[Household's] illegal practices." Plaintiffs' "response" is twenty-eight pages. All but five pages are objections.

Plaintiffs' Evasions Are Part Of A Deliberate and Improper Strategy, Inconsistent With The Federal Rules and the PSLRA

There can be no doubt that Plaintiffs' evasions and objections are part of a deliberate and cynical strategy by counsel at Lerach that serves two improper purposes. First, by refusing to make any concrete contentions in this case, counsel believe that they can successfully avoid any real scrutiny of the claims they have vaguely alleged. For example, Household has and had an internal electronic "bulletin board" that posts Household policies for the various products that the company sells. Plaintiffs have these materials, yet not one specific product or policy is cited in any of the responses as being "illegal." All the specifics are there. Plaintiffs' vagueness is nothing more than strategy. Having prosecuted dozens of similar *securities fraud* cases to a lucrative settlement, counsel plans to avoid any factual and legal defects by refusing to put specifics around these claims as long as they are permitted to do so.

Second, counsel are also aware that large public companies are significantly risk averse with respect to deliberately inflammatory and vague claims such as those asserted here. The more inflammatory and vague the claims are, the more likely the corporate defendant may be tempted to settle such claims at unwarranted amounts for lack of any ability to predict what might take place at trial. Plaintiffs' "strategy" is antithetical to both the PSLRA and the Federal Rules, which contemplate only specific claims of securities fraud and a full exposition of all allegations and contentions before trial. The absence of a claim of illegality to identify also would not excuse Plaintiffs or their counsel of their obligations. In fact, counsel at Lerach were reminded of this fact when they were recently sanctioned under similar circumstances. *See Newby* v. *Enron Corp.*, No. H-01-3624, 2006 WL 3474980 (S.D. Tex. Nov. 30, 2006) (dismissing claims against defendant on summary judgment and sanctioning Lerach, Coughlin, Stoia, Geller, Rudman & Robbins under Section 11(e), requiring them to pay defendant's legal fees for preparing for summary judgment because while the case was not frivolous when initially brought, counsel continued to pursue the claims when it became clear during discovery that it was without merit).

Under the Federal Rules, Plaintiffs are required to take a definite position as to what illegal products, policies and revenues they claim. Once they do, the "illegal predatory lending scheme" they vaguely allege will be exposed for what it is, a collection of customer complaints and a

regulatory settlement mischaracterized as a "fraud" against investors. Plaintiffs' refusal to provide this information, however, is an unacceptable violation of the Federal Rules and this Court's Order, and warrants sanctions to cover the costs of this second motion and a recommendation of dismissal of these claims.

Plaintiffs' Dilatory Conduct

Defendants served these five Supplemental Interrogatories on September 15, 2006 as authorized by the Court's August 10, 2006 Order ("August Order,"[3] Owen Aff., Ex. 4 at 16-17). The Court held that contention interrogatories must be answered no later than December 1, 2006. On October 24, Plaintiffs served non-responsive answers, comprised mostly of objections. On November 10, 2006, Defendants met and conferred with Plaintiffs. Plaintiffs refused to provide any additional information at that time. A few days later, Plaintiffs changed position and agreed to supplement their responses by December 1—the Court ordered deadline for responses to contention interrogatories. (Owen Aff., Ex. 7 at 2). Defendants inquired if "the new responses you promise by December 1 will speak to the issues we discussed." (Owen Aff., Ex. 8 at 1). Conceding the irrelevance of these efforts, Plaintiffs cynically but revealingly responded "you are too experienced an attorney to make such assumptions." (Owen Aff., Ex. 9 at 1).

At the November 30, 2006 status conference, Defendants expressed their concern to the Court that Plaintiffs would not substantively respond on December 1—the next day. Echoing Defendants' concerns, the Court cautioned:

> "I allowed you in good faith to file your answer 60 days prior to the close of discovery fully expecting that people were going to answer them. I would not have waited two years if I thought we were going to get some boilerplate answers. . . . So I'm fully expecting . . . they are going to answer these interrogatories. . . . If they don't, then we're going to deal with them."

(Owen Aff., Ex. 10 at 42-43). Counsel for Plaintiffs reassured the Court "responses are due tomorrow. ***They will get them tomorrow.***" (*Id*. at 41 (emphasis added)).

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[3] "August Order" refers to the Court's August 10, 2006 Order of Magistrate Judge Nan R. Nolan. (Owen Aff., Ex. 4).

