IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
SEP 7 2004
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT
DOCKETED
SEP 09 2004
RECEIVED FOR DOCKETING
04 SEP -7 PM 4:37
U.S. DISTRICT COURT
CLERK

LAWRENCE E. JAFFE PENSION PLAN, on behalf of itself and all others similarly situated, Plaintiff, v. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	)	No. 02 C 5893 Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

NOTICE OF FILING

To: Counsel on the Attached Service List

PLEASE TAKE NOTICE that on September 7, 2004, we filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Chicago, Illinois, the ***Lead Plaintiffs' Submission Pursuant to the Court's August 30, 2004 Hearing***, a copy of which is hereby served upon you.

Dated: September 7, 2004

Respectfully submitted,

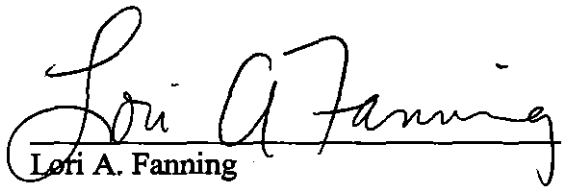
By: _____

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

177

CERTIFICATE OF SERVICE

I, Lori A. Fanning, one of the attorneys for plaintiffs, hereby certify that I caused the ***Lead Plaintiffs' Submission Pursuant to the Court's August 30, 2004 Hearing*** to be served upon all counsel on the attached service list by placing a copy of the same in the United States Mail at 30 North LaSalle Street, Chicago, Illinois this 2nd day of September, 2004.



Lori A. Fanning

SERVICE LIST

Nathan P. Eimer
Adam Deutsch
EIMER STAHL KLEVORN & SOLBERG LLP
224 S. Michigan Ave., Suite 110
Chicago, IL 60605

Stanley Parzen
Lucia Nale
MAYER, BROWN, ROWE & MAW
190 South LaSalle Street
Chicago, Illinois 60603

David R. Gelfand
Michael L. Hirschfeld
Douglas W. Henkin
MILBANK, TWEED, HADLEY & McCLOY LLP
1 Chase Manhattan Plaza
New York, New York 10005

William S. Lerach
LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP
401 B Street
Suite 1700
San Diego, California 92101
(619) 231-1058

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

Lawrence G. Soicher
LAW OFFICES OF LAWRENCE G. SOICHER
305 Madison Avenue
46th Floor
New York, New York 10165

David R. Scott
Michael A. Swick
SCOTT & SCOTT, LLC
108 Norwich Avenue
Colchester, Connecticut 06415

FILED
SEP 7 2004
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

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, vs. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

RECEIVED
04 SEP 06 PM 4:51
U.S. DISTRICT COURT
DOCKETED
SEP 09 2004

LEAD PLAINTIFFS' SUBMISSION
PURSUANT TO THE COURT'S AUGUST 30, 2004 HEARING

1. On August 10, 2004, defendants filed a motion to compel lead plaintiffs to provide more detailed information related to their Fed. R. Civ. P. 26(a)(1)(C) initial disclosures, specifically to state the amount of their claimed damages, provide a computation of the damages on which their damages claims are based, including all evidence in support of that damages computation.

2. On August 17, 2004, lead plaintiffs filed an opposition to defendants' motion on the basis that it was premature and that the computation of damages was a matter for expert analysis and opinion, which would be provided at a later stage in the litigation. Further, lead plaintiffs reiterated that they did not currently possess a computation of damages that was not privileged or otherwise protected from disclosure.

177

3. On August 20, 2004, defendants filed a reply reiterating their demand for a computation of damages and all evidence in support of such a computation.

4. On August 30, 2004, the Court heard oral argument on defendants' motion and instructed lead plaintiffs to provide defendants with their "underlying theory of damage" to the class. As outlined below, the measure of damages in securities cases, such as this, is well established by statute and caselaw. Thus, not surprisingly, counsel for defendants with decades of collective experience in securities litigation did not raise this issue in their briefs. In response to the Court's instruction, however, lead plaintiffs submit as follows:

I. Lead Plaintiffs Have Already Outlined the Theory of Damages in the Complaint and the Opening Brief in Support of Class Certification

A. Summary of Factual Allegations

5. Lead plaintiffs have already detailed the factual allegations underlying their theory of damage liability to the class in the [Corrected] Amended Consolidated Class Action Complaint ("Complaint") filed on March 7, 2003. The Complaint, consisting of 154 pages and 398 paragraphs, sufficiently outlines the theory upon which lead plaintiffs base defendants' liability to the class. Lead plaintiffs' memorandum of law in support of class certification also provides the common theory of damages for the class. *See generally* Plaintiffs' Memorandum of Law in Support of Motion for Class Certification ("Plfs' Mem.").

