

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

<p>LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">- <i>against</i> -</p> <p>Household International, Inc., et al.,</p> <p style="text-align: right;">Defendants.</p>	}	<p>Lead Case No. 02-C-5893 (Consolidated)</p> <p>CLASS ACTION</p> <p>Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan</p>
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**DECLARATION OF DAVID R. OWEN IN SUPPORT OF THE  
HOUSEHOLD DEFENDANTS' MOTION PURSUANT TO THE  
COURT'S OCTOBER 17, 2007 ORDER AND FOR PRECLUSION**

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I, DAVID R. OWEN, declare as follows:

1. I am a member of the bar of the State of New York, admitted to this Court *pro hac vice* in connection with the above captioned matter, and a member of the firm Cahill Gordon & Reindel LLP, co-counsel for defendants Household International, Inc., Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer, and J.A. Vozar in this action. I hereby submit this declaration in support of the Household Defendants' Motion Pursuant To The Court's October 17, 2007 Order and For Preclusion.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Lead Plaintiffs' Supplemental Statement Regarding Damages Pursuant To The Court's October 17, 2007 Order, which was served upon Defendants by Plaintiffs in this action on October 24, 2007.

3. Attached hereto as Exhibit 2 is a true and correct copy of The Affidavit of Mukesh Bajaj, dated

4. Attached hereto as Exhibit 3 is a true and correct copy of the November 7, 2007 letter from Azra Z. Mehdi to David R. Owen.

Executed this 14th day of November, 2007, in New York, New York.

/s/ David R. Owen  
David R. Owen

**EXHIBIT 1**

**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' SUPPLEMENTAL STATEMENT REGARDING DAMAGES  
PURSUANT TO THE COURT'S OCTOBER 17, 2007 ORDER**

Pursuant to the Court's October 17, 2007 Order lead plaintiffs supplement their Statement Regarding Damages as follows:

**A. Lead Plaintiffs' Proposed Method of Calculating Damages**

Lead plaintiffs intend to seek recovery for their out-of-pocket losses due to defendants' fraud. *Katz v. Comdisco, Inc.*, 117 F.R.D. 403, 408 (N.D. Ill. 1987) ("out-of-pocket rule [is] the standard measure of damages in securities fraud litigation"). Thus, lead plaintiffs will ask the jury to determine the artificial inflation present in Household International, Inc.'s ("Household") common stock on a per share basis for each day of the Class Period (July 30, 1999 through October 11, 2002).

Exhibits 53 and 56 to the Report of Daniel R. Fischel ("Fischel Report") illustrate the estimated artificial inflation in Household's common stock for each day during the Class Period based on two different methods. Exhibit 53 identifies the estimated artificial inflation using only specific disclosures. As Professor Fischel states in his report "[t]his quantification likely understates the amount of inflation because it does not take into account the stock price effect of all of the information related to the alleged fraud . . . that leaked into the market in the latter part of the Class Period." Fischel Report, ¶30. Exhibit 56 identifies the estimated artificial inflation including leakage. Both methods are applicable to all Class members, including in-and-out investors.<sup>1</sup>

Once the jury determines the artificial inflation in Household's common stock for each day during the Class Period, lead plaintiffs propose to calculate individual damages using a formulaic approach:

$x(A) = D$ , if the shares are held through the end of the Class Period

$x(A-B) = D$ , if the shares are sold before the end of the Class Period

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<sup>1</sup> "In-and-out investors" are those investors who purchased shares during the Class Period and sold them at some point before the last day of the Class Period, October 11, 2002.

where A equals the amount of artificial inflation in Household's common stock on the day the shares were purchased, x equals the number of shares purchased, B equals the amount of artificial inflation in Household's stock on the day the shares were sold, and D equals damages.

Lead plaintiffs do not intend to seek damages for shares sold prior to November 15, 2001, the earliest date Professor Fischel "found that Household's stock price was negatively affected by the alleged fraud." Fischel Report, ¶¶12, 28.

**B. Lead Plaintiffs' Response to Additional Questions Posed by the Court in the October 17, 2007 Order**

Having identified their proposed formula for calculating individual damages, lead plaintiffs address the four additional questions identified on page 5 of the Court's October 17, 2007 Order:

1. Lead plaintiffs intend to use a netting approach for Class members who profited from some trades of Household's common stock acquired during the Class Period and sold after November 14, 2001, but suffered losses from other trades of Household's common stock during this same period.

