

**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.)	
_____)	

LEAD PLAINTIFFS' REQUEST FOR A TELEPHONIC STATUS CONFERENCE

Lead Plaintiffs respectfully request that the Court set a telephonic status conference to discuss two issues: (1) the *Sunstar* issue and the parties' inability to reach a stipulation; and (2) lead plaintiffs' motion to compel discovery with respect to their subpoenas served upon defendants' experts.

A. The *Sunstar* Issue

Following this Court's February 26 Order, lead plaintiffs, as directed by that Order, submitted a list of possible witnesses, whose testimony could fall within defendants' interpretation of the Court's *Sunstar* ruling. Since submitting their list, plaintiffs have attempted to work with defendants to a stipulation regarding the *Sunstar* issue. However, despite all reasonable efforts by lead plaintiffs, defendants will not stipulate but have invented ever broader and more wild arguments in order to preclude agreement.

Prior to the February 26 Order, defendants would not enter into a stipulation on the *Sunstar* issue because plaintiffs had not provided a list. The February 26 Order and plaintiffs' February 27 list removed that excuse.

However, defendants then contended that lead plaintiffs' list was improper because it included four witnesses, who were independent third parties with specialized knowledge and "different" from those individuals on defendants' list. This is untrue: defendants' own list includes four third party witnesses with specialized knowledge: (1) Christopher Biannucci of Arthur Andersen/Ernst & Young; (2) Jonathan Keller of Arthur Andersen/Ernst & Young; (3) William Long of KPMG; and (4) Brian Stephens of KPMG.

In any event, defendants in a letter to this Court suggested additional meet and confer efforts were necessary to resolve how to "remedy" this issue. In the meet and confer, defendants asserted a right to depose each of these individuals even though defendants have known about these witnesses since the beginning of the case and even subpoenaed one of them (William Ryan) but elected not to

follow through with the deposition. Given the possible delays associated with taking four depositions of third parties, plaintiffs agreed to drop three of the four and keep only one of the four, Charles Cross.¹ Mr. Cross authored the Washington state DFI report, which is attached to the operating Complaint in this action, and was extensively deposed by Household in a prior case with respect to his experience and the Washington state DFI report. That prior case was a class action involving allegations that Household had systematically engaged in predatory lending in the state of Washington. Experts from both sides have cited and relied upon this deposition of Mr. Cross. Nonetheless, during the meet and confer, lead plaintiffs did not (and still do not) object to defendants' taking his deposition if they really want to but do object to any use of this deposition as a means to foster any delays, such as moving the pending status conference with Judge Guzman. At this point, the parties seemingly had an agreement on the substance and had an agreement to use plaintiffs' language with respect to the stipulation.

However, defendants reversed course yet again. They renewed their objection to the inclusion of Mr. Cross and asserted the right to depose Mr. Cross *before* they would stipulate. There is no rational basis for this course under any construction of *Sunstar*. In a letter dated today to this Court,² defendants now assert the right to depose all four "new" individuals identified by lead plaintiffs on February 27, even though three have been withdrawn from that list.³ This is blatantly improper as none of these three individuals now are involved in any aspect of expert discovery.

¹ Plaintiffs' decision was also based upon the consideration that the testimony they might seek to elicit from witnesses would not fall within *Sunstar*, even using defendants' expansive interpretation of that decision.

² As discussed further below, defendants' practice of sending substantive letters to this Court is improper and has been the subject of criticism by Judge Guzman. Plaintiffs request that the Court disregard this letter and any further letters from defendants "seeking guidance."

³ For the Court's reference, lead plaintiffs attach a copy of their amended list as Exhibit A hereto. They also attach as Exhibit B the proposed stipulation using the agreed upon language.

Additionally, during the meet and confer, defendants agreed to use plaintiffs' language. Subsequently, defendants asserted the stipulation should also cover post-Class Period opinions. This is contrary to the positions taken by defendants before this Court where they explained that the opinions would be only "real-time" Class Period opinions. Defendants know that the extension to post-Class Period opinions would be unacceptable to plaintiffs given defendants' long-standing opposition to post-Class Period discovery, the Court's limitation on post-Class Period document and interrogatory discovery, and the fact that lead plaintiffs had to affirmatively move to obtain post-Class Period discovery. Needless to say, all this means lead plaintiffs have little or no idea of what post-Class Period opinions these individuals might offer and via such extension, lead plaintiffs would either incur prejudice by not deposing these individuals (if that were sufficient) or suffer via a substantial delay.

