

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, ON)	
BEHALF OF ITSELF AND ALL OTHERS SIMILARLY)	
SITUATED,)	Lead Case No. 02-C-5893
)	(Consolidated)
Plaintiffs,)	
)	CLASS ACTION
<i>- against -</i>)	
)	Judge Ronald A. Guzmán
HOUSEHOLD INTERNATIONAL, INC., ET AL.,)	
)	
Defendants.)	

**DECLARATION OF THOMAS J. KAVALER IN SUPPORT
OF DEFENDANTS' RECOMMENDATIONS FOR PHASE
TWO PROCEEDINGS, IF NEEDED**

STATE OF CALIFORNIA)
 : ss.:
COUNTY OF SONOMA)

I, THOMAS J. KAVALER, declare as follows:

1. I am a member of the bar of the State of New York and a member of the firm Cahill Gordon & Reindel LLP, attorneys for defendants Household International, Inc., William F. Aldinger, David A. Schoenholz, and Gary Gilmer ("Defendants") in this action. I submit this declaration to place before the Court certain information and documents referenced in Defendants' Recommendations for Phase Two Proceedings, If Needed.

2. Attached hereto as Exhibit A is a true and correct copy of the Lead Plaintiffs' Supplemental Statement Regarding Damages Pursuant to the Court's October 17, 2007 Order, dated October 24, 2007.

3. Attached hereto as Exhibit B is a true and correct copy of the Lead Plaintiffs' Further Supplement to Their Prior Statements Regarding Damages, dated February 1, 2008.

Executed this 28th day of May, 2009, in Sonoma County, California.

/s / Thomas J. Kavalier
Thomas J. Kavalier

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

**LEAD PLAINTIFFS' SUPPLEMENTAL STATEMENT REGARDING DAMAGES
PURSUANT TO THE COURT'S OCTOBER 17, 2007 ORDER**

Pursuant to the Court's October 17, 2007 Order lead plaintiffs supplement their Statement Regarding Damages as follows:

A. Lead Plaintiffs' Proposed Method of Calculating Damages

Lead plaintiffs intend to seek recovery for their out-of-pocket losses due to defendants' fraud. *Katz v. Comdisco, Inc.*, 117 F.R.D. 403, 408 (N.D. Ill. 1987) ("out-of-pocket rule [is] the standard measure of damages in securities fraud litigation"). Thus, lead plaintiffs will ask the jury to determine the artificial inflation present in Household International, Inc.'s ("Household") common stock on a per share basis for each day of the Class Period (July 30, 1999 through October 11, 2002).

Exhibits 53 and 56 to the Report of Daniel R. Fischel ("Fischel Report") illustrate the estimated artificial inflation in Household's common stock for each day during the Class Period based on two different methods. Exhibit 53 identifies the estimated artificial inflation using only specific disclosures. As Professor Fischel states in his report "[t]his quantification likely understates the amount of inflation because it does not take into account the stock price effect of all of the information related to the alleged fraud . . . that leaked into the market in the latter part of the Class Period." Fischel Report, ¶30. Exhibit 56 identifies the estimated artificial inflation including leakage. Both methods are applicable to all Class members, including in-and-out investors.¹

Once the jury determines the artificial inflation in Household's common stock for each day during the Class Period, lead plaintiffs propose to calculate individual damages using a formulaic approach:

$x(A) = D$, if the shares are held through the end of the Class Period

$x(A-B) = D$, if the shares are sold before the end of the Class Period

¹ "In-and-out investors" are those investors who purchased shares during the Class Period and sold them at some point before the last day of the Class Period, October 11, 2002.

where A equals the amount of artificial inflation in Household's common stock on the day the shares were purchased, x equals the number of shares purchased, B equals the amount of artificial inflation in Household's stock on the day the shares were sold, and D equals damages.

Lead plaintiffs do not intend to seek damages for shares sold prior to November 15, 2001, the earliest date Professor Fischel "found that Household's stock price was negatively affected by the alleged fraud." Fischel Report, ¶¶12, 28.

B. Lead Plaintiffs' Response to Additional Questions Posed by the Court in the October 17, 2007 Order

Having identified their proposed formula for calculating individual damages, lead plaintiffs address the four additional questions identified on page 5 of the Court's October 17, 2007 Order:

1. Lead plaintiffs intend to use a netting approach for Class members who profited from some trades of Household's common stock acquired during the Class Period and sold after November 14, 2001, but suffered losses from other trades of Household's common stock during this same period.

2. For those Class members who sold their stock during the negative inflation period identified in Professor Fischel's report, lead plaintiffs propose using the same formula identified in Section A above for shares sold before the end of the Class Period.