2. For those Class members who sold their stock during the negative inflation period identified in Professor Fischel's report, lead plaintiffs propose using the same formula identified in Section A above for shares sold before the end of the Class Period.

3. Lead plaintiffs intend to seek damages for the artificial inflation present in the stock price on every day of the Class Period, including the first day.

4. Lead plaintiffs currently do not intend to offer expert testimony in their case-in-chief regarding aggregate damages suffered by the Class. Instead, as discussed above, plaintiffs will ask the jury to determine the artificial inflation in Household's common stock on a per share basis for each day of the Class Period and expect damages will be distributed on a "claims made" basis. This method has been accepted by many courts, including courts in this district. *Kaufman v. Motorola, Inc.*, No. 95 C 1069, 2000 U.S. Dist. LEXIS 14627, at \*6 (N.D. Ill. Sept. 19, 2000) (observing that

“an adequate remedy may be fashioned by having the jury determine a per share damage loss and requiring the filing of claims by each shareholder who claims that he, she, or it has been damaged”).

Notwithstanding that plaintiffs currently do not intend to offer expert testimony on the issue of aggregate damages in their case-in-chief, pursuant to the Court’s October 17, 2007 Order, lead plaintiffs estimate the aggregate damages suffered by the Class to be approximately \$4.1 billion.

DATED: October 24, 2007

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**EXHIBIT 2**

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

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In re: Lawrence E. Jaffe Pension Plan )  
Plaintiff, )  
 )  
v. )  
 )  
Household International, Inc., et al )  
 )  
 )  
Defendant, )  

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Lead Case No. 02-C-5893

**AFFIDAVIT OF MUKESH BAJAJ**

November 13, 2007

I am a financial economist and Senior Managing Director leading the securities practice at LECG, LLC. LECG is an international consulting firm specializing in economics and financial analysis. I have been retained by counsel for Household International Inc. (“Household” or the “Company”) to review and comment on the expert report of Professor Daniel Fischel (the “Fischel Report”) dated August 15, 2007, served by Plaintiffs in this case.

## **I. Background**

The Court has found the Fischel Report<sup>1</sup> “inadequate in several respects” (“the Order”).<sup>2</sup> Judge Nolan ordered Plaintiffs to “provide the supplemental information” listed below by October 31, 2007:<sup>3</sup>

- A. Plaintiffs were ordered to “clarify which of Professor Fischel’s tables [which provide alternative quantifications of alleged artificial inflation] will be used [to calculate damages] for each type of investor” [Bracketed text added]; and
- B. Plaintiffs were ordered to “identify their proposed method of calculating those damages should they prevail on the issue of liability. This should include a statement as to (1) whether Plaintiffs intend to use a netting or transactional approach for class members who profited from some trades but suffered losses from others; (2) Plaintiffs’ proposed method of calculating damages on behalf of class members who sold their stock during the negative inflation period identified in Professor Fischel’s report; (3) whether Plaintiffs intend to claim damages for inflation already present in the stock price on the first day of the Class Period; and (4) the estimated aggregate damages claimed by the class as a whole.”

The Lead Plaintiffs’ Supplemental Statement Regarding Damages Pursuant to the Court’s October 17, 2007 Order (“Supplemental Statement”) is inadequate and incomplete with respect to both A and B above. As I explain below, the inadequacies of Plaintiffs’ damages disclosures principally stem from the failure to identify which

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<sup>1</sup> Expert Report of Daniel R. Fischel, August 15, 2007 (“Fischel Report”).

<sup>2</sup> Order by Judge Nan R. Nolan, dated October 17, 2007, page 2.

<sup>3</sup> Order by Judge Nan R. Nolan, dated October 17, 2007, pages 4-5.

misrepresentations inflated Household's stock price. This problem impacts many aspects of Plaintiffs' damages claims including how to net gains against losses, and how to utilize Exhibits 53 and 56 to Professor Fischel's report, both subjects that I understood would be explained following the court's decision.

Plaintiffs' current theory produces a lack of vital information about what the inflation stems from, and makes analysis of Plaintiffs' damages theory problematic. It also limits my ability to respond to Plaintiffs' theory, requiring me to guess as to what Plaintiffs might say about how the inflation allegedly came in.

