

**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,) CLASS ACTION
)
 vs.) Judge Ronald A. Guzman
)
)
 HOUSEHOLD INTERNATIONAL, INC., et)
 al.,)
)
 Defendants.)
)
)

PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT'S MARCH 20, 2014
ORDER ON PLAINTIFFS' MOTION FOR ENTRY OF BILL OF COSTS

I. INTRODUCTION

On March 20, 2014, the Court entered an order on Plaintiffs' Motion for Entry of Bill of Costs (the "Order"). Dkt. No. 1992. In the Order, the Court reduced plaintiffs' request for reimbursement for costs incurred for exemplification and copies from \$184,235.82 to \$79,219.57. Specifically, the Court ruled plaintiffs were not entitled to recover costs in the amount of \$105,016.25 for payments made to Cahill Gordon & Reindel, LLP ("Cahill Gordon"), concluding plaintiffs failed to provide the Court with sufficient documentation to support the requested costs. March 20, 2014 Order at 8-9. The Court's ruling was based on the erroneous assumption that Cahill Gordon is "an outside vendor that provides duplication services." *Id.* at 8. In fact, Cahill Gordon is one of the law firms representing defendants in this case. Plaintiffs paid Cahill Gordon \$105,016.25 as reimbursement for the costs it incurred in copying and shipping to plaintiffs the documents responsive to plaintiffs' discovery requests, in accordance with an agreement counsel for the parties reached during the discovery phase of this case. Indeed, at no time have defendants objected to plaintiffs' request to recover the payments made to Cahill Gordon for copying charges. Because this portion of the Court's Order constitutes a manifest error of fact, plaintiffs respectfully request that the Court reconsider its Order denying plaintiffs' request to recover \$105,016.25 in taxable costs for payments made to Cahill Gordon.¹

II. RELEVANT PROCEDURAL HISTORY

During the nearly three-year discovery phase of this case, defendants produced over a million pages of documents in response to plaintiffs' document requests. Cahill Gordon, one of the law firms representing defendants in this case and the law firm primarily involved in discovery, sought reimbursement from plaintiffs' counsel for the costs incurred in copying responsive documents and

¹ Plaintiffs intend to file an objection to the Court's Order under Fed. R. Civ. P. 72(a) in the event the Court does not rule on the instant motion prior to the expiration of the 14-day time period for filing objections under Rule 72(a).

shipping them to plaintiffs. *See* Ex. A (November 10, 2005 letter from Kesch to Baker). Pursuant to an agreement reached by counsel for the parties after lengthy and contentious negotiations, plaintiffs agreed to reimburse Cahill Gordon for the cost of copying documents at a rate of 8 cents per page, as well as the cost of shipping documents to plaintiffs. *See* Ex. B (December 19, 2005 letter from Baker to Kesch); Ex. C (December 20, 2005 letter from Kesch to Baker). Those costs totaled \$105,016.25.²

On October 17, 2013, the Court entered a final judgment pursuant to Fed. R. Civ. P. 54(b) in the amount of \$2,462,899,616.21 against defendants Household International, Inc., William F. Aldinger, David A. Schoenholz and Gary Gilmer. Dkt. No. 1898. The Court's final judgment also awarded plaintiffs, as the prevailing party, postjudgment interest and taxable costs. *Id.* On November 18, 2013, pursuant to Fed. R. Civ. P. 54(d)(1) and Local Rule 54.1, plaintiffs timely filed a bill of costs, requesting that the Clerk tax certain costs totaling \$623,257.78 which plaintiffs incurred during the course of this 11-year case. Dkt. No. 1913. Plaintiffs also filed a declaration explaining the payments to Cahill Gordon along with correspondence and checks evidencing the amounts and dates of payment. *See* Dkt. No. 1913-1. The Court subsequently requested that plaintiffs file a motion for entry of plaintiffs' bill of costs, and on December 16, 2013, plaintiffs filed a motion for entry of plaintiffs' bill of costs. Dkt. No. 1954.

Among other items, plaintiffs sought to recover as taxable costs the \$105,016.25 paid to Cahill Gordon as reimbursement for the costs it incurred in copying and shipping documents responsive to plaintiffs' discovery requests. *See* Dkt. No. 1954. Defendants were afforded two

² As reflected in Ex. C (December 20, 2005 letter from Kesch to Baker), the final invoice plaintiffs received from Cahill Gordon was for \$111,196.14. Plaintiffs thereafter received an additional invoice for \$51.36, bringing the total amount due to \$111,247.50. As explained in the Cook Declaration and Exhibit B to the Cook Declaration, Cahill Gordon subsequently refunded \$5,731.25 to plaintiffs' counsel and plaintiffs further reduced the amount due to Cahill Gordon by \$500.00 due to Household's untimely cancellation of a deposition. Accordingly, plaintiffs' bill of costs only sought reimbursement of \$105,016.25. *See* Cook Decl. ¶7, n.1.

opportunities to object to plaintiffs' bill of costs. *See* Dkt. Nos. 1973, 1983. Importantly, despite filing two separate objections to plaintiffs' bill of costs, at no time did defendants object to plaintiffs' request to recover as taxable costs the payments made to Cahill Gordon or otherwise dispute the validity of these costs. Notwithstanding this fact, on March 20, 2014, the Court entered an Order denying plaintiffs' request to recover costs totaling \$105,016.25 paid to Cahill Gordon. For the reasons set forth below, plaintiffs respectfully request that the Court reconsider the portion of its Order denying plaintiffs from recovering costs associated with payments made to Cahill Gordon.