3. Lead plaintiffs intend to seek damages for the artificial inflation present in the stock price on every day of the Class Period, including the first day.

4. Lead plaintiffs currently do not intend to offer expert testimony in their case-in-chief regarding aggregate damages suffered by the Class. Instead, as discussed above, plaintiffs will ask the jury to determine the artificial inflation in Household's common stock on a per share basis for each day of the Class Period and expect damages will be distributed on a "claims made" basis. This method has been accepted by many courts, including courts in this district. *Kaufman v. Motorola, Inc.*, No. 95 C 1069, 2000 U.S. Dist. LEXIS 14627, at *6 (N.D. Ill. Sept. 19, 2000) (observing that

“an adequate remedy may be fashioned by having the jury determine a per share damage loss and requiring the filing of claims by each shareholder who claims that he, she, or it has been damaged”).

Notwithstanding that plaintiffs currently do not intend to offer expert testimony on the issue of aggregate damages in their case-in-chief, pursuant to the Court’s October 17, 2007 Order, lead plaintiffs estimate the aggregate damages suffered by the Class to be approximately \$4.1 billion.

DATED: October 24, 2007

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154452)
MONIQUE C. WINKLER (90786006)
LUKE O. BROOKS (90785469)
JASON C. DAVIS (4165197)

s/ AZRA Z. MEHDI
AZRA Z. MEHDI

100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
PATRICK J. COUGHLIN
SPENCER A. BURKHOLZ
JOHN J. RICE
JOHN A. LOWTHER
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Lead Counsel for Plaintiffs

MILLER LAW LLC
MARVIN A. MILLER
LORI A. FANNING
115 S. LaSalle Street, Suite 2910
Chicago, IL 60603
Telephone: 312/332-3400
312/676-2676 (fax)

Liaison Counsel

LAW OFFICES OF LAWRENCE G.
SOICHER
LAWRENCE G. SOICHER
110 East 59th Street, 25th Floor
New York, NY 10022
Telephone: 212/883-8000
212/355-6900 (fax)

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 October 24, 2007 declarant served by electronic mail and by U.S. Mail to the parties: **LEAD PLAINTIFFS' SUPPLEMENTAL STATEMENT REGARDING DAMAGES PURSUANT TO THE COURT'S OCTOBER 17, 2007 ORDER.** The parties' email addresses are as follows:

<u>TKavaler@cahill.com</u> <u>PSloane@cahill.com</u> <u>PFarren@cahill.com</u> <u>LBest@cahill.com</u> <u>DOwen@cahill.com</u>	<u>NEimer@EimerStahl.com</u> <u>ADeutsch@EimerStahl.com</u> <u>MMiller@MillerLawLLC.com</u> <u>LFanning@MillerLawLLC.com</u>
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and by U.S. Mail to:

Lawrence G. Soicher, Esq.
Law Offices of Lawrence G. Soicher
110 East 59th Street, 25th Floor
New York, NY 10022

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 24th day of October, 2007, at San Francisco, California.

s/ Juvily P. Catig

JUVILY P. CATIG

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)
Situated,)	
Plaintiff,)	<u>CLASS ACTION</u>
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)	Magistrate Judge Nan R. Nolan
HOUSEHOLD INTERNATIONAL, INC., et)	
al.,)	
Defendants.)	
_____)	

**LEAD PLAINTIFFS' FURTHER SUPPLEMENT TO THEIR PRIOR STATEMENTS
REGARDING DAMAGES**

Lead plaintiffs further supplement their September 7, 2004 and October 24, 2007 statements regarding their damages theory in response to some of the criticisms of defendants' expert Dr. Mukesh Bajaj that lead plaintiffs have not provided sufficient information. Bajaj Report at 86-92.¹ Some of the issues raised by Dr. Bajaj have already been addressed by lead plaintiffs and their expert Professor Fischel. Other issues raised by Dr. Bajaj represent a misunderstanding by Dr. Bajaj of lead plaintiffs' damages theory or are inconsistent with such theory and thus, are not relevant to lead plaintiffs' obligations under the initial disclosures provisions of Fed R. Civ. P. 26(a)(1) (hereafter "Rule 26(a)(1)"). Lead plaintiffs have, therefore, satisfied their obligations to set forth a complete theory of their damages calculation under the initial disclosures provisions of Rule 26(a)(1).