## **II. Plaintiffs' Supplemental Statement Does Not Provide The Information Identified In Section I-A Of This Affidavit**

The Plaintiffs' Supplemental Statement simply states that the Fischel Report's Exhibits 53 and 56 "illustrate the estimated artificial inflation in Household's common stock for each day during the Class Period based on two different methods."<sup>4</sup> Plaintiffs have not clarified which of Professor Fischel's tables will be used to calculate damages or how. Instead Plaintiffs have claimed that both methods described in the Fischel Report merely "illustrate" the estimated artificial inflation in Household's common stock and that either method can be used to compute damages for the entire class. Thus, the Plaintiffs' Supplemental Statement does not even rule out the possibility that they might provide other "illustrations" of the alleged artificial inflation in Household's common stock price in the future.

Professor Fischel's inflation illustrations yield significantly different estimates of the alleged inflation in Household's stock price on each day of the Class Period. For instance, the alleged inflation on the first day of the Class Period is \$7.97 per share according to Professor Fischel's Specific Disclosures model (Exhibit 53), or more than double that amount (\$17.81 per share) according to his Leakage model. The average daily level of alleged inflation is \$6.71 per share according to Professor Fischel's Specific

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<sup>4</sup> Supplemental Statement, page 1. I refer to Professor Fischel's "Quantification Including Leakage" and "Quantification Using Specific Disclosures" models as the "Leakage" and "Specific Disclosures" models, respectively.

Disclosures model or almost three times larger (\$18.98 per share) according to Professor Fischel's Leakage model. The maximum alleged daily inflation is \$7.97 per share according to Professor Fischel's Specific Disclosures model or \$23.94 per share according to his Leakage model.

Professor Fischel's inflation models are also inconsistent with each other. For instance, Professor Fischel claims in his Specific Disclosures model that November 15, 2001 was the first of fourteen Specific Disclosure dates when Professor Fischel claims that the inflation in Household's stock price declined by \$1.86 per share, following the announcement of a lawsuit by the California Department of Corporations ("CDC") against Household after trading hours the previous day.<sup>5</sup> However, according to his Leakage model, the alleged inflation level remain unchanged (at \$23.94 per share) on November 15, 2001. That is, the Plaintiffs' assertion that "Household's stock price was negatively affected by the alleged fraud"<sup>6</sup> is consistent with one of the Plaintiffs' inflation illustrations (Exhibit 53), but not with the other (Exhibit 56).<sup>7</sup>

Clearly, using different measures of the alleged artificial inflation in Household's common stock price can result in significantly different damages. When serving as an expert in similar matters, I have typically been asked to respond to a single theory of damages, and not to multiple and inconsistent "illustrations." It will be substantially more burdensome for me to respond to multiple ambiguous illustrations of damages instead of a single claim. Plaintiffs have failed to explain how they arrive at their claim that class-wide damages total \$4.1 billion, which I cannot reproduce under either of Professor Fischel's inflation illustrations.<sup>8</sup> Given the wide variation in the two daily

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<sup>5</sup> Fischel Report, paragraph 12.

<sup>6</sup> Supplemental Statement, page 2, which cites the Fischel Report at paragraph 12.

<sup>7</sup> Similarly, according to Professor Fischel's Specific Disclosures model, \$1.85 per share of inflation was introduced into Household's stock price on December 5, 2001, following remarks by Household's CEO Aldinger at a conference (Exhibit 53). However, the events of December 5, 2001 did not introduce any alleged inflation, according to the Leakage model (Exhibit 56).

<sup>8</sup> In addition to various issues discussed below, in my experience, these types of damage calculations depend on numerous assumptions regarding investors' trading behavior, fraction of observed trading volume assumed to represent double counting arising from specialist trades, etc., none of which have been identified by the Plaintiffs.

alleged inflation estimates, the resultant damages estimates could vary by billions of dollars, depending on the inflation measure chosen. It is impossible to tell how the Plaintiffs arrived at their \$4.1 billion damage estimate without disclosures from the Plaintiffs about several specific quantitative assumptions that go into such a calculation.

