

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN, ON ) BEHALF OF ITSELF AND ALL OTHERS SIMILARLY ) SITUATED, )  Plaintiff, )  - <i>against</i> - )  HOUSEHOLD INTERNATIONAL, INC., ET AL., )  Defendants. )  border-bottom: 1px solid black;	Lead Case No. 02-C-5893 (Consolidated)  CLASS ACTION  Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan
--	--

**JOINT STATEMENT OF THE PARTIES AS  
TO HOUSEHOLD'S COST ESTIMATE IN  
ORDER TO RESPOND TO CERTAIN  
INTERROGATORIES AND PROPOSED  
ALLOCATION OF THE ESTIMATED COST**

**JOINT STATEMENT OF THE PARTIES AS  
TO HOUSEHOLD'S COST ESTIMATE IN  
ORDER TO RESPOND TO CERTAIN  
INTERROGATORIES AND PROPOSED  
ALLOCATION OF THE ESTIMATED COST**

Pursuant to the Court's August 10, 2006 Order, the parties held a meet and confer on August 16, 2006 to discuss the issues of "a fair estimate of the cost of producing the statistics, along with a proposal setting forth the amount each side is prepared to contribute." At the meet and confer, the parties were unable to agree on a joint proposal. Set forth below is each party's respective proposal.

The Class' Estimate of Costs Associated with Responding to the Class' Interrogatory Nos. 40-42 and Proposal for Allocation.

On August 16, 2006, the parties met and conferred to discuss the estimated costs for responding to the Class' Interrogatory Nos. 40-42 and the allocation of those costs as directed by the Court in its August 10 Order. During the meet and confer, counsel for the Household defendants stated that Household stood by Ms. Giannis' prior estimate of \$26,600. They also explained that this estimate represented the value of the time that a Household Technology Services (HTS) employee would spend in performing the work necessary to obtain the responsive information. In the spirit of compromise, the Class accepted this estimate and offered to pay half of the estimated internal costs. The Household defendants rejected this compromise and requested that the Class pay the full amount of the \$26,600. In these circumstances, the Class proposes that Household bear the full amount of the internal costs consistent with the applicable law and the Household defendants' unwillingness to reach reasonable compromises.

As a starting point, the costs reflected in Ms. Giannis' affidavit are not third-party expenses to be incurred by Household, but rather represent the time and effort normally

spent in responding to discovery requests in large, complex cases. *Schaap v. Executive Indus., Inc.*, 130 F.R.D. 384, 387 (N.D. Ill. 1990) (“The mere fact that [a responding party] will be required to expend a considerable time, effort, or expense in answering the interrogatories is not a sufficient reason to preclude discovery.”); James Wm. Moore et al., *Moore’s Federal Practice, Civil* § 33.173 (3d ed. 2006) (“interrogatories involving substantial research will also be permitted in cases involving large amounts of money or complex litigation”) (citing, e.g., *Roberts v. Heims*, 130 F.R.D. 424, 429 (N.D. Cal. 1989)).

In-house costs relating to the time and effort to respond to discovery requests are not a basis for requiring the Class to pay Household for its time and effort. To the contrary, cost-shifting is only appropriate where the costs at issue are third-party vendors. *See, e.g., Wiginton v. CB Richard Ellis, Inc.*, 229 F.R.D. 568, 576 (N.D. Ill. 2004) (discussing allocation of expenses associated with third-party vendor’s restoration of emails from backup tapes where the estimate of these expenses ranged from hundreds of thousands of dollars to millions). Thus, there are no third-party costs that would warrant departure from “the general presumption in discovery that the responding party must bear the expense in complying with discovery requests.” *Id.* at 571-72 (citing *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 358 (1978)).

Even if the costs at issue were third-party costs, there still is no basis to overcome the general presumption here under the factors considered in *Wiginton*. First, as found by the Court in its August 10 Order, the responsive information at issue is relevant. August 10 Order at 13. Second, the information is available nowhere else. Third, the total cost of production (\$26,600) pales in comparison to the amount in controversy (in the billions). Fourth, the total cost of production pales in comparison to Household’s resources (again in the billions) and Household’s assets dwarf those of the Class. Fifth, as this process of obtaining the information will be done under Household’s control, it will have the opportunity to control the costs of obtaining the information. Sixth, the responsive information supports

the Class' factual claims. The two first points are the most important and heavily weigh against cost-shifting. Thus, the Court should not shift costs in this situation.

Additionally, the Court should require Household to bear the full costs based on its conduct in the meet and confer, which was ordered by the Court. Here, the Household defendants adopted a wholly unreasonable position, *i.e.* that the Class bear the full costs associated with the search. Moreover, they refused to alter this position even after the Class proposed the reasonable compromise of paying half. This conduct has resulted in unnecessary briefing by the parties on a subject that should have been resolved via the meet and confer. Equally significant from the Class' perspective and the Court's is that by refusing the Class' offer of compromise, the Household defendants have delayed resolution of this issue and thus, the day on which they will produce the responsive information. Not coincidentally, on August 17, counsel for Household stated that it was not possible to provide this information in less than the 56 *business* days estimated in Ms. Giannis' affidavit as Household could only devote one HTS employee to the task.

