

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FILED
2003 JUN 26 PM 3:56
U.S. DISTRICT COURT

LAWRENCE E. JAFFE PENSION PLAN,)
on behalf of itself and all others similarly)
situated,)

Plaintiff,)

v.)

HOUSEHOLD INTERNATIONAL, INC., et al.)

Defendants.)

No. 02 C 5893

Judge Ronald A. Guzman

DOCKETED

JUL 01 2003

NOTICE OF MOTION

To: Counsel on the Attached Service List

PLEASE TAKE NOTICE that on Tuesday, July 1, 2003 at 9:30 a.m., we shall appear before the Honorable Ronald A. Guzman, or any judge sitting in his stead, in Courtroom 1219 of the United States District Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Chicago, Illinois and then and there present the *Motion for Leave to File Supplemental Authority*, a copy of which is hereby served upon you.

Dated: June 26, 2003

Respectfully submitted,
Plaintiffs

By:



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Lori A. Fanning

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Designated as Local Counsel

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Francisco, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on June 26, 2003, declarant served the following document by depositing a true copy thereof in a United States mailbox at San Francisco, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List, except as otherwise noted thereon.

MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY

I declare under penalty of perjury that the foregoing is true and correct. Executed this 26th day of June, 2003, at San Francisco, California.



Monina O. Gamboa

HOUSEHOLD INTERNATIONAL (LEAD)

Service List - 6/26/2003 (02-0377)

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* Denotes service via hand delivery on June 26, 2003

** Denotes service via Federal Express for delivery on June 27, 2003

HOUSEHOLD INTERNATIONAL (LEAD)

Service List - 6/26/2003 (02-0377)

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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN, On
Behalf of Itself and All Others Similarly
Situating,

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

U.S. DISTRICT COURT

2003 JUN 26 PM 3:56

FILED

DOCKETED
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MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY

1. On June 25, 2003, plaintiffs were informed by defense counsel that an unpublished opinion in *Friedman v. Rayovac Corp., et al.*, Nos. 02-C-308-C, 02-C-325-C, 02-C-370-C (W.D. Wis. May 29, 2003) was not included in the Compendium of Authorities that was filed on June 19, 2003, in support of plaintiffs' responses to defendants' motions to dismiss. See Exhibit A attached hereto.

2. Additionally, on June 20, 2003, Judge Barbara B. Crabb denied plaintiffs' motion for reconsideration of the aforementioned opinion. See Exhibit B attached hereto.

3. Plaintiffs respectfully request leave to file the above described supplemental authority. In addition, plaintiffs respectfully submit that Judge Crabb's interpretation of §804 of the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002), is incorrect. In holding that the extended statute of limitations under The Sarbanes-Oxley Act does not apply to claims under the Securities Act of 1933, 15 U.S.C. §77 ("1933 Act"), Judge Crabb necessarily concluded, without discussion, that the word "contrivance," standing alone, is a term of fraud invoking a requirement of scienter. See Exhibit B at 3-4.

4. As discussed in Plaintiffs' Response to Household Defendants' Motion to Dismiss [Corrected] Amended Consolidated Class Action Complaint ("Plaintiffs' Response"), §IV.E.2.b., the word "contrivance" by itself is not a term of fraud. Only when paired with fraud terms, *i.e.*,

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"deceptive," "manipulative," or "fraudulent," does the word "contrivance" invoke a scienter requirement. *See Ernst v. Hochfelder*, 425 U.S. 185, 197 (1976). A "contrivance" is merely the vehicle through which a fraud is conducted (e.g., a registration statement, a prospectus, a Securities and Exchange Commission Form 10-K, a press release). Judge Crabb did not address this point in reaching her conclusion that, on its face, §804 does not apply to claims arising under §§11 and 12 of the 1933 Act.

5. At the very least, the statute's disjunctive construction and its inclusion of the word "contrivance" render §804 ambiguous. Judge Crabb, however, declined to consider the statute's legislative history which, as discussed in Plaintiffs' Response, §IV.E.2.c., unequivocally supports plaintiffs' interpretation. Indeed, Senator Leahy's instruction in the Congressional Record that §804 is intended to "govern all the already existing private causes of action" and "is intended to lengthen any statute of limitations under federal securities law" clearly demonstrates that Congress intended that the extended statute of limitations apply to claims arising under §§11 and 12(a)(2) of the 1933 Act. *See Legislative History of Title VIII of HR 2673: The Sarbanes-Oxley Act of 2002*, 148 Cong. Rec. S. 7418 (2002).

DATED: June 26, 2003

Respectfully submitted,



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**SEE CASE
FILE FOR
EXHIBITS**