As an economic matter, unless Plaintiffs explain which prior misrepresentations and/or omissions inflated the stock price by the first day of the Class Period, it is not possible to fully examine merits of either of Professor Fischel's purported inflation illustrations and resulting damages conclusions. For example, Professor Fischel has quantified inflation due to purported predatory lending practices by measuring Household's stock price decline on November 15, 2001 purportedly associated with a corrective disclosure of alleged predatory lending following the announcement of the CDC lawsuit. As a result, he claims that the inflation in Household's stock price declined by \$1.86 per share that day. Professor Fischel is silent about what prior misrepresentation(s) and/or omission(s) led to the \$1.86 per share inflation and when. Yet, according to Plaintiffs' own damage theory, their damages would be different if this inflation was suddenly introduced on the first day of the Class Period or if it had been introduced earlier, as I will explain in the next section of this Affidavit. Moreover, Professor Fischel's silence about which specific announcements or omissions led to the \$1.86 per share inflation makes it difficult to adequately examine the merits of his claim that the price drop on November 15, 2001 was caused by the revelation of prior fraud rather than changed investor expectations and circumstances unrelated to the fraud.

### **III. Plaintiffs' Supplemental Statement Is Unresponsive With Respect To The Four Information Items Identified In Section I-B Of This Affidavit**

Plaintiffs indicate that individual damages will be computed in a formulaic manner, *i.e.*, damages *per share* will be calculated as **A-B**, where A equals the amount of artificial inflation in Household's common stock on the day such shares were purchased and B equals the amount of artificial inflation in Household's common stock on the day the shares were sold during the Class Period, respectively. (B is assumed to be zero if the

shares were not sold until after the end of the Class Period.) An individual Plaintiff's total damages are then calculated as:

$$x (A-B)$$

where x "equals the number of shares purchased."<sup>9</sup> [Emphasis added]

It is important to note that the Plaintiffs' damage formula also depends on B, the purported inflation at the date of sale or after the end of the Class Period. Plaintiffs state that their formula will be applied to compute damages on shares' **sale dates**, implying that damages must also depend on the number of **shares sold** (or retained through the end of the Class Period). However, Plaintiffs fail to specify how they will compute damages in situations when either the number of shares purchased during the Class Period, x, is different than the number of shares sold during the Class Period or retained until the end of the Class Period or if shares sold during the Class Period exceed purchases during the Class Period prior to such sales.

To compute damages in the manner that Plaintiffs have proposed, it is critical to understand:

- a) **Treatment of Pre-Class Period Purchases:** How Plaintiffs intend to treat shares purchased before the Class Period began ("Pre-Class Period Purchases"), which were subsequently sold during the Class Period or retained until the end of the Class Period. Ignoring the Pre-Class Period Purchases, as Plaintiffs seem to suggest they will, would be illogical because assuming Pre-Class Period Purchases were at uninflated prices, their subsequent sales during the Class Period at allegedly inflated prices would constitute a benefit to the Plaintiffs which should be netted against their damage claims, just as Plaintiffs concede gains on purchases *during the Class Period* must be netted.<sup>10</sup>

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<sup>9</sup> Supplemental Statement, page 2.

<sup>10</sup> Supplemental Statement, page 2.

- b) **Matching of Transactions:** How Plaintiffs propose to match the number of shares that are (i) sold on different dates during the Class Period; and/or (ii) held through the end of the Class Period, from the lot of shares purchased during the Class Period (x) by a particular Plaintiff on a certain date (“Purchase Date”).<sup>11</sup>

I explain these two issues below.

- a) **Treatment of Pre-Class Period Purchases: Plaintiffs do not explain the manner in which shares purchased prior to the start of the Class Period should be treated in their damages theory**

The Plaintiffs’ Supplemental Statement appears to exclude any consideration of Pre-Class Period Purchases because it explicitly notes that Plaintiffs:<sup>12</sup>

intend to use a netting approach for Class Members who profited from some trades of Household’s common stock **acquired during the Class Period** and sold after November 14, 2001, but suffered losses from other trades of Household’s common stock during this same period. [Emphasis added]

However, without a clear description of the manner of how Plaintiffs intend to treat Pre-Class Period Purchases, which were subsequently sold during the Class Period or retained until the end of the Class Period, the Plaintiffs’ methodology to compute (net) damages remains seriously incomplete.

The following example illustrates the incomplete nature of the Plaintiffs’ damages methodology.<sup>13</sup> Suppose an investor who held 400 shares of Household as of July 29, 1999 (the day before the beginning of Class Period) conducted no transactions in Household stock until July 31, 2002 when he sold 100 shares. Suppose also that this

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<sup>11</sup> The manner in which roundtrip transactions are identified (or a sale is matched to a prior purchase) would not be relevant in determining the total damages (*i.e.*, in-and-out plus retained damages) to the Class if (i) there are no Pre-Class Period Purchases that were subsequently sold during the Class Period; and (ii) sales prior to November 15, 2001 are not excluded as per the Plaintiffs’ damage theory, as I discuss later.

