

**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' REPLY IN SUPPORT OF MOTION TO COMPEL THE  
HOUSEHOLD DEFENDANTS TO PRODUCE SOURCE LOGS FOR DOCUMENTS  
PRODUCED IN THIS LITIGATION**

Lead plaintiffs respectfully submit this reply in further support of their Motion to Compel the Household Defendants to Produce Source Logs for Documents Produced in this Litigation (“Motion”).

Plaintiffs are partially withdrawing this Motion inasmuch as defendants agreed on June 14, 2005, to produce source logs for previously-produced documents. On June 30, 2005, defendants agreed to produce source logs for all future document productions. The mere fact that defendants produced source logs only *after* plaintiffs filed this Motion highlights the need for the motion to compel filed by plaintiffs. To require an opposing party to file a motion to compel in order to trigger any obligation to even respond to discovery requests in the first instance, violates every tenet of the discovery rules. *Carlson v. Freightliner LLC*, 226 F.R.D. 343 (D. Neb. 2004). Plaintiffs need say nothing further on this issue.

The only issue remaining before this Court is defendants’ continued refusal to verify completion of their document production. Defendants attempt to characterize this issue as premature are unavailing. Without this relief, and with the fast approaching fact discovery deadline of January 13, 2006, plaintiffs risk running out of time to prosecute this case on behalf of the certified Class due to the delay tactics employed by defendants.

Plaintiffs’ request for verification that defendants have completed production of responsive documents pursuant to each request is not unusual. When appropriate, the court may order a party to formally verify under oath that either no responsive documents exist, or if they exist, that all responsive documents have been disclosed. *See, e.g., Carlson*, 226 F.R.D. 343; *Wagner v. Dryvit Sys., Inc.*, 208 F.R.D. 606, 610 (D. Neb. 2001) (same); *Safeco Ins. Co. of Am. v. Rawstron*, 181 F.R.D. 441, 449 (C.D. Cal. 1998) (directing service of a supplemental verified written response expressly stating that the party has produced all documents responsive to a document request); *Amon ex rel. Amon v. Harrison*, No. 91 C 980, 1993 U.S. Dist. LEXIS 9565 (N.D. Ill. July 14, 1993) (party

directed to tender an affidavit verifying their compliance with the production request by a certain date).

Although defendant's failure to produce certain documents is the subject of other motions to compel and production pursuant to Plaintiffs' First Request for Production of Documents to Household Defendants ("First Request") is purportedly continuing, there is nothing preventing defendants from verifying that production pursuant to certain requests is complete. For example, defendants can easily verify if they have produced to plaintiffs documents previously produced to other parties in prior proceedings, *i.e.*, documents responsive to Request No. 1 (investigations by federal or state agencies into Household's lending practices), Request No. 2 (investigations by federal or state agencies into Household's reaging practices); Request No. 3 (communications with federal or state agencies); Request No. 15 (documents produced to plaintiffs in prior litigations). Instead, defendants' response has been:

As to your inquiry whether the production of documents responsive to this request is "complete", surely plaintiffs can appreciate that given the volume of documents being collected and reviewed in response to plaintiffs' overbroad requests, as well as the parties' continuing obligations pursuant to the Federal Rules of Civil Procedure, the *Household Defendants can make no such representation*.

Attached hereto as Ex. A at 2 (emphasis added).

Defendants' refusal to verify that they have produced all responsive documents can only mean that they are withholding documents. For instance, plaintiffs were able to ascertain that defendants had failed to produce exhibits to deposition transcripts and declarations in other litigations and made a demand for these documents. Defendants are continuing to produce these in dribs and drabs, but only after repeated requests from plaintiffs. However, plaintiffs are unable to recognize if defendants are withholding documents in every instance, thereby further delaying plaintiffs from raising these issues before the Court. For instance, plaintiffs have not received all documents relating to a number of requests in the First Request – for example Request No. 5

(documents relating to the August 14, 2002 restatement), Request No. 13 (documents relating to management and employee incentives), Request No. 14 (documents relating to management and employee discipline), Request No. 17 (documents relating to work performed by KPMG LLP), Request No. 18 (documents relating to work performed by Arthur Andersen LLP), Request No. 19 (documents relating to Arthur Andersen LLP compensation), Request No. 22 (documents relating to HFC's registration of debt securities), and others. Yet, defendants refuse to verify whether they have produced all responsive documents.

Plaintiffs are entitled to all responsive documents also to make a determination which individuals should be deposed, and what further written discovery, interrogatories, admissions, etc., are needed from defendants. Defendants' refusal to verify document completion and their withholding of electronic files has seriously hindered plaintiffs' ability to notice depositions. If plaintiffs were to depose individuals at this stage, they would necessarily need to re-depose the same individuals when email production is complete. In light of the Court's present limitation of ten depositions on plaintiffs and defendants' obstructive behavior in the three depositions that have occurred thus far, plaintiffs intend to use their deposition time wisely and only request additional depositions if necessary.<sup>1</sup>

Defendants' contention that the overlap in Plaintiffs' Second Request for Production of Documents to Household Defendants ("Second Request") interferes with defendants' ability to certify completion as to the First Request, is without merit. If anything, it facilitates defendants'

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<sup>1</sup> Defendants have produced relevant documents on the eve of depositions noticed weeks in advance. Additionally, despite numerous requests that counsel for the Household Defendants refrain from injecting lengthy speaking objections, counsel continued to do so stating that he was merely trying to "shorten" or "short-circuiting" plaintiffs' deposition and that plaintiffs were "wasting time" with their deposition. Counsel also failed to notify plaintiffs how much time for cross-examination they needed with third-party witness Elaine Markell, and then interrupted plaintiffs' direct examination on at least three occasions to complain that they had extensive cross-examination, would need several hours and intended to complete their cross-examination within the seven-hour deposition period.

production of documents responsive to the Second Request because defendants' can simply point to the already complete production in the First Request and only produce any additional responsive documents. Defendants cannot have it both ways – refuse to certify completion and refuse to produce pursuant to the Second Request. Given the pace of production, defendants will never be finished with document production.

With less than six months of fact discovery remaining, plaintiffs' request to certify completion of production pursuant to those requests that are complete is timely and completely appropriate. For the foregoing reasons, plaintiffs' motion seeking an order requiring defendants to verify completion of its production should be granted.

DATED: July 21, 2005

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DECLARATION OF SERVICE BY UPS OVERNIGHT DELIVERY

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 July 21, 2005, declarant served by UPS, next day delivery, the **LEAD PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL THE HOUSEHOLD DEFENDANTS TO PRODUCE SOURCE LOGS FOR DOCUMENTS PRODUCED IN THIS LITIGATION** to the parties listed on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of July, 2005, at San Francisco, California.

/s/

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MARCY MEDEIROS

HOUSEHOLD INTERNATIONAL (LEAD)

Service List - 7/21/2005 (02-0377)

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