

**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. )	
_____ )	

**NOTICE OF LEAD PLAINTIFFS' RENEWED MOTION TO COMPEL THE  
HOUSEHOLD DEFENDANTS TO PRODUCE ELECTRONIC EVIDENCE IN NATIVE  
ELECTRONIC FORMAT**

PLEASE TAKE NOTICE that lead plaintiff renews its Motion to Compel the Household Defendants to Produce Electronic Evidence in Native Electronic Format (“Motion”) originally filed on June 6, 2005, in its entirety, along with the Declaration of Sylvia Sum in support of the Motion (docket numbers 237-240). Lead plaintiff relies on this Renewed Motion as well as the Declaration of Azra Z. Mehdi in Support of the Lead Plaintiffs’ Renewed Motion to Compel the Household Defendants to Produce Electronic Evidence in Native Electronic Format (“Mehdi Decl.”), copies of which are hereby served upon you.

Pursuant to the Court’s instructions at the August 24, 2005 status conference, plaintiffs provide further information regarding the Renewed Motion as follows:

1. On June 6, 2005, plaintiffs filed their Motion. Mehdi Decl., Exhibit 1. During the June 9, 2005 and August 24, 2005 status hearings, defendants represented to the Court that agreement had been reached between the parties on the production of documents in native format, and that the only dispute concerned the search terms and the number of custodians to be searched. Mehdi Decl., ¶4; Ex. 2 at 24-25. Because of defendants’ representations that electronic mail (emails) and spreadsheets would indeed be produced, plaintiffs partially withdrew their Motion to reflect discussion only of the disputed issues. Mehdi Decl., Ex. 3.

2. The record clearly demonstrates that defendants agreed to produce emails. As outlined in plaintiffs’ June 6, 2005 Motion, after six months of outright refusal to produce documents in native electronic format, in light of the weight of authority permitting such discovery, when defendants agreed to put together a proposal for the production of documents in native electronic format, plaintiffs requested that the proposal “cover[] the production of all electronic information, including electronic mail.” Mehdi Decl., Ex. 4.

3. In response, on January 11, 2005, defendants proposed a protocol for the production of electronic discovery for the relevant period. Mehdi Decl., Ex. 5. The Relevant Period as defined

in Plaintiffs' First and Second Requests for Production of Documents is January 1, 1997 through the present. Mehdi Decl., Exs. 6-7. This proposal specifically provided:

Subject to the caveats listed below, the *Household Defendants* ("*defendants*") will *provide the following electronic documents in native format*:

- "Excel" documents (and other spreadsheet-type documents)
- *Email and attachments (as set forth in paragraph 2(d) below)[.]*

Mehdi Decl., Ex. 5 (emphasis added). With respect to the production of email, defendants explained: "Household used both Lotus Notes and Housemail during the relevant time period." *Id.*

4. Specifically, regarding the production of Housemail, defendants stated:

Housemail was a proprietary, custom made email system. It is obsolete and no longer in use. Defendants propose that Housemail be produced in paper form due to technological and cost issues, but will continue exploring a native format production if plaintiffs are interested.

*Id.* The underlying premise of these negotiations was that defendants had agreed to produce responsive emails from the Housemail system.

5. In their initial proposal, defendants stated that because Housemail was a proprietary system at Household that was now obsolete, it was cost prohibitive for defendants to produce the Housemail emails in electronic format. *Id.* Plaintiffs initially agreed to accept Housemail emails in paper format only if defendants also agreed to produce any metadata associated with the Housemail emails at plaintiffs' request. Mehdi Decl., Ex. 8. In response, during a January 21, 2005 meet and confer, Household counsel Craig Kesch informed plaintiffs that Household does not have the metadata for the Housemail emails because the Housemail emails are stored as text files. Mehdi Decl., ¶3. Mr. Kesch further confirmed that Household would produce the Housemail emails in text format. *Id.* Again, the underlying assumption being that all responsive documents in Housemail were being produced. Accordingly, in the spirit of compromise, plaintiffs agreed to the production of Housemail emails for the relevant period in paper format. Mehdi Decl., Ex. 8.

6. Until September 29, 2005, no emails had been produced in electronic format and no Housemail emails in paper format. On September 29, 2005, upon receiving a paltry production of 646 documents (including emails and attachments) for six individuals in advance of Walt Rybak's and Curt Cunningham's depositions scheduled for October 6 and 7, 2005, plaintiffs were shocked to learn that defendants had neither searched, nor produced any Housemail emails except for those that had been fortuitously printed out and saved by individuals. Mehdi Decl., Exs. 9-10.

7. Defendants now take the position that Housemail emails prior to August 31, 2002 do not exist. Mehdi Decl., Ex. 11. As outlined in the correspondence to the Court and the parties, the sworn deposition testimony of Household's Fed. R. Civ. P. 30(b)(6) witness, Christine Cunningham, contradicts Household's recent position. Mehdi Decl., Exs. 11-12. Accordingly, plaintiffs renew their Motion to Compel the Household Defendants to Produce Electronic Documents in Native Format.

DATED: October 11, 2005

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