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, vs. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

REPLY IN SUPPORT OF THE CLASS' MOTION FOR A PROTECTIVE ORDER QUASHING DEFENDANTS' INTERROGATORIES SERVED ON THE LAST DAY OF THE CLOSE OF FACT DISCOVERY

I. INTRODUCTION

Pending before this Court is the Class' motion for a protective order seeking relief from defendants' further abuse of the discovery process in this case. The Class seeks an order quashing the Household Defendants' [Ninth] Set of Interrogatories to Lead Plaintiffs on the grounds that the propounded discovery is improper and untimely. Class' Mot. (Dkt. No. 955). The Court should grant this motion and quash this set of interrogatories.

II. ARGUMENT

As shown in the Class' opening brief, it is improper for a party to serve interrogatories on the final day of fact discovery. Defendants do not and, indeed, cannot dispute this. Instead, defendants contend that they have good cause to serve untimely interrogatories because the additional interrogatories are "follow up" interrogatories. This contention fails. Half of the interrogatories at issue are not follow up interrogatories, but stand-alone interrogatories that could have been propounded at any time during discovery. As to the remainder, these interrogatories purportedly follow up on the Class' December 1, 2006 interrogatory responses. Defendants had ample time to timely propound interrogatories on these December 1, 2006 responses. Significantly, defendants did not do so nor did they apprise the Court of any need for additional time to propound follow up interrogatories after receiving the responses. In these circumstances, there is no basis to allow defendants' eleventh hour interrogatories, particularly given the prejudice to the Class.

As amply demonstrated by the Class, the case law in this District and related Districts precludes a party from propounding discovery on the last day of fact discovery. Defendants do not dispute this case law, but assert that they have good cause for their untimely interrogatories. To support their assertion, defendants claim falsely that they could not have propounded the interrogatories at issue in a timely fashion because these interrogatories relate to the Class' January 29, 2007 responses.

The text of the interrogatories at issue thoroughly undercuts that claim. Many of the interrogatories are stand-alone interrogatories that could have been propounded at any time. We quote a number of the relevant interrogatories below to make this point:

> Interrogatory No. 63: Identify any instances in which you contend that Household took a charge against earnings to increase loan loss reserves as a result of "Improperly 'Reaging' or 'Restructuring' Delinquent Accounts" as alleged and set forth in Part VI.B of the Complaint. (AC ¶¶50, 107-133)
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> Interrogatory No. 65: Identify any document reflecting the authorization or approval by Household of any policy that you contend was illegal or prohibited by any relevant banking or lending laws.
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> Interrogatory No. 74. Identify the earliest date(s) which you contend that Defendants first had scienter in connection with the alleged fraud relating to "Illegal Predatory Lending Practices" as alleged and set forth in Part VI.A of the Complaint. (AC ¶¶50-106) [*see* Interrogatory Nos. 75-76, which are similar.]
>
> Interrogatory No. 77. If you contend that Household's "Illegal Predatory Lending Practices" as alleged and set forth in Part VI.A of the Complaint (AC ¶¶50-106) were the proximate cause of the alleged economic loss, state the legal and factual basis for your contention.
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> Interrogatory No. 80. Identify all facts and documents that you contend establish that Household acted with scienter as to any fraud alleged in the Complaint.

Class' Mot., Ex. A. These interrogatories which reference and/or quote the operative Complaint filed on March 13, 2003 could have been served at any point during discovery. None of these interrogatories refer to any prior response by the Class nor are they related in any way to such responses. The same point holds true for Interrogatory Nos. 78-79. These interrogatories could and should have been propounded months ago. Similarly, Interrogatory No. 64 is not, as defendants claim, a "follow up" but rather a re-worded version of the interrogatories to which it refers. Even if this interrogatory is somehow distinct from Interrogatory Nos. 31-33 there is no reason it could not have been propounded along with that set which was served on February 14, 2006, almost a year before the discovery cut-off.

As to Interrogatory Nos. 66-73, defendants concede that these interrogatories relate to the Class' December 1, 2006 responses. Defs' Opp. at 3 n.3 (Dkt. No. 981). Defendants, thus, had ample time to prepare these follow up interrogatories so that they could have been propounded in a timely fashion if defendants had been "prompt" as they suggest. Moreover, if defendants felt they needed additional time for these follow up interrogatories, the proper course would have been for defendants to seek additional time. However, at the January 24, 2007 status conference, defendants did not assert any need for more time to propound interrogatories although the subject of interrogatories was broached and they requested leave to serve a deposition notice on the Class. (As an aside, we note that defendants' own brief undercuts any claim that defendants need responses to these interrogatories when that brief concedes the Class has already identified responsive documents. *See id*.)

