

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

**PLAINTIFFS' MOTION FOR AN ORDER SETTING A SCHEDULE FOR LEAD  
PLAINTIFFS' AND LEAD COUNSEL'S FEE AND EXPENSE APPLICATIONS**

## I. INTRODUCTION

Lead Plaintiffs respectfully request that the Court set a schedule for (1) Lead Counsel's application for an award of attorney's fees and non-taxable costs and (2) Lead Plaintiffs' application for an award of expenses. Lead Plaintiffs propose the following schedule:

Lead Plaintiffs submit a Proposed Notice to the Court to be mailed or e-mailed to the Class Members identified in Exhibit A to the Judgment.	15 calendar days after entry of the attached Order Setting Schedule.
Notice mailed or e-mailed to Class Members identified on Exhibit A to the Judgment.	15 calendar days after the Court enters an order approving the Notice (hereinafter, "the Notice Date").
Deadline for filing motion for an award of attorney's fees and non-taxable costs and Lead Plaintiffs' application for reimbursement of expenses ("the Fee and Expense Application").	28 calendar days after the Notice Date.
Deadline for objecting to the Fee and Expense Application.	56 calendar days after the Notice Date.
Deadline to file reply papers in support of the Fee and Expense Application.	77 calendar days after the Notice Date.
Hearing regarding the Fee and Expense Application.	At the Court's convenience, but not earlier than 90 calendar days after the Notice Date.

Lead Plaintiffs believe that the proposed schedule will provide sufficient time to provide notice to the affected class members and for the affected class members to consider and analyze the fee and expense application.

## II. THE COURT SHOULD SET A SCHEDULE FOR THE FEE AND EXPENSE APPLICATION AT THIS TIME

On October 17, 2013, the Court entered judgment in favor of 10,902 class members with claims valued at \$1,476,490,844. The Court also awarded \$986,408,772 in prejudgment interest to these class members, for a total amount of \$2,462,899,616.21. Pursuant to Fed. R. Civ. P. 23(h), Lead Counsel will seek an award of attorney's fees and non-taxable costs. Fed. R. Civ. P. 23(h)(1) states:

(h) ATTORNEY'S FEES AND NONTAXABLE COSTS. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), *at a time the court sets*. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner. (Emphasis added.)

Lead Counsel respectfully asks the Court to set a schedule for the filing of the motion in support of the fee and expense application in accordance with the schedule proposed above.<sup>1</sup> In addition, Lead Plaintiffs will submit their application for an award of reasonable costs and expenses related to the representation of the Class in conjunction with the fee and expense application. 15 U.S.C. §77z-1(a)(4).

### **III. NOTICE TO AFFECTED CLASS MEMBERS**

Rule 23(h)(1) requires that “[n]otice of the motion [for attorney’s fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.” Lead Counsel suggests that notice be sent by mail or e-mail to all of the 10,902 class members identified in Exhibit A of the Judgment, which was entered on October 17, 2013. The claims administrator has addresses for the affected class members who filed directly and will be in a position to send the Notice to these class members. As to class members who filed through custodian banks or third-party filing services, Lead Counsel suggests that the claims administrator provide notice to these

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<sup>1</sup> Rule 23(h) governs the timing of the fee and expense application in a class action. However, it should be noted that Rule 54(d)(2)(B) states that a claim for attorney’s fees and related non-taxable expenses must be made by motion filed not later than 14 days after the entry of judgment unless a statute or court order provides otherwise. At least one commentator has noted that the 14-day requirement does not apply to class actions, which are governed by the “at a time the court sets” provision in Fed. R. Civ. P. 23(h)(1). *See* 5 James Wm. Moore, et al., *Moore’s Federal Practice* §23.124[2], at 23-497 (3d ed. 2013) (“In a class action, the court must set a deadline for the filing of motions seeking attorney’s fees or reimbursement of nontaxable costs. The more general, Rule 54(d)(2) deadline of ‘14 days after the entry of judgment’ does not apply in class actions. By its terms, Rule 23(h) requires the court to set a specific deadline that is tailored to the facts of the case.”). *See also* N.D. Ill. Local Rule 54.3.

class members through their filer by mail or e-mail, unless the filer provides the claims administrator with contact information and requests that the claims administrator mail it directly to their clients. Since Lead Counsel will only seek an award of fees and expenses at this time from the common fund obtained for the class members identified in Exhibit A, Lead Counsel believes that these class members are the only persons with standing to object to this fee and expense application. *Silverman v. Motorola Solutions, Inc.*, No. 12-2339, 2013 U.S. App. LEXIS 16878, at \*2-\*3 (7th Cir. Aug. 14, 2013) (objector “did not file a claim to his share of the recovery. He thus lacks any interest in the amount of fees, since he would not receive a penny from the fund even if counsel’s take should be reduced to zero. . . . We dismiss his appeal on the ground that he lacks any interest in the outcome.”). Because of the high likelihood that all affected class members will receive the mailed or emailed notice as described above, Lead Counsel suggests that notice by publication is unnecessary.

Lead Counsel will submit for the Court’s consideration a proposed notice within 15 days of the entry of an Order Setting Schedule, as set forth above.

DATED: October 21, 2013

Respectfully submitted,

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Attorneys for Plaintiff

**DECLARATION OF SERVICE BY ELECTRONIC 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 Diego, State of California, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 W. Broadway, Suite 1900, San Diego, California 92101.

2. That on October 21, 2013, declarant caused to be served by electronic mail and by U.S. Mail to the parties the following document:

PLAINTIFFS' MOTION FOR AN ORDER SETTING A SCHEDULE FOR LEAD PLAINTIFFS' AND LEAD COUNSEL'S FEE AND EXPENSE APPLICATIONS

The parties' e-mail addresses are as follows:

Tkavaler@cahill.com	Zhudson@bancroftpllc.com
Pfarren@cahill.com	Mrakoczy@skadden.com
Dowen@cahill.com	Rstoll@skadden.com
Jhall@cahill.com	Mmiller@MillerLawLLC.com
Pclement@bancroftpllc.com	Lfanning@MillerLawLLC.com

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

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of October, 2013, at San Diego, California.

s/ TERESA HOLINDRAKE  
\_\_\_\_\_  
TERESA HOLINDRAKE