<sup>12</sup> Supplemental Statement, page 2.

<sup>13</sup> This example highlights how the Plaintiffs’ damage theory remains incomplete in the case where a Class Member had not bought any shares prior to the date of his first sale during the Class Period. However, the Plaintiffs’ damage theory is incomplete for the reasons discussed above in the more general case where the number of shares sold on any given date during the Class Period is more than the number of shares acquired prior to that date during the Class Period.



investor subsequently bought and sold shares during the Class Period (after July 31, 2002) and hence is a member of the Class. According to Professor Fischel's "Quantification Including Leakage" ("Leakage") model, Household's stock price was allegedly inflated by \$11.49 per share on July 31, 2002. Thus, as Plaintiffs admit, this Class Member received a benefit of \$1,149 through his sale of 100 shares on July 31, 2002. Yet, it is unclear from the Plaintiffs' damage theory as currently articulated, whether Plaintiffs intend to net this benefit against this Class Member's damages from subsequent trades, which may result in net benefit to this Class Member from the alleged inflation.

The Plaintiffs damage theory simply states that they intend to exclude<sup>14</sup> a Class Member's Pre-Class Period **Purchases** from any **damage** computations, but do not explain (and neither does the Fischel Report) how they intend to treat the **benefit** from shares acquired before the Class Period started which were **sold** during the Class Period (after November 15, 2001).

There are at least two alternative ways of treating this Class Member's benefit of \$1,149 from the sale of Pre-Class Period Purchases during the Class Period.

1. *Plaintiffs may intend to ignore the benefit altogether:* Such a damage theory, in which a Class Member's benefit from shares acquired prior to a particular date and sold at inflated prices are arbitrarily ignored, would be inconsistent with the economic principle (and common sense) of netting benefits against losses in computing a Class Member's damages, that Plaintiffs have accepted.<sup>15</sup>
2. *Plaintiffs may intend to include the benefit but have not explained the details of such a net damage calculation:* In order to properly compute the net benefit of the 100 shares sold on July 31, 2002 in the above example, the Plaintiffs must (a)

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<sup>14</sup> Letter from Plaintiffs' Counsel to Defendants' Counsel, David Owen, dated November 7, 2007.

<sup>15</sup> Ignoring a particular investor's benefits from the sale of Pre-Class Period Purchases at inflated prices would be economically rational only if this investor is excluded from the Class altogether, *i.e.*, if this investor's net damages from other transactions during the Class Period are also excluded from the Class' aggregate damage claim.

identify when such shares were bought before the Class Period started (“Pre-Class Period Purchase Dates”); and (b) the alleged inflation on such Pre-Class Period Purchase Dates. Plaintiffs are silent on both these issues.

Plaintiffs claim that they intend to seek damages “for the artificial inflation present in the stock price on every day of the Class Period, including the first day”<sup>16</sup> but do not explain how Household’s common stock became inflated as of the first day. One can envision an infinite number of possibilities that are consistent with their statement, each resulting in a different damage conclusion that may or may not be consistent with Professor Fischel’s report.

For example, Plaintiffs may claim that the entire inflation in Household’s stock price on the first day of the Class Period was introduced on that day alone. In this case, they would need to explain what misstatement or omission caused such inflation and their explanations will obviously have implications for Plaintiffs’ explanation of events during the Class Period and their damages calculations. Alternatively, they may claim that the inflation in Household’s stock price on the first day of the Class Period was introduced gradually prior to the beginning of the Class Period, based on some other yet unspecified arguments. In order for me to evaluate Professor Fischel’s damages theory, I would need to understand what events Plaintiffs will ultimately claim led to the inflation purportedly present on the first day of the Class Period and whether or not such claims are consistent either of the two inflation functions “illustrated” in Professor Fischel’s report.

- i) *Assuming that the entire inflation in Household’s stock price on the first day of the Class Period was introduced on that day alone*

If under the Plaintiffs’ theory, the entire inflation in Household’s stock price on the first day of the Class Period was introduced on that day alone, then it follows that only shares *purchased* on the first day of the Class Period were inflated on that day, and the remainder of the Plaintiffs’ holdings of Household common stock, which were Pre-Class Period Purchases, had occurred at uninflated prices. The subsequent sale of such Pre-

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<sup>16</sup> Supplemental Statement, page 2.