The next day came and went and no responses arrived. Plaintiffs further declined to state when, if ever, the responses would be forthcoming. Finally, over two weeks later at midnight on December 15, only hours before a 7:30 a.m. status hearing with the Court, Plaintiffs served the responses that had been ordered, assuring that their substance, *vel non*, could not be discussed with the Court as originally planned. Unsurprisingly, Plaintiffs' "supplemental" answers identified no "illegal" products, policies or revenues with any specificity, nor any law alleged to have been violated.

The relevant rules and established case law make clear that dilatory conduct of this type is sanctionable, especially where there is an existing court order. Fed. R. Civ. P. 37(b)(2); *In re Industrial Gas Antitrust Litigation*, No. 80 C 3479, 1985 U.S. Dist. LEXIS 15646, at *4-7 (N.D. Ill. Sept. 24, 1985) (sanctioning plaintiffs for providing evasive, inadequate responses to contention interrogatories which the court had ordered them to answer, including paying defendants' attorneys fees for bringing the motion and recommending that the court bar plaintiffs from proving any fact that was not disclosed in their responses). Where, as here, the refusal to respond adequately to a court ordered discovery request results in prejudice, appropriate sanctions can include substantive remedies including dismissal. *In re Thomas Consolidated Industries, Inc.*, 456 F.3d 719, 726 (7th Cir. 2006) (dismissal was "justified" where "[plaintiff] repeated the same non-responsive, inadequate answers that the bankruptcy court expressly warned him were unacceptable").

ARGUMENT

As this Court has held, "interrogatories that seek to clarify the basis for or scope of an adversary's legal claims [and] . . . require the answering party to commit to a position and give factual specifics supporting its claims" are appropriate and require a response. (November Order,[4] Owen Aff., Ex. 2 at 3). Evasive, vague or incomplete responses to an interrogatory are treated as a failure to respond. *Jones* v. *Syntex Laboratories, Inc.*, No. 99 C 3113, 2001 U.S. Dist. LEXIS 17926, at *4, *6 (N.D. Ill. Oct. 24, 2001) (Nolan, M.J.); Fed. R. Civ. P. 37(a)(3). The five Supplemental Interrogatories at issue on this motion ask Plaintiffs to articulate the scope of the alleged fraud—to

[4] "November Order" refers to the Court's November 10, 2005 Order of Magistrate Judge Nan R. Nolan. (Owen Aff., Ex. 2).

identify the specific products that utilized the "illegal predatory lending practices" and the revenues that Plaintiffs allege were generated as a result. Despite an order from the Court stating that Defendants are entitled to such information, Plaintiffs have once again refused to respond in good faith.

A. Plaintiffs' Latest Litany of Objections Is Inconsistent With The Court's August Order

These Interrogatories were served upon the August Order of the Court that Defendants must identify "which ***specific*** products and revenues Plaintiffs claim derived from those illegal practices." (Owen Aff. Ex. 4 at 16-17 (emphasis added)). In response to this Court authorized inquiry, Defendants have offered more than twenty pages of objections. Plaintiffs' objections repeatedly assert, for example: "Put bluntly, this interrogatory makes no sense whatsoever." (Owen Aff. Ex. 11 at 9, 13, 17, 21, 25). The subject matter of Plaintiffs' objections is typically irrelevant and deliberately intended to be non-responsive and inflammatory. (*See, e.g.*, *Id*. at 7-9, 11-13, 15-17, 19-20, 21-25). There is also no indication of what information is being withheld on the basis of these objections. Given that the discoverability of this information has been conclusively established (without objection to Judge Guzman—i.e., waiver), this litany of objections is inconsistent with the Court's August Order. Plaintiffs should be meaningfully sanctioned for this conduct and ordered to serve new responses without objections.

B. Plaintiffs Failed to Identify Which Products and Revenues Were Allegedly Derived From Defendants' "Illegal" Practices

Plaintiffs' Complaint identifies five general categories of products that were allegedly abused as part of the alleged "illegal predatory lending scheme": (1) discount points, (2) insurance, (3) prepayment penalties, (4) E-Z-Pay, and (5) loans carrying interest at rates in excess of 20%. (Owen Aff. Ex. 1 at ¶ 52). Plaintiffs' discovery has also requested that Defendants provide specific information in these five areas. Notwithstanding these allusions, Plaintiffs have never articulated the actual scope of their claims of fraud—i.e., which specific products and practices are covered by their claims and which revenues and profits were "illegally" generated as a result. As this Court has acknowledged, this information is vital for any fraud defendant in order for such defendant to know precisely of what they have been accused. Plaintiffs' use of general terms like "massive" and "widespread" provide little assistance on the actual extent of the fraud alleged.

