

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

<b>Lawrence Jaffe Pension Plan, et al.,</b>	)	
<b>Plaintiffs,</b>	)	<b>Case No: 02 C 5893</b>
	)	
<b>v.</b>	)	
	)	<b>Judge Ronald Guzmán</b>
	)	
<b>Household International, Inc., et al.,</b>	)	
<b>Defendants.</b>	)	

**ORDER**

For the reasons stated below, Plaintiff’s “response” [1862] is denied.

**STATEMENT**

This case is currently before the Court on Plaintiffs’ “response” to the Special Master's July 11, 2013 Report and Recommendation (R&R) regarding Lists 1, 2, and 3, as those terms are defined in the R&R. The Court assumes familiarity with its prior orders in this case. Plaintiffs’ “response” states that they do not object to the R&R, but want to “bring to the Court's attention” seven claims on List 3. These seven claims total approximately \$3,823,547.00.

Plaintiffs admit that they do not object to the R&R, but have filed this “response.” Under Federal Rule of Civil Procedure 72, Plaintiff’s “response” to the R&R is improper and is denied on that basis. Fed. R. Civ. P. 72(a), (b)(2) (a party may serve and file *objections* to an R&R within 14 days after being served with a copy).<sup>1</sup> Even assuming it were proper, the Court would deny it on the merits.

Plaintiffs ask that the Court remove all seven claims from List 3, and permit the claims administrator to send supplemental interrogatory forms to the custodians for two of the claims (Nos. 620530 and 631113). According to the R&R, List 3 identifies those claimants whose claims will be rejected under the Court's prior rulings for failing to answer the claim form question and/or supplemental interrogatory. (R&R, Dkt. # 1860, at 4.) Five of the seven claimants submitted their supplemental interrogatory responses late. As to four of these five claims (Nos. 619782, 620361, 620487, and 620747), the claimants only recently filed the supplemental response form, which was

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<sup>1</sup> Plaintiffs assert in their reply that their “response” is not procedurally improper. The Court disagrees. Plaintiffs ask this Court to take action with respect to the R&R submitted by the Special Master. To obtain such relief, they must abide by Federal Rule of Civil Procedure 72. They have not. If a party could obtain relief from an R&R simply by “informing” the Court of its position, then Federal Rule of Civil Procedure 72 would become meaningless. Regardless of the procedural impropriety, Plaintiffs have received a ruling on the merits of their “response.”

originally due on September 12, 2011. Plaintiffs acknowledge that, as to three of these four claims, they do not know why the responses were returned so late. As to the fourth, Claim No. 620487, Plaintiffs state that they received a letter on August 15, 2013 from BNY Mellon, which indicates that although there is “confusion” as to the actual sequence of events, the claimant did not receive the initial request but sent in a response as soon as it was known to them. (Pls.’ Reply, Dkt. # 1873, at 3.) The Court discerns no basis on which to remove these four claims from List 3; therefore, the request is denied.

As to the fifth of these claims for which an untimely response was received, No. 620530, a supplemental claim form was never mailed because the claims administrator believed it had a loss of less than \$250,000.00. However, at some point during the claims process (but after the deadline of September 2011 for submitting the supplemental form), it was determined that Claim No. 620530 contained data that was related to data submitted in connection with another claim, Claim No. 621850, which was in excess of \$250,000.00. Therefore, Plaintiffs ask that they be given the opportunity to send a supplemental claim form to the claimant for Claim No. 620530. However, as Defendants note, Plaintiffs admit that a supplemental claim form was sent to BNY Mellon for the related Claim No. 621850, but a response was not received for that claim until May 2013, well past the due date. The Court finds no basis to send a supplemental claim form on behalf of a claimant who did not timely respond to the initial claim form it received. Therefore, the request to allow the supplemental claim form be sent for Claim No. 620530 is denied.

With respect to the sixth claim, No. 621214, the claims administrator sent the supplemental form for this claim to its custodian, BNY Mellon because the associated loss was calculated at over \$250,000.00. The claimant did not submit a response by September 12, 2011, as required. However, Plaintiffs state, the claimant submitted additional data to the claims administrator in June 2013 indicating that its allowed loss is actually less than \$250,000.00. Moreover, the claimant returned the supplemental interrogatory form on June 21, 2013, and provided an explanation in lieu of an answer to the interrogatory. While Plaintiffs apparently sought an answer as to why the response was late, it did not receive one. Plaintiffs now ask that because the allowed loss is than \$250,000.00, it be removed from List 3, and that the Special Master be given an opportunity to determine whether the response to the interrogatory is proper. The request is denied. The claimant was given an opportunity to respond, it did so late and with an improper response. No basis exists for re-sending the interrogatory.

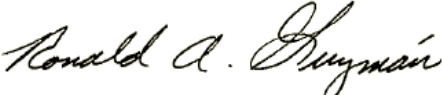
As to the seventh claim at issue, Claim No. 631113, Plaintiffs state that two different custodians, BNY Mellon and Bank of America, originally submitted separate claims for this class member, which turned out to be partially duplicative. While the claims administrator sent the supplemental form to BNY Mellon for Claim No. 621202, it was never returned. No supplemental form was sent to Bank of America for Claim No. 631113, because, at the time, the allowed loss associated with its claim was less than \$250,000.00. The claims administrator then determined that the Bank of America claim (No. 631113) was related to the BNY Mellon claim (No. 621202), and that Claim No. 621202 was a partial duplicate of Claim No. 631113. BNY Mellon then withdrew Claim No. 621202, and that claim was merged into Claim No. 631113 for a loss of \$859,071.50. Plaintiffs now ask that the supplemental form be sent to the claimant for Claim No. 631113 because

"this class member did not receive a supplemental form through its correct custodian." (Pls.' Resp., Dkt. # 1862, at 7.) But, it did receive a form from the custodian BNY Mellon, which initially represented the majority of the claim. Regardless of the specific amount of the claim at the time, the claimant received a supplemental form and did not return it. Plaintiffs' request to send another form is denied. The Court's ruling does not change based on Plaintiffs' assertion in its reply brief that it recently contacted Bank of America on August 2, 2013, which "responded quickly after learning of the issue." (Pls.' Reply, Dkt. # 1873, at 2.)

Finally, in their reply, Plaintiffs raise a new claim, Claim No. 621208, that was not previously raised in its "response." Apparently, BNY Mellon never sent the form to Bank of America "due to conflicting information at BNY Mellon as to which custodian was following up on the claim." (*Id.* at 3.) Again, the Court sees no basis on which to offer relief, two years after the claim form was supposed to have been sent, based on a mistake by the custodian.

"Deadlines may lead to unwelcome results, but they prompt parties to act and produce finality." *Taylor v. Freeland & Kronz*, 503 U.S. 638, 644 (1992). Finality is a legitimate goal, particularly in this now eleven-year-old case. While the Court recognizes that some of the issues raised by Plaintiffs here may not be due to the fault of a particular claimant, even when an individual's liberty is at stake, due process requires fairness, not perfection. *United States v. Agymang*, 876 F.2d 1264, 1271 (7th Cir. 1989) ("[D]ue process guarantees a fair sentencing hearing, not a perfect one"). The Court is confident that the years-long process in this case for determining which claimants may recover and how much they are entitled to has been fair. Plaintiffs' "response" is denied.

**Date:** August 22, 2013

/s/   

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**HON. RONALD A. GUZMAN**  
**United States District Judge**