

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	Nan R. Nolan
CASE NUMBER	02 C 5893	DATE	2/26/2008
CASE TITLE	Lawrence E Jaffe vs. Household International Inc, et al		

DOCKET ENTRY TEXT

For the reasons set forth below, Plaintiffs’ Motion to Enforce the January 31, 2008 Order and to Compel Production of Documents by Defendants’ Experts Pursuant to Plaintiffs’ Subpoenas [Doc. 1184] is denied in part and entered and continued in part.

■ [For further details see text below.]

Notices mailed by Judicial staff.

STATEMENT

The first part of this motion relates to Defendants’ December 10, 2007 Notice Concerning Expert Testimony that identified 23 witnesses who may give testimony “as to matters as to which they have specialized knowledge and whose testimony may, at least in part, fall within the purview of the Court’s ruling in *Sunstar, Inc. v. Alberto-Culver Co.*, No. 01 C 736, 2006 U.S. Dist. LEXIS 85678 (N.D. Ill. Nov. 16, 2006).” On January 31, 2008, the court questioned whether the 23 witnesses actually qualify as non-retained “experts” under *Sunstar*. The court explained that (1) unlike the third-party employee involved in *Sunstar*, “the 23 witnesses at issue in this case are all current and former Household employees – some are named Defendants – with extensive personal knowledge of Household’s policies and practices”; and (2) “Defendants represent that they have no intention of eliciting any expert opinions or testimony from these individuals.” (Minute Order of 1/31/08, Doc. 1172.)

In light of these differences, the court instructed Defendants to (1) submit a revised expert disclosure notice identifying only individuals who may provide expert testimony at trial; and (2) provide a detailed statement of the specific opinions any non-retained experts may offer at trial, and the bases for those opinions. (*Id.*) Defendants again objected, and at a status hearing on February 7, 2008, the parties agreed to prepare a stipulation regarding the 23 witnesses as stated in open court. (Minute Order of 2/7/08, Doc. 1176.) This effort has failed, apparently due to a misunderstanding of the court’s instructions at the February 7 hearing.

Defendants proposed a stipulation that addressed the 23 witnesses on their December 10, 2007 Notice, providing that “to the extent any of the 23 individuals . . . is called to give testimony at trial or otherwise as to what they did in real time, why and how they did it, and why they believe it was right, even if based on specialized knowledge, the parties will not object on the ground that it is improper expert testimony by a lay witness or on the ground that the other party failed to disclose the identity of the witness as required by Rule 26(a)(2)(A).” (Ex. A to Letter dated 2/25/08.) Plaintiffs now seek to expand the stipulation to include other

STATEMENT

unidentified witnesses who may testify at trial as to what they did in real time, even if based on specialized knowledge. Plaintiffs, however, have not submitted a notice indicating that any of their witnesses may be considered non-retained experts under *Sunstar*. In the absence of such a notice, Plaintiffs' proposed expansion of the stipulation is inconsistent with this court's February 7, 2008 ruling.

Plaintiffs may submit an appropriate notice identifying the specific witnesses they believe may fall within the purview of *Sunstar* by February 27, 2008. The parties may then submit a stipulation covering all named witnesses consistent with this opinion by February 29, 2008. In the event Plaintiffs choose not to submit a notice, the parties should file the stipulation as drafted by Defendants. In the alternative, to the extent this entire matter may be moot depending on Judge Guzman's understanding of *Sunstar*, the parties remain free to appeal this ruling to the district court. The court hereby confirms that any such appeal is not time-barred.

As for Plaintiffs' motion to compel production of documents from Defendants' experts, Defendants will respond by February 28, 2008; Plaintiffs will reply by March 3, 2008. The motion hearing set for February 29, 2008 is stricken.