

**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' STATUS REPORT: OCTOBER 26, 2005 STATUS CONFERENCE**

Lead plaintiffs hereby submit this Status Report in advance of the October 26, 2005 status conference.

**A. Status of Motions Pending Before This Court**

**1. Motions Where Briefing Is Complete, Court Decision Pending**

a. Plaintiffs' Motion to Compel Responses to First Set of Interrogatories: Briefing was completed on September 27, 2005.

b. Motion to Compel the Household Defendants to Produce Documents Improperly Withheld on the Basis of Privilege: Briefing was completed on July 21, 2005. Plaintiffs take issue with defendants' submission of select privileged documents, instead of producing all disputed documents *in camera*. Plaintiffs' review of defendants' document production demonstrates excessive and improper redactions. The Court's decision on the first privilege log will shape defendants' subsequent logs, a large number of which remain pending.

**2. Motions Where Briefing Is Incomplete**

a. Plaintiffs' Renewed Motion to Compel the Household Defendants to Produce Electronic Evidence in Native Electronic Format: Plaintiffs' initial motion was filed on June 6, 2005. After meet and confers, defendants agreed to produce spreadsheets and the parties limited presentation of disputed issues on emails to (i) 18 search terms, and (ii) 165 custodians.

On October 3, 2005, defendants appeared to have revoked any agreement that the parties might have had by refusing to produce all responsive Housemail emails from the Relevant Period.<sup>1</sup> Defendants' excuse for their refusal is that such documents no longer exist. Defendants' representations (i) violate their obligations to preserve documents when litigation is pending

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<sup>1</sup> Although plaintiffs' First and Second Requests for Production of Documents define the Relevant Period as January 1, 1997 to present, plaintiffs are willing to limit this period to January 1, 1997 to December 31, 2003. This period includes a short time period before and after the Class Period of October 23, 1997 to October 11, 2002, and includes HSBC, plc's March 28, 2003 acquisition of Household.

(lawsuits have been pending against Household since at least late 2001); (ii) violate the April 8, 2003 Stipulation and Order Providing for Household International, Inc. to Preserve and Maintain Relevant Documents in the United States (“April 8 Order”), attached hereto as Exhibit 1; and (iii) contradict the November 11, 2004 sworn testimony of Household’s Rule 30(b)(6) witness for emails that such emails were saved indefinitely on backup tapes. Further, in the April 8 Order, defendants represented as follows:

Household represents that it has not knowingly undertaken any efforts, and does not have any intention, to destroy or remove from the United States any documents that may be relevant to the allegations in the Complaint . . . .

April 8 Order at 1. In light of the foregoing developments, plaintiffs have renewed their motion to compel documents in the native format in its entirety, and anticipate filing motions for evidentiary sanctions against defendants for the intentional spoliation of evidence.

b. Household Defendants’ Motion for Costs, Expenses and Fees: Plaintiffs believe defendants’ motion is frivolous and improper, designed to delay and to distract the Court’s attention from the real issues here – spoliation of evidence. Defendants had more than adequate notice – at least as of October 3, 2005 – that the depositions were cancelled and needed to be rescheduled upon resolution of the issue relating to defendants’ non-production of Housemail emails (*see* §A.(2).(a) above). Defendants admit having sufficient notice, but nonetheless decided to show up at plaintiffs’ local counsel’s offices on October 6, 2005. Neither the facts here, nor the legal authority cited by defendants support their motion. Plaintiffs believe that Class resources should not be wasted in responding to a frivolous motion, and await the Court’s guidance. If the Court contemplates ruling on this motion on the papers, plaintiffs would like an opportunity to file a response.

c. Household Defendants’ Motion for Partial Reconsideration of the Court’s September 28, 2005 Order Regarding Defendants’ Motion to Amend the Protective Order: On October 12, 2005, defendants moved for partial reconsideration of the Court’s September 28, 2005 Order

inasmuch as it directed defendants to review and redesignate the confidentiality designations of all documents produced to plaintiffs to date. On October 17, 2005, plaintiffs opposed the motion in light of defendants' arbitrary use of the "Confidential" designation. Defendants' reply is due on October 25, 2005.