Class Period Purchases during the Class Period (before or after November 15, 2001) at allegedly inflated prices would constitute a benefit to the Plaintiffs, that Plaintiffs must net against damages from other trades, to be consistent with their admission that damages must be considered on a net basis.

Benefits for Pre-Class Period Purchases can be very significant because the number of shares acquired at uninflated prices through Pre-Class Period Purchases is vastly greater than the number of inflated shares on the first day of the Class Period.<sup>17</sup> Assuming each subsequent day's sales come proportionally from prior days' purchases, such subsequent sales would come primarily from Pre-Class Period Purchases, conveying a significant benefit to the Plaintiffs as some of these shares are sold at inflated prices during the Class Period. My calculations indicate that such benefits could theoretically amount to \$8.6 billion through the entire Class Period or possibly \$7.4 billion on sales through November 14, 2001.<sup>18</sup> These benefits may therefore offset some/all of the Plaintiffs' damage estimate of \$4.1 billion (for which they have provided no explanation or supporting calculations).

*ii) Assuming the inflation in Household's stock price on the first day of the Class Period was introduced gradually prior to the beginning of the Class Period*

Under this alternative scenario, Plaintiffs must provide:

1. a quantification of such Pre-Class Period inflation on a daily basis; and
2. the method by which Pre-Class Period Purchases and the later sales of Household stock would be matched and the level of inflation on each purchase date.

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<sup>17</sup> For instance, as of the first day of the Class Period, there were 479.4 million shares outstanding, but only 1.5 million Household shares were traded on that date. Therefore, 477.9 million of the 479.4 million shares Plaintiffs held as of the first day of the Class Period were Pre-Class Period Purchases. [Source: Center for Research in Security Prices ("CRSP")]

<sup>18</sup> I have adjusted shares outstanding as of July 29, 1999 of 479.4 million shares by insider holdings and short interest. Such adjustments result in total shares outstanding of 483.1 million. Subsequent purchase and sale transactions can be estimated by adjusting the total daily volume by insider holdings, short interest, and specialist transactions. Daily benefits from sales of Pre-Class Period Purchases can be estimated by multiplying the daily alleged artificial inflation by the proportionally allocated shares sold. \$3.3 and \$8.6 billion are calculated using the inflation from Professor Fischel's "Quantification Using Specific Disclosures" and "Quantification Including Leakage" models, respectively. Corresponding amounts though November 14, 2001 are \$3.1 billion and \$7.4 billion, respectively.

Plaintiffs have failed to identify which of above two Pre-Class Period inflation scenarios (or any other) they have in mind.

**b) Matching of Transactions: Plaintiffs do not describe how they intend to match roundtrip transactions to determine damages**

Plaintiffs' damage formulae propose computing gains or losses from a specific "trade" on a per share basis as the difference between the inflation at the time of purchase (A) minus the inflation at the time of sale (B). However, Plaintiffs have failed to explain how the term "trade" is defined, *i.e.*, how a particular sale is matched to an earlier purchase, or *vice versa*. Without such information, it is impossible to know how Plaintiffs propose to compute damages, as the following example illustrates.<sup>19</sup>

Suppose a Class Member held 400 shares of Household as of July 29, 1999 (the day before the Class Period), *bought 100 shares on August 2, 1999 when the Household's stock price was allegedly inflated by \$17.37 per share,*<sup>20</sup> and sold 100 shares on July 31, 2002 when, according to Professor Fischel's Leakage model, Household's stock price was allegedly inflated by \$11.49 per share. In this case, in order to calculate the Class Member's damages from the sale on July 31, 2002, it is first necessary to determine when the shares sold that day were purchased. There are two possible answers: (a) on August 2, 1999 or (b) before the Class Period had begun.

If we assume that the shares sold on July 31, 2002 were from this Class Member's purchase on August 2, 1999 then this Class Member's in-and-out damage from its sale on July 31, 2002 is equal to \$588, which equals the inflation on the purchase date less the inflation on the sale date, multiplied by 100 (the number of shares purchased during the Class Period). This Class Member's damages from the 400 shares bought at uninflated prices before the Class Period and retained until after the Class Period would be zero and his total damages would be \$588.

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<sup>19</sup> This example slightly extends the earlier one I provided (as shown by the text in italics in the next paragraph).