In response to Defendants' interrogatories No. 10-14 on these subjects, Plaintiffs refused to provide any specifics and reiterated their allegations from the Complaint, stating, for example:

> "The following Household practices fall within the definition of predatory lending as the term is used in the Complaint: . . .Failing to disclose or actively concealing that loans contained prepayment penalties;"

(Owen Aff. Ex. 3 at 24-25). Plaintiffs' responses identified neither which products utilized the "illegal predatory lending practices" nor what revenues were allegedly gained through these illegal as opposed to legitimate practices.

Defendants moved to compel responses. On August 10, 2006, the Court held that Plaintiffs must disclose the specifics of the *actual scope* of the fraud alleged. The Court stated:

> "Defendants object that Plaintiffs have merely stated that these terms do constitute illegal predatory lending without providing any information as to ***which specific products and revenues Plaintiffs claim derived from those illegal practices*****.** (Def. Mot., at 10-11) ***The court agrees that Defendants are entitled to such information*** . . . . Defendants may thus submit up to five additional and more specific interrogatories on these issues no later than September 15, 2006."

(Owen Aff. Ex. 4 at 16-17 (emphasis added)). In accordance with the Court's Order, Defendants served Supplemental Interrogatories No. 10-14 that requested, for example:

> "[I]f Plaintiffs do not include all uses of "prepayment penalties" within the alleged illegal practices, identify the Household products utilizing "prepayment penalties" that Plaintiffs contend were part of any alleged illegal practices, including any revenues illegally derived thereby."

(Owen Aff. Ex. 5 at 2). Plaintiffs' latest responses continue to be deficient, however, reiterating for a third time the vague generalities contained in the Complaint:

> "Household products utilizing "prepayment penalties" that were part of Household's illegal practices include all loans that included prepayment penalties that were not disclosed or which were actively concealed, or whose existence or imposition was misrepresented in some fashion, as well as prepayment penalties that were in violation of state or federal law."

(Owen Aff. Ex. 11 at 18).

These latest "answers" provide no specifics. Instead, this circular response amounts to saying "prepayment penalties were concealed in all loans that concealed prepayment penalties." To illustrate the problem, it is worth noting that prepayment penalties at Household and elsewhere are disclosed to customers, *inter alia*, in various legally required loan documents and forms required by

regulators. If Plaintiffs' responses identified, for example, an internal Household policy that the required forms and disclosures were not to be used in connection with certain products containing prepayment penalties, Plaintiffs would have at least offered a specific factual claim that could be evaluated and rebutted by actual evidence. Instead, Plaintiffs' responses are deliberately non-specific and vague so as to prevent any such evaluation.

Given Plaintiffs' discovery into relevant company wide bulletin boards and a veritable mountain of product and policy documents covering all five of the general categories at issue, the absence of any specifics is both indefensible and revealing. For example, with respect to "discount points," Plaintiffs' responses vaguely decry "providing borrowers with a range of discount points but almost always charging at the high end of the range." (*See* Owen Aff., Ex. 11 at 10). Plaintiffs could have instead contended "products containing discount point of X are illegal in Jurisdiction Y where they were sold, producing revenues of Z" and cited to documents from which such contentions could be explained. With Plaintiffs having bluntly intruded into Household's regulatory relationship with its state and federal regulators in discovery, it is reasonable to have expected Plaintiffs to offer particularized contentions of precisely that kind. Indeed, Plaintiffs explicitly represented to the Court that this was in fact the purpose of this discovery which has consumed so much of the Court's and the parties' time. Instead, there are no such contentions, and Defendants are left with an unspecified "range of discount points," no asserted illegality and ambiguities like "almost always." (*Id*.)

Defendants have now sought relief twice from the Court for Plaintiffs' lack of specific information on this subject in three different sets of responses. This Court need not wait for a fourth set of responses from Plaintiffs for sanctions to be warranted. Fed. R. Civ. P. 37(b)(2); *In re Industrial Gas Antitrust Litigation*, No. 80 C 3479, 1985 U.S. Dist. LEXIS 15646, at *4-7 (N.D. Ill. Sept. 24, 1985) (imposing sanctions for providing evasive, inadequate responses to contention interrogatories which the court had ordered them to answer); *see also Farrar* v. *City of Chicago*, 61 Fed. Appx. 967, 969 (7th Cir. 2003) (affirming the dismissal of a plaintiffs case where plaintiff refused to comply with the court's order to answer the defendants' interrogatories).