A. Lead Plaintiffs' Proposed Method for "Matching"

Dr. Bajaj criticizes lead plaintiffs' proposed damages methodology for "fail[ing] to explain how shares bought on a particular date are to be 'matched' to shares sold."² Bajaj Report at 90. This is a damages calculation issue that the Court will adjudicate after a trial on class-wide liability, assuming that plaintiffs obtain a verdict, and is a question of law. *Arenson v. Broadcom Corp.*, No. SA CV 02-301-GLT (MLGx), 2004 U.S. Dist. LEXIS 27522 (C.D. Cal. Dec. 6, 2004) (citing *Crow Tribe of Indians v. Racicot*, 87 F.3d 1039, 1045 (9th Cir. 1996)). Notwithstanding that the issue is not ripe, in the interest of avoiding further disputes over lead plaintiffs' initial disclosure obligations, lead plaintiffs state that they intend to propose the use of a FIFO (first-in, first-out) method of matching purchases and sales rather than a LIFO (last-in, first-out) method.

¹ It should be noted that Professor Daniel R. Fischel has directly responded to the issues raised by the Court's November 20, 2007 Order in his Rebuttal Report, which is being concurrently served on defendants on February 1, 2008. "Bajaj Report" refers to the December 10, 2007 Expert Report of Mukesh Bajaj.

² Notably, Dr. Bajaj did not set forth in his report his opinion on the appropriate method for "matching" and sales.

B. Lead Plaintiffs Do Not Propose Netting Shares that Were Purchased Prior to the Class Period

Dr. Bajaj also complains that without a measure of pre-Class Period inflation, “[i]t is not possible to net the gains on shares sold at inflated prices during the Class Period, that were bought at uninflated or less-inflated values *before the Class Period began.*” Bajaj Report at 87 (emphasis added). However, lead plaintiffs have not proposed the netting of shares purchased before the Class Period, and do not believe it is appropriate to do so.³ Indeed, lead plaintiffs’ October 24, 2007 statement clearly limits any “netting” to shares purchased during the Class Period and sold after the first disclosure on November 14, 2001: “Lead plaintiffs intend to use a netting approach for Class members who profited from some trades of Household’s common stock *acquired during the Class Period* and sold after November 14, 2001, but suffered losses from other trades of Household’s common stock during this same period.” Lead Plaintiffs’ October 24, 2007 Statement at 2 (emphasis added). The pre-Class Period purchases – shares held by plaintiffs before the beginning of the Class Period – are only relevant to the extent that they are used under the FIFO method to “match” up with the Class Period sales, which matching up is not used in any calculation of gains or losses under lead plaintiffs’ damages theory as previously stated in prior disclosures.⁴ As the determination of pre-Class Period inflation is not within lead plaintiffs’ damages theory, such inflation is not encompassed within lead plaintiffs’ initial disclosure obligations under Rule 26(a)(1). It appears,

³ In securities fraud cases, plaintiffs recover damages for shares they purchased *during the Class Period* based on the extent to which artificial inflation in the stock at the time of purchase has been diminished by the time of sale or the end of the Class Period. Lead plaintiffs previously identified the specific formulas for measuring the damages based on the date of purchase and the date of sale. Lead Plaintiffs’ Supplemental Statement Regarding Damages Pursuant to the Court’s October 17, 2007 Order (“Lead Plaintiffs’ October 24, 2007 Statement”) at 1. These formulas do not require the determination of the artificial inflation present in Household International, Inc.’s stock on any date prior to the Class Period to calculate damages. See Rebuttal Report of Daniel R. Fischel at 25-28.

⁴ LIFO, the other method accepted by courts for “matching” shares, similarly does not consider shares held before the Class Period.

therefore, that Dr. Bajaj's criticism is based on a misunderstanding or manipulation of lead plaintiffs' stated position on netting.⁵

DATED: February 1, 2008

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154452)
LUKE O. BROOKS (90785469)
JASON C. DAVIS (4165197)



AZRA Z. MEHDI

100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
PATRICK J. COUGHLIN
SPENCER A. BURKHOLZ
JOHN J. RICE
JOHN A. LOWTHER
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Lead Counsel for Plaintiffs

MILLER LAW LLC
MARVIN A. MILLER
LORI A. FANNING
115 S. LaSalle Street, Suite 2910
Chicago, IL 60603
Telephone: 312/332-3400
312/676-2676 (fax)

Liaison Counsel

⁵ Again, although Dr. Bajaj claims to be confused regarding this position, he fails to offer any explanation what he believes to be the appropriate procedure for netting.

LAW OFFICES OF LAWRENCE G.
SOICHER
LAWRENCE G. SOICHER
110 East 59th Street, 25th Floor
New York, NY 10022
Telephone: 212/883-8000
212/355-6900 (fax)

Attorneys for Plaintiff

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