

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

FILED

SEP 17 2004

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

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

Plaintiff, )

v. )

No. 02 C 5893

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

Judge Ronald A. Guzman  
Magistrate Judge Nan R. Nolan

Defendants. )

SEP 20 2004

NOTICE OF FILING

To: Counsel on the Attached Service List

PLEASE TAKE NOTICE that on September 17, 2004, we filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Chicago, Illinois, the *Lead Plaintiffs' Motion to Strike the Response of Defendants to Lead Plaintiffs' Submission Pursuant to the Court's Order of August 30, 2004*, a copy of which is hereby served upon you.

Dated: September 17, 2004

Respectfully submitted,

By:

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Marvin A. Miller

Jennifer W. Sprengel

Lori A. Fanning

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DECLARATION OF SERVICE BY FACSIMILE

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 interest in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on September 17, 2004, declarant served by facsimile the **LEAD PLAINTIFFS' MOTION TO STRIKE THE RESPONSE OF DEFENDANTS TO LEAD PLAINTIFFS' SUBMISSION PURSUANT TO THE COURT'S ORDER OF AUGUST 30, 2004** to the parties listed on the attached Service List.

3. That there is a regular communication by facsimile between the place of origin and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of September, 2004, at San Francisco, California.

  
\_\_\_\_\_  
MONINA O. GAMBOA

**HOUSEHOLD INTERNATIONAL (LEAD)**

Service List - 9/17/2004 (02-0377)

Page 1 of 2

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\* Denotes service by overnight Federal Express delivery.

**HOUSEHOLD INTERNATIONAL (LEAD)**

Service List - 9/17/2004 (02-0377)

Page 2 of 2

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
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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

DOBBINS  
SEP 20 2004

**LEAD PLAINTIFFS' MOTION TO STRIKE THE RESPONSE OF  
DEFENDANTS TO LEAD PLAINTIFFS' SUBMISSION  
PURSUANT TO THE COURT'S ORDER OF AUGUST 30, 2004**

Pursuant to Federal Rule of Civil Procedure 12(f), lead plaintiffs respectfully move to strike the Response of Defendants to the Lead Plaintiffs' Submission Pursuant to the Court's Order of August 30, 2004 ("Response"). Defendants failed to meet and confer pursuant to the Court's order.

1. At the August 30, 2004 Status Conference and hearing on defendants' motion to compel, the Court ordered lead plaintiffs to make a submission identifying the theory underlying their claim for damages. Exhibit ("Ex.") A at 21-22, attached hereto.<sup>1</sup> At the same hearing, the Court instructed defendants to meet and confer with plaintiffs to specifically identify what, if anything, they still needed after plaintiffs' submission. The Court also gave defendants leave to make a submission outlining any issues that the parties could not resolve through the meet and confer process:

\_\_\_\_\_

<sup>1</sup> For the Court's convenience, pertinent information in the attached exhibits has been underlined.

[W]hatever you want, you *meet and confer* with the plaintiffs prior to filing your brief, okay, and see if the plaintiffs won't agree....

\* \* \*

[Y]ou'll give them your theory, you will give them this purchase and sales information, and you'll *meet and confer*. Defendants, if you need something more specific, Counsel will keep her head open completely. Then, if [plaintiffs] say no, then you'll file something with me telling me what's unresolved, and hopefully when we get back together we'll have a resolution.

*Id.* at 24, 27-28 (emphasis added).

2. On September 7, 2004, plaintiffs filed and served their submission. On September 13, 2004, counsel for Arthur Andersen LLP ("Andersen") sought an extra day to serve its response, originally due September 14, 2004. Ex. B at 3. The same day, lead plaintiffs granted Andersen's request, and, because no defendant had made an effort to discuss the substance of lead plaintiffs' submission, reminded defendants of their obligation to meet and confer and made themselves available to do so. *Id.* at 2-3. Counsel for the Household Defendants did not respond.

3. Counsel for Andersen refused to meet and confer, responding that "the Court's *written order* specifically references the filing of a response and *makes no reference to any need to discuss the plaintiffs' response*" and that "*the Court speaks through its written orders.*" *Id.* at 2; Ex. C. (Emphasis added.) Of course, defendants only observe this "rule" when convenient for them.<sup>2</sup> Despite the fact that the stay on merits discovery imposed by the Court at the August 30, 2004 hearing was not incorporated into the minute order, defendants did not hesitate to inform

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<sup>2</sup> Indeed, it was defendants' consistent departure from agreements and mischaracterization of statements made during meet and confers and other proceedings which led plaintiffs to seek transcription of the August 30, 2004 hearing.

plaintiffs of their intention to adhere to the Court's ruling and immediately halt all pending merits discovery.<sup>3</sup> Ex. D.

4. On September 15, 2004, for the first time – despite the fact that the parties had been in almost daily contact – counsel for Andersen emailed plaintiffs requesting that plaintiffs agree to provide defendants with their “methodology for calculating damages.” Ex. B at 1. Plaintiffs responded that such information was contained in their submission. *Id.* Without stating why, counsel for Andersen wrote that he disagreed. *Id.* Later that day, without ever having met and conferred with plaintiffs, defendants, in direct contravention of both the letter and spirit of the Court's August 30, 2004 order, filed their Response. Defendants' blatant disregard of the Court's explicit instruction that the parties meet and confer is alarming.

5. Defendants' refusal to define for plaintiffs what further information they seek prior to filing their Response is also emblematic of their constantly shifting position with respect to this motion. Initially, defendants sought an order requiring lead plaintiffs “to state the amount of their claimed damages, provide the computations on which their damages claims are based, and produce all evidence on which their damages computations are based (including all materials bearing on the nature and extent of their alleged injuries).” Defendants' Reply in Further Support of Motion to Compel Lead Plaintiffs to Comply with Their Obligations Under Fed. R. Civ. P. 26(a)(1) at 5.

6. Then, at the August 30, 2004 hearing, defendants changed course and claimed they were simply looking for plaintiffs' underlying theory of damages:

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<sup>3</sup> Despite defendants' strict adherence to the merits discovery stay when imposed on plaintiffs, they apparently do not believe it applies equally to them. On September 14, 2004, defendants improperly noticed merits depositions during the stay on merits discovery.

The Court: "If you're talking about an underlying theory, I think that would be discoverable.... [I]s that one of the things you're asking for, sir?"

Mr. Henkin: "Yes, that's exactly right, your Honor."

Ex. A at 17; *see also id.* at 20 (observing that defendants were "being much more reasonable on this phone than you were on your motion"). Now, through their Response, defendants seek for the first time a specific mathematical formula for calculation of plaintiffs' damages. This demand runs far afield of the Court's order that plaintiffs provide their underlying *theory* of damages.<sup>4</sup> Response at 6.

7. Thus, it appears from defendants' shifting positions and refusal to meet and confer that rather than actually seeking specific information, defendants simply are engaging in an attempt to confuse and delay the class certification proceedings. Such gamesmanship should not be countenanced. Defendants' Response should be stricken and their motion denied.

DATED: September 17, 2004

Respectfully submitted,

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<sup>4</sup> As outlined in plaintiffs' briefs, damages computations, including the formulae on which they are based, are the subject of expert analysis. Accordingly, the discovery defendants now seek is premature.



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*See Case File  
for  
Exhibits*