By emails last Friday, lead plaintiffs asked defendants to reconsider their positions and to agree to the stipulation including the language agreed upon by the parties and with plaintiffs' list including Mr. Cross but not the other three witnesses. Defendants were to have responded by noon their time Monday. Instead of responding, defendants sent an unauthorized letter to this Court. This is the second time that defendants have prematurely sent letters to this Court with biased descriptions of the parties' discussions. As Judge Guzman noted at the January 16, 2008 hearing in this case, these letters by defendants are improper and are "like an attorney calling me on the phone and giving me information." January 16, 2008 Transcript at 3. "[I]n the future, if you have something you wish to put before the Court, follow the Rules of Civil Procedure, file a motion, a petition, an application, serve the other side, set it up for presentment and we'll hear it." *Id.* Defendants apparently have not received that clear message to cease sending letters to this Court.

In any event, by their latest actions, defendants proved that any stipulation with them on this issue is impossible. Thus, lead plaintiffs see two options: (1) a return to the status quo before

plaintiffs naively suggested a stipulation, *i.e.* defendants must comply with the January 31 Order; or (2) the Court orders that both parties have adequately designated their respective witnesses with respect to any potential *Sunstar* issue and require that any party seeking to introduce post-Class Period opinion testimony adequately identify such opinions and the related specialized knowledge within five days of the Order. Lead plaintiffs favor this latter solution. Defendants' only real objection is that lead plaintiffs' list is untimely. However, there is no prejudice to defendants since there is only one witness whom they wish to depose in this matter (Charles Cross) and lead plaintiffs do not object to that deposition. Additionally, this latter alternative puts defendants to the test on their new expansion to post-Class Period opinions and giving lead plaintiffs the information they need to respond to any such opinions.

B. Lead Plaintiffs' Subpoenas on Defendants' Experts

Lead plaintiffs respectfully raise a timing issue with respect to their pending motion with respect to the expert subpoenas. As this Court is aware, defendants raised issues with respect to this Court's ability to enforce those subpoenas. Lead plaintiffs believe these issues lack merit, as outlined in their submissions. However, if the Court were to adopt defendants' position on this issue, lead plaintiffs would need to open subsidiary litigation in other District Courts prior to the upcoming March 25 close of expert discovery. As this Court has not yet ruled on lead plaintiffs' motion, lead plaintiffs wish to inform the Court of this timing issue.

DATED: March 10, 2008

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Exhibit A

**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
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HOUSEHOLD INTERNATIONAL, INC., et)	
al.,)	
)
Defendants.)	
_____)	

LEAD PLAINTIFFS' AMENDED NOTICE CONCERNING EXPERT TESTIMONY
PURSUANT TO THE COURT'S FEBRUARY 26, 2008 ORDER

Pursuant to the Court's February 26, 2008 Order, lead plaintiffs provide the following list of witnesses whose testimony as to opinions developed before or during the Class Period lead plaintiffs may introduce at trial or otherwise. Consistent with defendants' "hedging" approach, lead plaintiffs provide this list without conceding that any opinion testimony from these witnesses constitutes expert testimony or falls within the scope of this Court's *Sunstar, Inc. v. Alberto-Culver Co.*, No. 01 C 736, 2006 U.S. Dist. LEXIS 85678 (N.D. Ill. Nov. 16, 2006) opinion. Lead plaintiffs reserve the right to introduce opinion testimony from the 23 individuals identified in defendants' earlier Notice Concerning Expert Testimony which list is hereby incorporated by reference.