The Court has already held that the reiteration of the allegations in the Complaint is insufficient to inform Defendants of the extent of the alleged fraud. (*See* Owen Aff., Ex. 4 at 17). Where responses to interrogatories provide little more than what is contained in the pleadings, courts have found the responses "substantially unresponsive." *Schaller Telephone Co.* v. *Golden Sky Systems, Inc.*, 139 F. Supp. 2d 1071, 1100-1101 (N.D. Iowa 2001). In fact, the Seventh Circuit recently

held that repeating the same responses to interrogatories after the court has determined that such responses are insufficient justifies dismissal of the complaint. *In re Thomas Consolidated Industries, Inc.*, 456 F.3d at 726 ("[T]he courts below . . . relied in part on the fact that [plaintiff] repeated the same non-responsive, inadequate answers that the bankruptcy court expressly warned him were unacceptable. This blatant disregard of the bankruptcy court's order was more than sufficient to demonstrate the bad faith finding that justified dismissal.").

Plaintiffs also fail to identify the *revenues* that they contend were derived as a result of the alleged fraud. Indeed, as with the vague identification of allegedly "illegal" products, Plaintiffs' response carefully *avoids* taking any position. For example, Plaintiffs' response to Supplemental Interrogatory No. 12 states:

> "In connection with the Attorney General settlement, Household calculated it would lose at least $161 million as a result of refunding certain improper prepayment penalty revenues generated by certain real estate products from 1999 through 2002."

(Owen Aff. Ex. 11 at 18).

As this Court has already concluded, such carefully constructed ambiguity is insufficient. (November Order, Owen Aff., Ex. 2 at 3) ("[C]ontention interrogatories require the answering party to commit to a position")). Although Plaintiffs' responses allege that Household made calculations regarding improper lending practices, the responses pointedly stop short of stating that Plaintiffs actually contend that this amount was in fact illegally generated revenue. Putting aside for now the problem of inadmissibility, references to settlement calculations are non-responsive and irrelevant unless Plaintiffs explicitly confirm that they contend such settlement calculations to reflect a calculation of the "illegal" revenues that support the alleged securities fraud.

Plaintiffs could have said "Plaintiffs contend that Household generated $161 million as a result of illegal prepayment penalties on certain real estate products from 1999 through 2002." A specific factual contention of this kind about the scope of the alleged fraud is what the Court has ordered. (August Order, Owen Aff., Ex. 4 at 16-17). It can be factually evaluated. Plaintiffs' current response only alleges that Household made certain calculations.[5]

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[5] Plaintiffs also avoid taking a clear position by referring to the calculation as representing refunds as to "certain ***improper*** prepayment penalty revenues" (Owen Aff., Ex. 11 at 18) (emphasis added). Plaintiffs fail to state whether the term "improper" is synonymous to "illegal"—instead choosing to play

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Plaintiffs are withholding this information for the same reason they refuse to state whether or not all of Household's products were illegal. The deliberate and cynical ambiguity serves their strategic purposes. Once Plaintiffs are compelled to take a position, their allegations will be scrutinized, revealing inherent contradictions and factual weaknesses. For example, ***if*** Plaintiffs contend that the calculations cited in their responses represents revenue illegally generated from prepayment penalties then Plaintiffs would be alleging that *all* of Household's real estate prepayment penalties were illegal because the document cited by Plaintiffs estimates the total revenue received from all real estate prepayment penalties from 1999 through May 2002. Plaintiffs know that proving such a claim would be impossible since prepayment penalties are not inherently illegal. This position would also contradict their allegation that only "concealment of prepayment penalties" is illegal, unless Plaintiffs also contend that Household *always* concealed *all* prepayment penalties. While Plaintiffs are permitted to take any remotely plausible position that they like, deliberate ambiguities and inherent contradictions do not meet their discovery requirements under the Federal Rules and the August Order.

C. Plaintiffs Refused Even To Indicate Whether All Sales In the Five Categories Were Contended To Be Part Of the Alleged "Illegal" Practices

Plaintiffs' responses also refuse to indicate whether they allege that all (or only some) of the sales and revenues in the five categories of products are "illegal," asserting without explanation that the Court granted them the right to withhold this information. (*See e.g.* Owen Aff., Ex. 11 at 9, 13, 17, 21, 25 ("The Court specifically denied . . . that any additional response need be provided . . ."). Given the absence of any order by the Court to this effect and the absence of any explanation, Plaintiffs' reasoning is difficult to fathom. As far as the details of Plaintiffs' claims of "illegal" practices are concerned, however, this information is the most basic, and is clearly covered by the August Order.