III. ARGUMENT

The Seventh Circuit has recognized that motions for reconsideration are appropriate "to correct manifest errors of law or fact or to present newly discovered evidence." *Publishers Resource, Inc. v. Walker-Davis Publications, Inc.*, 762 F.2d 557, 561 (7th Cir. 1985). A motion for reconsideration may also be warranted "where the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." *Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990) (noting that a motion for reconsideration can perform a "valuable function" in certain situations).

Reconsideration is warranted here because the Court's Order denying plaintiffs from recovering costs associated with payments to Cahill Gordon is based on a manifest error of fact: that Cahill Gordon is "an outside vendor that provides duplication services." Order at 8. As a result of this manifest error of fact, the Court found plaintiffs failed to provide sufficient documentation supporting the payments made to Cahill Gordon, erroneously concluded it could not make a finding as to necessity, and declined to authorize these costs. *Id.*

In fact, Cahill Gordon is one of the law firms representing defendants in this case. The payments made to Cahill Gordon were made pursuant to an agreement reached by the parties during

the discovery phase of this case. *See* Exs. A-C. Under the terms of that agreement, plaintiffs agreed to reimburse Cahill Gordon for the costs it incurred in copying documents responsive to plaintiffs' document requests at a rate of 8 cents per page, along with the cost of shipping hard copy documents to plaintiffs. Importantly, defendants do not dispute that plaintiffs, as the prevailing party, are entitled to recover these costs, nor did they object to the nature or amount of these costs. *See, e.g., Baltimore v. Quinn-Mims*, 10 C 1031, 2012 U.S. Dist. LEXIS 149866, at *2 (N.D. Ill. Oct. 18, 2012) (Guzman, J.) (recognizing that "Rule 54(d) creates a presumption that the prevailing party will be awarded costs, which the losing party can overcome only by making 'an affirmative showing that [the] costs are not appropriate.'").

Furthermore, it is indisputable that these costs are appropriate under Rule 54(d)(1) and 28 U.S.C. §1920(4), as they were incurred in making copies of materials "necessarily obtained for use in the case." 28 U.S.C. §1920(4). Specifically, the documents at issue were produced by defendants in response to plaintiffs' document requests and were later used during depositions, summary judgment briefing and the trial in this case. *See Brook, Weiner, Sered, Kreger & Weinberg v. Coreq., Inc.*, No. 91 C 7955, 1995 U.S. Dist. LEXIS 3953, at *11 (N.D. Ill. Mar. 29, 1995) (Guzman, J.) (recognizing that 28 U.S.C. §1920(4) allows for recovery of the "cost of items introduced at trial but also the cost of copying pleadings, correspondence, discovery documents, and other items 'necessarily obtained for use in the case'"); *Angevine v. Watersaver Faucet Co.*, Case No. 02 C 8114, 2003 U.S. Dist. LEXIS 23113, at *21 (N.D. Ill. Dec. 22, 2003) (Guzman, J.) (prevailing party need not submit a bill of costs itemizing each document copied). Given the importance of the documents at issue to this case and the absence of any objection by defendants, plaintiffs should be entitled to recover the costs of copying these documents.

IV. CONCLUSION

Because the Court's Order denying plaintiffs' request for costs for payments made to Cahill Gordon was based on a manifest error of fact – that Cahill Gordon is an “outside vendor that provides duplication services” – plaintiffs' motion for reconsideration should be granted.

DATED: March 24, 2014

ROBBINS GELLER RUDMAN
& DOWD LLP
MICHAEL J. DOWD (135628)
SPENCER A. BURKHOLZ (147029)
DANIEL S. DROSMAN (200643)
LAWRENCE A. ABEL (129596)
MAUREEN E. MUELLER (253431)

s/ DANIEL S. DROSMAN
DANIEL S. DROSMAN

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
LUKE O. BROOKS (90785469)
JASON C. DAVIS (253370)
Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
Telephone: 415/288-4545
415/288-4534 (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

DECLARATION OF SERVICE

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 March 24, 2014, declarant caused to be served by electronic mail to the parties listed below the following documents:

**PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT'S
MARCH 20, 2014 ORDER ON PLAINTIFFS' MOTION FOR ENTRY
OF BILL OF COSTS**

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

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of March, 2014, at San Diego, California.

s/ Teresa Holindrake
TERESA HOLINDRAKE