

**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. )	
_____ )	

**THE CLASS' OBJECTION TO THE MAGISTRATE'S SEPTEMBER 20, 2006 ORDER**

## **I. INTRODUCTION**

Lead plaintiffs and the Class respectfully object to the Magistrate's Order entered on September 20, 2006 rejecting the Class' arguments with respect to the counting of Household's interrogatories. *See* Baker Decl., Ex. B; *see also* Baker Decl., Ex. A (related September 19, 2006 hearing transcript).<sup>1</sup> As shown below, the Magistrate's Orders and oral rulings on this issue have collectively resulted in substantial prejudice to the Class, namely that it has been deprived of some 31 interrogatories while Household has been awarded an additional 60 some interrogatories. The Class has been instructed by the Magistrate not to seek reconsideration of the Magistrate's Orders but to take all issues to this Court. Therefore, the Class brings this matter to the Court's attention to correct what the Class believes to be a manifest injustice.

## **II. BACKGROUND**

The issue of counting interrogatories first arose on September 6, 2005 when the Class moved to compel defendants to respond to its first interrogatories. *See* Lead Plaintiffs' Memorandum in Support of Motion to Compel Responses to First Set of Interrogatories from Household Defendants, Docket No. 289. Following briefing and arguments, the Magistrate held on November 10, 2005 that any interrogatory addressing a discrete subject matter was properly counted as a separate interrogatory. *See* Baker Decl., Ex. C at 2, n.1 (November 10, 2005 Order (citing *Swackhammer v. Sprint Corp. PCS*, 225 F.R.D. 658, 664-665 (D. Kan. 2004))).

The counting issue next arose on June 29, 2006 when the Class moved to compel defendants to respond to its third interrogatories. *See* Baker Decl., Exs. D-F. Defendants had refused to respond to the Class' Interrogatory No. 56 on the ground that the Class had exceeded the 85

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<sup>1</sup> "Baker Decl." refers to the Declaration of D. Cameron Baker in Support of the Class' Objection to the Magistrate's September 20, 2006 Order, filed herewith.

interrogatory limit previously imposed on both parties by the Magistrate. In its opening papers, the Class argued that this assertion was incorrect under the standard set in the November 10, 2005 Order, and that defendants had improperly inflated the number of the Class' interrogatories (unilaterally splitting numerous single interrogatories into five or more) in order to avoid answering them. Baker Decl., Ex. D at 14-15.

On August 10, 2006, the Magistrate issued a 17-page Order addressing four separate motions, each with objections and responses and numerous exhibits. *See* Baker Decl., Ex. G. In that Order, the Magistrate stated she would not "participat[e] in the parties' unnecessary counting dispute." *Id.* at 15. However, the Magistrate went on without analysis or explanation to preclude the Class from propounding further interrogatories without leave, thus implicitly accepting Household's argument that the Class had exceeded its 85 interrogatory limit. *Id.* At the same time, defendants were awarded (i) five additional interrogatories in order to allow them to correct a single poorly drafted interrogatory, and (ii) one other interrogatory (for a total increase of six) to "make up" for the fact that the Magistrate had ordered defendants to answer the Class' 56th interrogatory. *See id.* at 15, 17.

On August 17, 2006, the Class requested that the Magistrate clarify the ruling as to the counting of interrogatories described above. As explained in the Class' brief and at the presentment hearing held on August 22, 2006, this clarification was necessary so that the Class could present support for its own argument that Household had substantially exceeded its own 85 interrogatory limit based on subparts. *See* Baker Decl., Ex. H at 3-4. The Magistrate declined to explain the August 10, 2006 Order on this point and responded to the Class' argument by prohibiting either side from propounding any additional interrogatories. *See* Baker Decl., Ex. I at 11. The Magistrate's language on this point was quite explicit: "I am not going to indulge either one of you into counting . . . neither party may propound further interrogatories." *See Id.* at 11-12. The Magistrate went on to

state that if either party wished to challenge the ruling, it should do so by way of presenting an objection to this Court. *Id.*

At this juncture, after reviewing the record and relying on the benefit of a concrete resolution that precluded either party from propounding further interrogatories, the Class elected not to object to the August 10 Order as clarified on August 22, 2006.