<sup>20</sup> This estimate is based on Professor Fischel's Leakage model.

If instead, we assume that the shares sold on July 31, 2002 were from this Class Member's holding of Pre-Class Period Purchases (400 shares), then this Class Member's retained damages (arising from purchase of 100 shares at inflation of \$17.37 on August 2, 1999) would be \$1,737.<sup>21</sup> However, determining the Class Member's in-and-out damages (or gains) in this scenario remains an open question. The answer is either - \$1,149 (*i.e.*, a benefit to the Plaintiff) or zero, and the Class Member's total damages are either \$588 (as in the preceding scenario) or significantly larger at \$1,737, depending on whether the Plaintiffs include Pre-Class Period Purchases in their aggregate damage calculations or not, respectively.

Plaintiffs also state that they "do not intend to seek damages for shares sold prior to November 15, 2001." This statement is ambiguous regarding whether Plaintiffs intend to exclude either (i) all sale transactions, or (ii) all roundtrip transactions with sales prior to November 15, 2001.

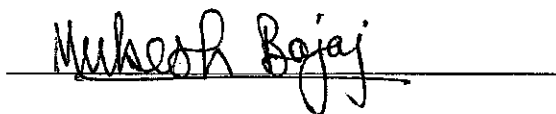
If only the sale transactions were excluded, Plaintiffs' damage claims would necessarily be inflated because all shares bought at no/lower inflation and sold at inflated prices before November 15, 2001 would be artificially excluded from calculation on net damages. Assuming that Plaintiffs instead refer to excluding roundtrip transactions, a matching algorithm becomes relevant in deciding which roundtrip trades are ultimately excluded from the Plaintiffs' aggregate damage calculations and yet the Plaintiffs are silent on their proposed matching algorithm.

In summary, as I have explained above, the Plaintiffs' Supplemental Statement has not fully and adequately explained their theory of damages.

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<sup>21</sup> \$1,737 is the sum of (a) zero retained damages from the remaining 300 shares bought at uninflated prices before the Class Period had begun; and (b) \$1,737 of retained damages on the 100 shares bought on August 2, 1999 at an inflation of \$17.37 per share, and assuming such shares were held through the end of the Class Period.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mukesh Bajaj". The signature is written in black ink and is positioned above a solid horizontal line that extends across the width of the signature.

Mukesh Bajaj

November 13, 2007

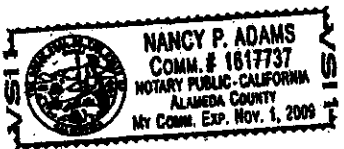
### CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }  
County of Alameda } ss.

On Nov. 13, 2007, before me, Nancy P Adams Notary Public,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Mukesh Bajaj  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~they executed the same in his/~~her~~their authorized capacity(ies), and that by his/~~her~~their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.  
Nancy P Adams  
Signature of Notary Public

Place Notary Seal Above

#### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document  
Title or Type of Document: Affidavit

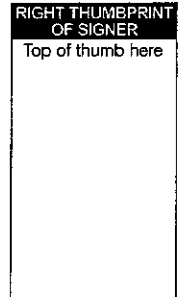
Document Date: Nov. 13, 2007 Number of Pages: 13

Signer(s) Other Than Named Above: none

#### Capacity(ies) Claimed by Signer

- Signer's Name: Mukesh Bajaj
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**EXHIBIT 3**





SAN DIEGO • SAN FRANCISCO  
NEW YORK • BOCA RATON  
WASHINGTON, DC • HOUSTON  
LOS ANGELES • PHILADELPHIA

Azra Z. Mehdi  
Amehdi@csgr.com

November 7, 2007

VIA FACSIMILE

David R. Owen, Esq.  
CAHILL GORDON & REINDEL LLP  
Eighty Pine Street  
New York, NY 10005-1702

Re: *Lawrence E. Jaffe Pension Plan v. Household International, Inc., et al.*  
Case No. 02-CIV-5893 (N.D. Ill.)

David:

During the meet and confer on Monday, November 5, 2007, you identified several issues that you believe support your position that Lead Plaintiffs' Supplemental Statement Regarding Damages Pursuant to the Court's October 17, 2007 Order ("Damages Supplement") is deficient. I will address each one in turn.

