

**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' STATEMENT FOR OCTOBER 2, 2007 STATUS CONFERENCE

A. Status of Expert Discovery and Recent Proceedings Before Judge Guzman

At the June 29, 2007 status conference, the Court adopted an expert discovery schedule. Pursuant to that schedule, on August 15, 2007, plaintiffs submitted three expert reports. Plaintiffs also supplemented 46 discovery responses to reference (where appropriate) the expert reports.

Based on one of plaintiffs' expert reports, that of Professor Daniel Fischel relating to damages, defendants filed a "Motion to Implement" on August 30 before Judge Guzman, contending that Professor Fischel's report established that all of the Class' claims were barred under the statute of limitations. At the presentment hearing on September 4, 2007, the Class opposed the motion on procedural grounds, contending principally that the motion was a premature motion for summary judgment and that expert discovery should be completed first. Judge Guzman concurred with the Class and denied the motion via minute order dated September 4, 2007.

At the September 4, 2007 hearing, Mr. Kavalier requested that Judge Guzman continue the October 2 status conference as expert discovery would not be complete by that date. Mr. Kavalier then proposed a new date of January 14, 2008 for the status conference, which Judge Guzman adopted. We attach a copy of the September 4, 2007 hearing transcript for the Court's convenience, as Exhibit 1.

Subsequently, via e-mail dated September 11, 2007, defense counsel requested a two-month extension of the October 15 date to submit their expert reports, stating, "the October 15 deadline is not nearly enough time for [their experts] to complete their review, formulate their responses, and prepare their reports." Class counsel agreed to extend the time for defendants' expert reports to November 5, 2007 with related modifications to the schedule with respect to any rebuttal reports and the deposition schedule. This response was framed to give defendants' experts the maximum time allowable while still concluding expert discovery prior to the January 14, 2008 status conference set

by Judge Guzman at the request of Mr. Kavalier. Defendants accepted the Class' proposed schedule, which this Court subsequently adopted on September 21, 2007.

B. Pending Issues

The Class has no pending issues to raise with the Court at this hearing. The Class understands that defendants may raise additional issues with respect to Professor Fischel's report, namely, that: (1) Professor Fischel has not provided certain Sungard data to defendants; (2) Professor Fischel's report should be adopted in response to an interrogatory served during the class certification discovery; and (3) Professor Fischel's report does not adequately explain how to compute damages. Plaintiffs are concerned that defendants seek to use these issues as an excuse to further extend the cut-off date for expert discovery.

The most serious issue raised by defendants, if true, concerns the Sungard data. However, as Class counsel has informed defense counsel twice in writing, all of the relevant data has been provided to defendants in accordance with the parties' stipulation. Out of an abundance of caution, Class counsel has reconfirmed this point with Professor Fischel's staff. Further, the data at issue is explicitly set forth *in toto* in Exhibit 49 to Professor Fischel's report. There is no missing data and nothing additional for Professor Fischel to provide.

As to supplementation of the class certification interrogatory, at issue is Interrogatory No. 2, which seeks (a) computation of each lead plaintiff's individual damages; and (b) witnesses with knowledge of such damages. Supplementation of this interrogatory is inappropriate at this time and does not serve the purpose of establishing class-wide liability. Indeed, during the meet and confer, defendants expressly disclaimed seeking the computation of each lead plaintiff's individual damages in the supplementation (nor could they seek such information consistent with this Court's prior orders of April 18, 2005, November 13, 2006 and January 29, 2007 deferring individual class member discovery until after the liability phase of this case is completed). Thus, putting aside the

other pending objections to this interrogatory, which defendants never challenged, there is no further substantive response possible. Moreover, defendants do not need supplementation of this interrogatory as further evidence that lead plaintiffs have adopted Professor Fischel's report. Indeed, in their Motion to Implement, defendants noted to Judge Guzman, "Plaintiffs explicitly incorporated Professor Fischel's Report in their responses to numerous contention interrogatories by which Defendants sought to learn the basis of Plaintiffs' claims, including their theory of the alleged 'inflation' and 'deflation' of the stock price." Memorandum of Law in Support of the Household Defendants' Motion for Implementation of This Court's February 28, 2006 Order at 5, Docket No. 1121. We further note that any arguments as to supplementation of this class certification interrogatory being important are undercut by the fact that, on August 17, defense counsel did not request further supplementation of this response when they requested supplementation of the responses to Interrogatory Nos. 46, 48-49 and 54. Ex. 2.

As to the substance of Professor Fischel's report, defendants now claim that they cannot understand how to compute damages based on his report. Putting aside the inconsistency between this claim and defendants' "Motion to Implement," wherein they so perfectly comprehended Professor Fischel's report and, in fact, "embraced it," Ex. 1 at 8, this issue, if it exists, is not ripe and, consistent with Judge Guzman's denial of the Motion to Implement, should be addressed after the completion of expert discovery at summary judgment.

In sum, defendants have no real issues worthy of discussion at this juncture and certainly none that warrant any further delays in the expert schedule.

DATED: September 27, 2007

Respectfully submitted,

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DECLARATION OF SERVICE BY E-MAIL 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 September 27, 2007, declarant served by electronic mail and by U.S. Mail to the parties: **THE CLASS' STATEMENT FOR OCTOBER 2, 2007 STATUS CONFERENCE.**

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 27th day of September, 2007, at San Francisco, California.

s/ Monina Gamboa

MONINA GAMBOA