Footnote continued from previous page.

word games to maintain ambiguity as to their position. Improper but legal lending practices cannot be the basis for securities fraud. *In re First Union Corp. Securities Litigation*, No. 3:99CV237-H, 2006 U.S. Dist. LEXIS 5083, at *8-9 (W.D.N.C. Jan. 20, 2006) (finding, in part, that discontinuing certain practices did not "reveal[] the truth" under loss causation because "gain-on-sale accounting was then, and presently is, permitted in the 'subprime' mortgage industry under [GAAP]").

If Plaintiffs contend that all uses of prepayment penalties are illegal, there is no reason they should be able to avoid saying so. In fact, if that is their contention, a flat statement to that effect is a complete response to the interrogatories. If (more plausibly) that is not their contention, then there is no reason why they should be permitted to object and evade making a clear statement to that effect. Plaintiffs' explicit refusal to say either "yes" or "no" to this simple question cannot be supported. *See, e.g., In re Industrial Gas Antitrust Litigation*, 1985 U.S. Dist. LEXIS 15646, at *4-7 (ordering plaintiffs to answer interrogatories that are susceptible to a "yes" or "no" response and sanctioning plaintiffs for failure to provide substantive responses as previously ordered by the court). This information is indisputably relevant to the litigation and Plaintiffs only excuse for refusing to say so is their claim that the Court told them not to.[6]

It is simply illogical that the Court would order Plaintiffs to identify within the five categories the "specific products and revenues" but not whether *all* of the products and revenues in the categories are claimed to be illegal. Identifying the latter is necessary to identify the former. Plaintiffs conceded as much by agreeing to redo their deficient responses. (Owen Aff. Ex. 7 at 2). In fact, the explicit refusal to provide this information illustrates the deliberate ambiguity that Plaintiffs have sought to maintain over the scope of their claims of securities fraud.

The case law clearly states that Defendants are entitled to such information. By definition, "contention interrogatories are interrogatories that seek to *clarify the basis for or* ***scope*** of an adversary's legal claims" (November Order, Owen Aff., Ex. 2 at 3) (emphasis added). They require a response. *See Ziemack* v. *Centel Corp.*, No. 92 C 3551, 1995 WL 729295, at *2 (N.D. Ill. Dec. 7, 1995).

Plaintiffs' failure to provide substantive answers prejudices Defendants and adversely affects the efficient adjudication of this case. Interrogatories serve an important purpose under the Federal Rules. They narrow the scope of the issues, enable a party to prepare for trial and minimize the possibility of surprise. *Portis*, 2005 U.S. Dist. LEXIS 7972, at *9-10. They are not formalities that Plaintiffs may disregard. To defend against Plaintiffs' claims, Defendants must know whether

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[6] For example, during the conference call with Plaintiffs on November 10, 2006, Defendants asked "[y]ou can't tell from your response whether you are saying that all single premium credit life insurance is part of the illegal predatory lending scheme." (Owen Aff., Ex. 6 at 9). Plaintiffs responded that "the more fundamental question is are you are entitled to that information? Because we read the court's order as saying, no, you don't get that information." *Id.*

Plaintiffs allege illegal companywide policies that affect every loan and all revenue in these categories or whether they allege a hodgepodge of individual branch violations. As long as Plaintiffs refrain from taking any definite position, Defendants will be unable to focus their resources and gather facts to disprove that specific position. Instead, Defendants will be forced to prepare to defend against *all possible* positions. Discovery under the Federal Rules is designed to prevent precisely this type of gamesmanship by Plaintiffs. Plaintiffs' continued deliberate disrespect for Defendants, the Federal Rules and this Court should not be countenanced.

CONCLUSION

For the foregoing reasons, Defendants respectfully submit that Plaintiffs have deliberately and openly engaged in dilatory and obstructive conduct and provided two sets of non-responsive answers in the face of the Court's August Order. Monetary and substantive sanctions including a recommendation of dismissal should be ordered to deter such conduct in the future. Furthermore, Plaintiffs should be ordered to substantively respond forthwith and without objection to Supplemental Interrogatories No. 10-14 in accordance with the Court's August 10, 2006 Order.

Dated: December 22, 2006
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