6. The Complaint alleges an overarching fraudulent scheme and course of business that acted to defraud all of the purchasers and acquirors of Household International, Inc.'s ("Household" or the "Company") equity and debt securities. *See generally* Complaint; *see also* Plfs' Mem. at 12. Defendants' wrongful scheme allowed them to artificially inflate the Company's financial and operational results and key financial metrics, including artificially inflating revenues, net income and earnings per share, thereby downplaying the risks associated with investing in the Company. ¶¶2-5, 7-8,14, 24, 28, 37, 51-83, 97-102, 109, 120, 123, 134-156, 162,173-174, 190, 202, 227, 245, 249,

262, 276, 279, 286, 309-310, 316, 322, 365, 384, 389; *see also* Plfs' Mem. at 4-5. Defendants' common scheme and course of conduct artificially inflated the price of the Company's securities and give rise to the claims of the class. *Id.*

7. Plaintiffs allege that "defendants made materially false representations and omissions in public filings, press releases, analyst reports and other public statements concerning the Company and its operations and financial condition during the Class Period [October 23, 1997 through October 11, 2002] in violation of [federal securities laws]." Plfs' Mem. at 2. Plaintiffs, like all other class members, seek to recover damages caused by the same materially false and misleading statements contained in, or material facts omitted from, documents and statements disseminated by defendants to the investing public generally. *Id.* at 14-15.

8. The Honorable Judge Guzman found these allegations to be sufficient even under the stringent standards for pleading securities fraud cases under the Private Securities Litigation Reform Act. In denying defendants' motions to dismiss, Judge Guzman found that the Complaint satisfied both "Rule 9(b) and the PSLRA's requirement for particularly pointing out misleading statements related to securities sales, indicating why it is material, and relating how the statements caused plaintiff's damages." *See Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2004 WL 574665, at *8 (N.D. Ill. Mar. 22, 2004). With respect to the §11 claims, Judge Guzman found that "[p]laintiff's allegations are detailed and voluminous, more than sufficient to put defendants on notice." *Id.* at *17. Thus, defendants' assertions that plaintiffs have failed to disclose their factual basis for damages, is disingenuous.

B. Individualized Damages Do Not Preclude Class Certification

9. During the August 30, 2004 hearing, the Court expressed some concern about the existence of individual differences in the amounts of losses or damages. As lead plaintiffs' counsel stated during the hearing, differences in the amount of damages that the class members are entitled to

does not preclude class certification. "It is well established [that], the presence of individualized damages does not render the class unsuitable for certification." *See Arenson v. Whitehall Convalescent & Nursing Home*, 164 F.R.D. 659, 666 (N.D. Ill. 1996) (citing *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 233 (7th Cir. 1983)).[1]

10. Indeed, the Seventh Circuit and district courts in this Circuit have consistently taken this position. *See Carnegie v. Household Int'l, Inc.*, 376 F.3d 656 (7th Cir. 2004) (Rule 23 allows district courts to devise imaginative solutions to problems created by the presence in a class action litigation of individual damages issues.); *Uhl v. Thoroughbred Tech. & Telecommuns., Inc.*, 309 F.3d 978, 986 (7th Cir. 2002) (differences in the amount of damages do not necessarily prohibit class certification); *Pleasant v. Risk Mgmt. Alternatives, Inc.*, No. 02 C 6886, 2003 WL 22175390, at *4 (N.D. Ill. Sept. 19, 2003) ("The amount of damages [class members] would be entitled to might be different, but the fact that there is some factual variation among the class grievances will not defeat a class action.").

11. Accordingly, the existence of individualized damages is a premature issue at this stage of the litigation; and in any event is not a bar to certification.