The Court has before it in Household's conduct at the meet and confer a clear example of the cause for the petty squabbles. Cost-shifting here in any amount would only encourage this conduct and further petty squabbles. Further, if the parties are to meet the firm discovery cut-off date of January 31, 2007, there must be clear guidance from the Court that stalling and delaying tactics by Household will neither be condoned nor tolerated. On this point, the Class respectfully requests that the Court direct Household to provide the information responsive to the Class' Interrogatory Nos. 40-42 on September 9, 30 days after issuance of the August 10 Order.

For the foregoing reasons, the Class proposes that Household bear the entirety of the estimated costs of Household's internal time and effort compiling the responsive information. There is no basis for cost-shifting of these types of "costs" under the applicable case law given the nature of these costs, their amount and the other circumstances of this case.

Defendants' Proposal

Creating and applying original programming to extract data and prepare customized computerized data reports in response to Plaintiffs' Interrogatories Nos. 40, 41 and 42(a) and (b),<sup>1</sup> would cost at least \$26,600 and deprive Household of the regular services and expertise of the full-time employee who would be dedicated to this project for weeks. (The specifics of this good-faith estimate are spelled out in the July 13, 2006 Affidavit of Diane Giannis submitted to the Court in support of Defendants' Opposition to Plaintiffs' Motion to Compel with respect to Plaintiffs' Third Set of Interrogatories.)

Defendants submit that since Household will be required to contribute the required expertise and computer resources, and will bear the burden of designing, supervising, managing and implementing this project, plus the impairment of its staff's normal-course activities, it is eminently fair to require Plaintiffs to contribute the monetary portion of these costs, which they have previously said is "not unduly burdensome." (*See* point 2 below.) Plaintiffs' proposal that Defendants defray half of the monetary costs in addition to the burden of performing the requested work on Plaintiffs' behalf would shift a disproportionate and unfair share of the costs to Defendants.

Defendants respectfully direct the Court's attention to the following relevant considerations:

1. As the Court found in its August 10 Order, "Household does not maintain the information [requested by Plaintiffs] in the ordinary course of business and will incur

---

<sup>1</sup> Interrogatory No. 42(c) and (d) seeks post-Class Period information that the Court, in its June 15, 2006 decision, ruled was not discoverable.

some associated expense” (Order of August 10, 2006, p. 13). In such situations, where the producing party is required to create and produce computerized information that does not currently exist, courts have routinely held that the requesting party must bear the cost. *See, e.g., In re Air Crash Disaster at Detroit Metropolitan Airport on Aug. 16, 1987*, 130 F.R.D. 634, 636 (E.D. Mich. 1989) (“because the requested discovery material does not currently exist, [the requesting party] is directed to pay all reasonable and necessary costs that may be associated with the manufacture of the computer-readable tape.”); *Anti-Monopoly, Inc. v. Hasbro, Inc.*, No. 94 Civ. 2120 (LMM) (AJP), 1996 WL 22976, at \*1 (S.D.N.Y. Jan. 23, 1996) (holding, as to data not kept in the form sought by the plaintiff in the ordinary course of business: “If plaintiff wants the computerized information, it will have to pay defendants’ reasonable costs of creating computer programs to extract the requested data from defendants’ computers.”)

2. Plaintiffs acknowledged in their Reply Brief on their Motion to Compel with respect to their Third Set of Interrogatories, that “Ms. Giannis’ estimated expense of \$26,600 is *not unduly burdensome* given the relevance of the information sought and the importance of this action” (Reply Brief, p. 13, emphasis added).

3. Unlike a situation where all parties share an interest in creating a data compilation (such as a list identifying putative class members), this project would be undertaken solely for Plaintiffs’ benefit, at considerable inconvenience and burden to Household, and would save Plaintiffs the much higher costs of reviewing voluminous raw data to elicit data they deem relevant and tailoring reports to their specifications. Under these circumstances, requiring them to contribute the “not unduly burdensome” monetary cost of the project is a more than reasonable outcome.

4. In addition to being fair, requiring Plaintiffs to bear the monetary cost of creating new data compilations tailored to their specifications would create a needed incentive to Plaintiffs to winnow and focus their discovery requests and protect Defendants from unwarranted burden and oppression.