Defendants are dissatisfied with the format of the Damages Supplement and claim it is not in compliance with Fed. R. Civ. P. 26. This complaint makes no sense. As an initial matter, the duty to supplement under Fed. R. Civ. P. 26(e) or pursuant to court order does not require an application of form over substance. *Coleman v. Keebler Co.*, 997 F. Supp. 1102, 1107 (D. Ind. 1998) (citing 8 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure: Civil 2d* §2049.1, at 604 (2d ed. 1994)). The Damages Supplement directly responds to the questions raised in the Court's October 17, 2007 Order ("Order"). Indeed, Lead Plaintiffs have done more than is required by certifying their Damages Supplement. *Bell v. Woodward Governor Co.*, No. 03 C 50190, 2004 U.S. Dist. LEXIS 26815, at \*15-\*16 (N.D. Ill. Dec. 20, 2004) (finding that it is "unclear that Rule 26(e) supplementations and corrections must meet Rule 26(g) certification requirements, as neither Rule 26(e) or 26(g) requires certification of supplementations").

Next, you claim that you are uncertain what Class Period we are requesting damages for in light of the fact that the class certification stipulation entered into by the parties identifies the class period as October 23, 1997 through October 11, 2002 while Judge Guzman's order based on the opinion in *Foss v. Bear, Stearns & Co.*, 394 F.3d 540 (7th Cir. 2005), cut off the beginning of the old class period and began it on July 30, 1999. Your confusion is surprising in light of the following facts: (1) since Judge Guzman's ruling on February 28, 2006, it has been understood by the Court as well as the parties that the operative Class Period is July 30, 1999 to October 11, 2002; (2) all briefing since February 28, 2006 has identified the Class Period as July 30, 1999 to October 11, 2002; (3) the briefing on this motion to compel identifies the Class Period as July 30, 1999 to October 11, 2002; (4) Judge Nolan's October 17, 2007 Order identifies the Class Period as July 30, 1999 to October 11, 2002 (see Order at 1); and (5) finally, but most importantly, the Damages Supplement

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Nov-07-07 06:32pm From-

T-467 P.003/003 F-772



David R. Owen, Esq.  
November 7, 2007  
Page 2

states: "lead plaintiffs will ask the jury to determine the artificial inflation present in Household International, Inc.'s ("Household") common stock on a per share basis for each day of the Class Period (July 30, 1999 through October 11, 2002)." Damages Statement at 1. I hope that clarifies your confusion regarding the applicable Class Period.

You also claim not to know how the formula identified by Lead Plaintiffs in their Damages Supplement applies to people who bought before the Class Period but sold during the Class Period. This "concern" makes no sense. Purchases made prior to the Class Period are not actionable. Such purchasers are not members of the Class. Thus, there is no need to apply a damages formula to shares purchased prior to the Class Period that were sold during the Class Period.

Defendants also complain that Lead Plaintiffs have not explained how inflation gets into the stock price on the first day of the Class Period. We have complied with Judge Nolan's Order, which required plaintiffs to "include a statement as to . . . whether Plaintiffs intend to claim damages for inflation already present in the stock price on the first day of the Class Period." Order at 5. With respect to your demand for an explanation, Judge Nolan indicated in her Order that this information can be elicited by defendants in deposition: "To the extent Professor Fischel has found the stock price artificially inflated as of the first day of the Class Period, Defendants may depose him to determine whether this inflation stems from alleged misrepresentations made prior to the beginning of the Class Period." *Id.* at 4.

Further, defendants claim that Lead Plaintiffs have failed to identify how the tables found in exhibits 53 and 56 of Professor Fischel's report apply to different types of investors. Defendants are wrong. The Damages Supplement provides a formula that can be used to calculate individual damages for different types of investors regardless of which table is used. As required by Judge Nolan, Lead Plaintiffs have "identif[ied] their proposed method of calculating those damages." *Id.* at 5.

Finally, defendants claim that Lead Plaintiffs have not answered Interrogatory Nos. 2[12] and 15[40], thus failing to comply with the Order. Judge Nolan's Order did not require Lead Plaintiffs to respond to these interrogatories. If Judge Nolan had intended for Lead Plaintiffs to answer them, she would have stated as much in her Order. Instead, the Order specifically outlines what information Lead Plaintiffs were required to supplement. Lead Plaintiffs responded completely to every question posed in Judge Nolan's Order.

Very truly yours,

  
Azra Z. Mehdi

cc: Spencer A. Burkholz, Esq.  
Marvin Miller, Esq.  
Adam Deutsch, Esq.

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