**3. Motions Where Party Action Is Needed Prior to Further Court Involvement**

Motion to Compel the Household Defendants to Produce Source Logs for Documents Produced in This Litigation: Plaintiffs filed this motion on June 6, 2005 seeking to compel source logs as well as verification that document production pursuant to individual requests was complete. Following plaintiffs' filing, defendants produced source logs. Plaintiffs withdrew that part of the motion. However, defendants only sporadically provide source logs for electronic productions. Briefing on the remainder of the motion was completed by July 21, 2005. At the August 24, 2005 hearing, the Court ordered defendants to file by September 2, 2005 a supplemental response verifying completion of document production. Instead of filing a response, defendants sent a letter to the Court describing generally their efforts in gathering documents. Defendants, however, failed to verify the completion of any individual request. In light of defendants' refusal to produce responsive emails during the Class Period, the verification that all responsive documents have been searched and produced is imperative.

Party Action Needed: As suggested by plaintiffs at the September 21, 2005 status conference, plaintiffs are in the process of assembling a list of the responsive documents not yet produced by defendants based upon their purported completion of hard copy production. Plaintiffs anticipate providing defendants this list by the first week of November 2005. Plaintiffs hope that defendants will produce any remaining responsive documents upon receipt of this list, as well as provide the missing source logs for electronic documents.

## **B. Status of Discovery**

### **1. Document Production and Motions to Compel**

Defendants currently represent that their document production will not be complete until January 20, 2006 – a week after the current fact discovery cut-off of January 13, 2006. Defendants' production has been deficient for (i) failure to produce responsive Housemail emails; (ii) abusive use of redactions; (iii) withholding of documents on improper assertions of privilege; and (iv) incomplete production of responsive documents. Plaintiffs may need to move to compel complete production. Additionally, defendants have flatly refused to produce numerous documents responsive to Plaintiffs' Second Request for Production of Documents. Having exhausted meet and confer avenues, plaintiffs intend to move to compel production of such responsive documents.

### **2. Copying and Shipping Expenses**

Plaintiffs recently initiated a meet and confer discussion regarding copying and shipping costs associated with defendants' production of documents by Cahill Gordon & Reindel LLP ("Cahill"). In the discussions, plaintiffs proposed a solution addressing both past and future productions. Although defendants have indicated partial acceptance of this solution, they have to date insisted on recovery of all past costs, which include Cahill's "normal" internal copying rate of \$0.20 per page, a disclosure defendants made just this week. Given the status of the parties' discussions, including the need for additional disclosures by defendants as to the actual amount at issue, plaintiffs believe this matter is not ripe for the Court's consideration. Should the parties' discussions ultimately prove unfruitful, plaintiffs believe the issue should be resolved through an appropriate motion.

### **3. Depositions**

Plaintiffs have taken three depositions and anticipate taking more. As detailed in the Rule 26(f) Plan filed May 20, 2004, plaintiffs intend to make a formal motion requesting 50 depositions.

Plaintiffs believe they have strong support for this request. Plaintiffs believe that the issue of non-production of Housemail emails must be resolved promptly to efficiently advance depositions.

**4. Interrogatories**

Plaintiffs have propounded 18 interrogatories. Due to the complex issues in this case, plaintiffs will seek leave to serve additional interrogatories beyond the limitation set by Fed. R. Civ. P. 33.

**5. Fact Discovery Cut-Off**

Defendants agree that the fact discovery cut-off currently scheduled for January 13, 2006, should be extended. Plaintiffs propose a four-month extension to May 12, 2006.

DATED: October 21, 2005

Respectfully submitted,

/S/ Azra Z. Mehdi

AZRA Z. MEHDI

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DECLARATION OF SERVICE BY UPS OVERNIGHT OR BY EMAIL

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 October 21, 2005, declarant served by UPS Overnight (noted on the service list attached) or by email **LEAD PLAINTIFFS' STATUS REPORT: OCTOBER 26, 2005 STATUS CONFERENCE** to the parties listed on the attached Service List. The parties' email addresses are as follows:

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

/S/ Monina O. Gamboa  
\_\_\_\_\_  
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HOUSEHOLD INTERNATIONAL (LEAD)

Service List - 10/20/2005 (02-0377)

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