- Robin Allcock
- William Burgess
- Paul Creatura
- Charles Cross
- Christine Cunningham
- Kathleen Curtin
- Per Ekholdt
- Gregory Fasana
- Douglas Flint
- Douglas Friedrich
- Ned Hennigan
- Stephen Hicks
- Dennis Hueman
- David Little
- Paul Makowski
- Helen Markell
- Todd May
- Steven McDonald
- Kay Nelson
- Robert O'Han

- Richard Peters Jr.
- Kenneth Posner
- Jonathan Pruzan
- Kenneth Robin
- Carin Rodemoyer
- Thomas Schneider
- Margaret Sprude
- Kenneth Walker
- Christine Worwa

DATED: March 10, 2008

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Attorneys for Plaintiff

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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 March 10, 2008, declarant served by electronic mail and by U.S. Mail to the parties: **LEAD PLAINTIFFS' AMENDED NOTICE CONCERNING EXPERT TESTIMONY PURSUANT TO THE COURT'S FEBRUARY 26, 2008 ORDER**. The parties' email addresses are as follows:

TKavaler@cahill.com PSloane@cahill.com PFarren@cahill.com LBest@cahill.com DOwen@cahill.com	NEimer@EimerStahl.com ADeutsch@EimerStahl.com MMiller@MillerLawLLC.com LFanning@MillerLawLLC.com
--	--

and by U.S. Mail to:

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David R. Scott, Esq.
Scott & Scott LLC
108 Norwich Avenue
Colchester, CT 06415

I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of March, 2008, at San Francisco, California.

/s/ Marcy Medeiros

MARCY MEDEIROS

Exhibit B

**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)
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) <u>CLASS ACTION</u>
Plaintiff,)	
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HOUSEHOLD INTERNATIONAL, INC., et)	
al.,)	
)
Defendants.)	
_____)	

STIPULATION PURSUANT TO THE COURT'S FEBRUARY 16, 2008 ORDER

WHEREAS, on December 10, 2007, the date set by the Court for Defendants' expert disclosures, Defendants served on Plaintiffs a Notice Concerning Expert Testimony ("Defendants' Notice") identifying, *inter alia*, 23 individuals whom "Defendants may call . . . to give testimony in this action 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 Company, Inc.*, 2006 U.S. Dist. LEXIS 85678 (N.D. Ill., Nov. 16, 2006)" ("*Sunstar*");

WHEREAS, Defendants represent that none of the individuals identified in Defendants' Notice is a retained expert or an employee of a party whose duties regularly involve giving expert testimony, but rather, each has real-time knowledge of the events, transactions, actions, decisions, and judgments during the Class Period and at issue in the underlying action;

WHEREAS, Defendants' Notice has been the subject of submissions to the Court by the parties, discussion during status conferences with Magistrate Judge Nolan, and Orders of Magistrate Judge Nolan dated January 16, 2008 and January 31, 2008, which required 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;"

WHEREAS, in their February 7 status conference statement, defendants requested the Court reconsider the January 31, 2008 Order based on the grounds that defendants only proposed to have the identified witnesses testify as to opinions based on their real-time knowledge of events, transactions, actions, decisions, and judgments;

WHEREAS, during the February 7, 2008 status conference with Magistrate Judge Nolan, the parties agreed to reach resolution on the issues related to Defendants' Notice by way of stipulation without any further Court submissions by either party or action by the Court and in a way equally applicable to any testimony that plaintiffs may seek to introduce at trial; and

WHEREAS, on February 27, 2008, pursuant to Magistrate Judge Nolan's February 26, 2008 Order, plaintiffs provided defendants with a list of witnesses whose testimony as to opinions developed before or during the Class Period, plaintiffs may introduce at trial or otherwise;

WHEREAS, on March 4, 2008, following further discussions with defendants, plaintiffs amended their February 27, 2008 Notice.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned counsel for the parties in the above-captioned action, that to the extent any party seeks to introduce testimony at trial or otherwise as to what individuals identified on plaintiffs' March 4, 2008 Amended Notice and defendants' December 10, 2007 Notice did in real time before or during the Class Period, why and how they did it, and the opinions they developed at the time, even if based on specialized knowledge, the parties will not object to such testimony 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).

DATED: March __, 2008

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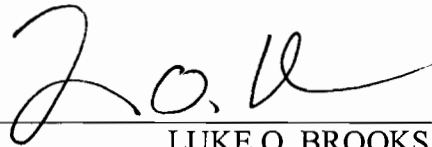
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2. That on March 10, 2008, declarant served by electronic mail and by U.S. Mail to the parties: **LEAD PLAINTIFFS' REQUEST FOR A TELEPHONIC STATUS CONFERENCE.**

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 10th day of March, 2008, at San Francisco, California.

/s/ Marcy Medeiros
MARCY MEDEIROS