Then, on September 19, 2006, Household counsel requested to be heard “on one small matter.” *See Baker Decl., Ex. A at 53-54.* Much to the dismay of the Class, this “small matter” was in actuality anything but small. In reality, Household made an oral motion (as opposed to the formal objection the Magistrate had adamantly ordered at the August 22 hearing) for reconsideration of the Court’s August 22 ruling of “[no] further interrogatories,” arguing that this ruling should be amended to provide that no party could propound any further interrogatories beyond the 85 previously authorized. *Id.* at 54. The Magistrate at that time acknowledged that she did not completely understand the import of defendants’ argument stating, “I don’t know what you are saying to me. Actually it is a kind of double speak . . . .” *Id.* at 55. However, the Magistrate went on to state that she only intended to rule that the parties could not exceed the 85 interrogatory limit. *Id.*

Then, on September 20, 2006, the Magistrate entered an Order addressing defendants’ motion to compel responses to their interrogatories. In that Order, the Magistrate rejected the Class’ argument that Household had exceeded its 85 interrogatory limit. *See Baker Decl., Ex. B at 2.* The Magistrate interpreted the Class’ argument as limited to disputing only ten additional interrogatories that Household had propounded but not included in its numbering. *Id.* Significantly, the Class’ argument was much broader, asserting that by use of subparts, Household had already propounded 101 interrogatories. *See Baker Decl., Ex. J at 4-5.* The Magistrate did not address this broader

argument by the Class and did not count defendants' interrogatories based on subparts. *See Baker Decl., Ex. B.*

The Class was prepared to bring this issue to the Magistrate's attention via motion for reconsideration on October 4, 2006. However, at a status conference held on that date, the Magistrate directed the Class not to bring any motions for reconsideration but to bring all issues respecting the Magistrate's rulings to this Court.

### **III. LEGAL ARGUMENT**

The Magistrate's rulings on the counting of interrogatories has been inconsistent at best and has had an extremely prejudicial and inequitable impact. As shown from above, there has not been a consistent standard of counting interrogatories applied to both Household and the Class. While the Class does not believe that the Magistrate intended this result or the related prejudice to the Class, the Class has been specifically instructed not to bring these types of concerns to the Magistrate. Accordingly, the Class requests that this Court sustain this objection to the Magistrate's Order and find that Household has exceeded its interrogatory limit. In the alternative, the Court should direct the Magistrate to reconsider this issue and apply a consistent standard as to both the Class and Household.

It is unfair to accept without analysis Household's unsupported assertion that the Class exceeded the interrogatory limit of 85 based on subparts while rejecting without analysis the Class' identical assertion that Household exceeded the interrogatory limit of 85 based on subparts. The impact of this uneven approach was mitigated by the Court's August 22, 2006 ruling that neither party could propound further interrogatories although some prejudice to the Class still resulted, namely that it would have to respond to Household's 101 interrogatories while the Class only got

85.<sup>2</sup> (In a case of this magnitude, interrogatories are an important discovery tool for the Class to identify relevant documents and witnesses and to probe defendants' contentions.)

However, on September 19, 2006, when Household sought and obtained its oral "clarification" of the Magistrate's ruling on August 22, 2006, this prejudice to the Class was significantly heightened. Now Household may propound an additional 42 or 52 depending on whether the Magistrate intends to count Household's first ten interrogatories. Not only this, but there can be little doubt that Household will take note of the Magistrate's reluctance to engage in counting Household's subparts. Future interrogatories are, thus, likely to be even more egregious than those that have gone before, spawning further motion practice.

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<sup>2</sup> This assumes for the moment that Household's counting was correct, a proposition that the Class still disputes under the standard adopted by the Magistrate in the November 10, 2005 Order.

In these circumstances, the Court should sustain this objection and hold that Household has exceeded its interrogatory limit. This solution would in effect restore the status quo after August 22, 2006 when the Magistrate clearly prohibited either party from propounding further interrogatories. While this position results in some prejudice to the Class, namely Household getting additional interrogatories, the Class accepts this prejudice to keep moving forward with the case. Alternatively, the Class requests the Court direct the Magistrate to reconsider her prior rulings and apply a consistent standard of counting both sides' prior interrogatories to determine whether each party has or has not exceed the 85 allotted.

DATED: October 4, 2006

Respectfully submitted,

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DECLARATION OF SERVICE BY EMAIL AND BY U.S. MAIL

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 4, 2006, declarant served by electronic mail and by U.S. Mail to the parties:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of October, 2006, at San Francisco, California.

s/ Pamela Jackson  
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PAMELA JACKSON