Defendants' failure to seek leave of Court prior to serving their interrogatories is significant. Defendants were aware that this Court's January 31, 2007 discovery cut-off was a firm date and that only limited fact discovery would be occurring after that date. As Mr. Kavaler stated to Judge Guzman: "Judge Nolan [] has said very clearly two things. ***January 31st is the end of all discovery***, on the one hand, but at the same time, she said: I understand if Judge Guzman rules on January 29th in a way [that] enables either side to take a few more focused, targeted depositions, I'll allow them to go on in February simultaneously with the expert discovery." Ex. A at 16 attached hereto (emphasis added). Given Mr. Kavaler's statements, defendants cannot claim that they mistakenly thought this Court had authorized them to serve this set of interrogatories on January 31, 2007. Additionally, if this discovery were truly important to defendants, they would have proactively sought leave of Court to serve untimely discovery. Instead, defendants were passive on this issue, a passivity that contrasts markedly with their generally very aggressive approach to interrogatory discovery.

Further, given the case law and this Court's prior rulings, defendants cannot argue that contention interrogatories are different from other interrogatories and therefore may be served on the last day of discovery. First, the case law carves out no exception for contention interrogatories. Indeed, defendants have failed to offer even one case from this jurisdiction that supports their position that it is acceptable to serve contention interrogatories or indeed any interrogatories on the last day of fact discovery with impunity. Second, this Court's August 10, 2006 Order, which addresses contention interrogatories, requires the Class to respond to such interrogatories ***two months*** prior to the close of discovery. Thus, defendants knew by implication that the ideal time for serving contention interrogatories would be ***three months*** prior to the close of discovery. Indeed, defendants served contention interrogatories on October 31, 2006 and December 22, 2006, well after the Court's August 10, 2006 Order. *See* Exs. B-C attached hereto. Thus, the August 10, 2006 Order did not provide defendants any excuse to delay propounding contention interrogatories until the last day of discovery.

Complex cases such as this one must have enforceable discovery deadlines. *United States v. Amerigroup Illinois, Inc.*, 230 F.R.D. 538, 545 (N.D. Ill. 2005) (citing *Harris v. Owens-Coring Fiberglas Corp.*, 102 F.3d 1429, 1433 (7th Cir. 1996)). Such deadlines are, to use Justice Holmes' phrase, a practical concession to the shortness of life. Without them, there would be no end to litigation, and without them there could not be the necessary expedition and coordination of a highly complex process. *See United States v. Golden Elevator, Inc.*, 27 F.3d 301, 302 (7th Cir. 1994). Defendants have failed to heed the Court-imposed time limit on discovery and they did so at their own peril.

Allowing defendants to ignore the January 31, 2007 fact discovery cut-off works a substantial prejudice on the Class, which has worked diligently to complete fact discovery and move on to expert discovery. The prejudice is particularly noteworthy here as defendants' interrogatories

are broad, sweeping interrogatories that are, as usual, poorly drafted. *See* January 24, 2007 Draft Hearing Tr. at 92-93 (Court statement: "I'm trying to level it out here. But, you know, you're not helping things here. And I thought those questions were clumsier and were going to really call for all kinds of more objections and I was trying to get you the facts is what I was trying – the fact, the underlying facts."); *see id.* at 86 (noting that interrogatory didn't request information regarding individual defendants despite defendants' claim to the contrary). For example, Interrogatory No. 80, quoted above, seeks "all facts and documents that . . . establish that Household acted with scienter as to any fraud alleged in the Complaint." Class' Mot., Ex. A. Similarly, Interrogatory No. 65 requests identification of documents reflecting "authorization or approval . . . of any policy that . . . was illegal or prohibited by any relevant banking or lending laws." *Id.* These expansive demands would require considerable time and effort (and thus burden) on the Class.

Significantly, the Class has already been prejudiced by defendants' delayed service of numerous additional interrogatories because the Class was forced to move for a protective order in the face of clearly improper fact discovery. This briefing diverts the Class' time and attention away from the remaining fact depositions and focusing on the upcoming expert discovery. The Court should not reinforce defendants' behavior and should not reward their diversionary tactics.

III. CONCLUSION

For all the foregoing reasons, the Class' motion for a protective order quashing defendants' interrogatories improperly and untimely served on January 31, 2007, the last day of fact discovery, should be granted.

DATED: March 2, 2007

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 March 2, 2007, declarant served by electronic mail and by U.S. Mail to the parties the: **REPLY IN SUPPORT OF THE CLASS' MOTION FOR A PROTECTIVE ORDER QUASHING DEFENDANTS' INTERROGATORIES SERVED ON THE LAST DAY OF THE CLOSE OF FACT DISCOVERY**. 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 2nd day of March, 2007, at San Francisco, California.

s/ Monina Gamboa
MONINA GAMBOA