5. Plaintiffs have no basis to challenge the good faith cost and time estimate set forth in Ms. Giannis' Affidavit, or to speculate that there may be some more efficient way to proceed. Defendants' estimate was prepared with considerable detail and diligence by the person who is in the best position to assess what is the most efficient way to create the information sought by the Plaintiffs without seriously jeopardizing Household's ongoing business operations. Plaintiffs' alleged concerns are misplaced in any event, because Household has every incentive to minimize the duration and costs (of all kinds) of this project and to accelerate the day of reckoning on Plaintiffs' claims. In practice, if its estimate proved to be too high, Plaintiffs would benefit from the reduction, and if the estimate proved to be too optimistic, Household would have to bear the additional disruption and costs.

6. Nonetheless, in response to Plaintiffs' arguments, Defendants promptly explored with Ms. Giannis Plaintiffs' suggestion that Household minimize the duration of the project by assigning additional Household employees to the task or hiring temporary non-Household personnel. As Defendants informed Plaintiffs on Thursday, August 17, neither alternative is feasible. It is not possible for more than one person to be dedicated to creating the requested compilations because all other personnel in Ms. Giannis' department are needed for time-sensitive, business-related work, including preparation for certain mandatory state examinations. It is not feasible to hire temporary, non-Household personnel because of the

specialized expertise required to work with the relevant systems and databases. (Hiring temporary staff would of course increase the expense of the project considerably.)

7. Finally, Defendants disagree with Plaintiffs' contention that during the March 9, 2006 status conference, in connection with a different cost estimate, Your Honor suggested that Plaintiffs should pay only half the monetary cost of obtaining information not maintained in the ordinary course by Household. The Court spoke generally of the concept of "sharing" but did not specify a proportion or discuss the hidden costs of dedicating Household's staff to creating new compilations for Plaintiffs' benefit. Defendants would be pleased to supply the Court with a copy of the relevant transcript on request.

Respectfully submitted,

Dated: Chicago, Illinois  
August 18, 2006

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
PATRICK J. COUGHLIN (90785466)  
AZRA Z. MEHDI (90785467)  
D. CAMERON BAKER (154452)  
MONIQUE C. WINKLER (90786006)  
LUKE O. BROOKS (90785469)  
MARIA V. MORRIS (223903)  
BING Z. RYAN (228641)

EIMER STAHL KLEVORN & SOLBERG LLP  
By: s/Adam B. Deutsch  
Nathan P. Eimer  
Adam B. Deutsch  
224 South Michigan Ave.  
Suite 1100  
Chicago, Illinois 60604  
(312) 660-7600



s/ Azra Z. Mehdi  
AZRA Z. MEHDI

100 Pine Street, Suite 2600  
San Francisco, CA 94111  
Telephone: 415/288-4545  
415/288-4534 (fax)

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
WILLIAM S. LERACH  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)

Lead Counsel for Plaintiffs

MILLER FAUCHER AND CAFFERTY  
LLP  
MARVIN A. MILLER  
30 North LaSalle Street, Suite 3200  
Chicago, IL 60602  
Telephone: 312/782-4880  
312/782-4485 (fax)

Liaison Counsel

LAW OFFICES OF LAWRENCE G.  
SOICHER  
LAWRENCE C. SOICHER  
110 East 59th Street, 25th Floor  
New York, NY 10022  
Telephone: 212/883-8000  
212/355-6900 (fax)

Attorneys for Plaintiff

-and-

CAHILL GORDON & REINDEL  
Thomas J. Kavalier  
Howard G. Sloane  
Landis C. Best  
Patricia Farren  
David R. Owen

80 Pine Street  
New York, New York 10005  
(212) 701-3000

*Attorneys for Defendants Household Inter-  
national, Inc., Household Finance Corpora-  
tion,  
William F. Aldinger, David A. Schoenholz,  
Gary Gilmer and J.A. Vozar*

*Attorneys for Defendants Household Interna-  
tional, Inc., Household Finance Corpora-  
tion, William F. Aldinger, David A. Schoen-  
holz, Gary Gilmer and J.A. Vozar*

**CERTIFICATE OF SERVICE**

Adam B. Deutsch, an attorney, certifies that on August 18, 2006, he caused to be served a copy of the JOINT STATEMENT OF THE PARTIES AS TO HOUSEHOLD'S COST ESTIMATE IN ORDER TO RESPOND TO CERTAIN INTERROGATORIES AND PROPOSED ALLOCATION OF THE ESTIMATED COST, to the parties listed below via the manner stated.

/s/ Adam B. Deutsch

Adam B. Deutsch

**Via E-mail and Fed-Ex**

Marvin A. Miller  
Lori A. Fanning  
MILLER FAUCHER and CAFFERTY LLP  
30 North LaSalle Street, Suite 3200  
Chicago, Illinois 60602  
(312) 782-4880  
(312) 782-4485 (fax)

**Via E-mail and Fed-Ex**

Patrick J. Coughlin  
Azra Z. Mehdi  
Cameron Baker  
Luke O. Brooks  
LERACH COUGHLIN STOIA  
& ROBBINS LLP  
100 Pine Street, Suite 2600  
San Francisco, California 94111  
(415) 288-4545  
(415) 288-4534 (fax)