II. Plaintiffs' Theory of Damages Liability Under Section 10(b) of the Securities Exchange Act of 1934

12. Defendants represented to the Court at the August 30, 2004 hearing that they do not know the theory for damages under which they have liability in this action. As a threshold matter, plaintiffs note that the determination of damages, what defendants appear to seek here, is an issue that is ripe only after defendants' liability to the class has been established. *See* Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* §10.1 (4th ed. 2002) ("***After proof of the***

---

[1] All citations and internal quotations are omitted unless otherwise noted.

defendant's liability to the class, the issue remains concerning a determination of what damages or other relief class members are entitled to receive.") (emphasis added).

13. Moreover, it is well established in this Circuit that in securities fraud cases, damages are usually measured by "the difference between the price of the stock and its value on the date of the transaction if the full truth were known." *Associated Randall Bank v. Griffin, Kubik, Stephens & Thompson, Inc.*, 3 F.3d 208, 214 (7th Cir. 1993); *Flamm v. Eberstadt*, 814 F.2d 1169, 1179-80 (7th Cir. 1987) (damages are measured by the difference between the price of stock and its value on the date of the transaction if the full truth were known); *see also Katz v. Comdisco, Inc.*, 117 F.R.D. 403, 408 (N.D. Ill. 1987) ("out-of-pocket rule [is] standard measure of damages in securities fraud litigation"); *Ziemack v. Centel Corp.*, 856 F. Supp. 430, 434 (N.D. Ill. 1994) ("damages under §10(b) usually are the difference between the price of the stock and its value on the date of the transaction if the full truth were known").

14. This measure of damages is also applied by circuit and district courts across the country. *See, e.g., Arrington v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 651 F.2d 615, 621 (9th Cir. 1981) ("The general rule allows plaintiffs defrauded in violation of section 10(b) and rule 10b-5 to recover the difference between the value of the consideration they gave and the value of the security they received, plus consequential damages that can be proved with reasonable certainty to have resulted from the fraud."); *Robbins v. Koger Props.*, 116 F.3d 1441, 1447 (11th Cir. 1997) ("The proper measure of damages utilizes the out-of-pocket rule: the plaintiff can recover the difference between the price paid and the real value of the security ...."); *Mathews v. Kidder, Peabody & Co.*, 260 F.3d 239, 249 (3d Cir. 2001) ("Damages in §10(b) securities fraud cases are most commonly calculated as the difference between the price paid for a security and the security's true value."); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 365 (S.D.N.Y. 2002) ("In a Section 10(b) action, the range of damages is the out of pocket damage measure, i.e., the difference

between the purchase price and the value of the stock [i.e., value absent the fraud] at the date of purchase.") (alteration in original); *Stone v. Kirk*, 8 F.3d 1079, 1092 (6th Cir. 1993) ("The correct measure of damages in cases arising under §10(b)/Rule 10b-5 is generally held to be an out of pocket measure. By this is meant the difference between the fair value of all that the [plaintiff] received and the fair value of what he would have received had there been no fraudulent conduct.") (alteration in original).

15. Further, as counsel for lead plaintiffs explained during the August 30, 2004 hearing, the determination of what the "fair value" or "value if the full truth had been known" is the subject of the expert analysis. "The determination of damages sustained by individual class members in securities class action suits is often a mechanical task involving the administration of a formula determined on a common basis for the class, and these necessary mechanics do not bar class certification." *Newberg on Class Actions* §10.8. Indeed once this valuation has been made, the application of the formula to the class is a fairly mechanical task. Even the United States Supreme Court has recognized that proof of the valuation of the artificial inflation of the stock price of a company is a matter for trial. *See Basic Inc. v. Levinson*, 485 U.S. 224, 249 (1988); *see also Fry v. UAL Corp.*, 136 F.R.D. 626, 634 (N.D. Ill. 1991) ("any alleged conflict in the fact" that class members owned different types of securities "will arise at the damages stage of the litigation and does not prevent a finding of typicality at the class certification stage").

III. Plaintiffs' Theory of Damages Liability Under Section 11 of the Securities Act of 1933

16. Plaintiffs' theory of damages liability under §11 of the Securities Act of 1933 is also based on the same materially false and misleading statements contained in, or material facts omitted from, financial reports, press releases, registration statements and other documents and statements disseminated by defendants to the investing public generally. *See* ¶¶6-7, *supra*; Plfs' Mem. at 17. Each of the securities was affected by the fraudulent scheme pursued by defendants and the false and

misleading statements made by them during the Class Period, which artificially inflated the price of all of Household's publicly traded securities. Plfs' Mem. at 16. The impact of defendants' material misrepresentations and omissions affected the market prices of Household debt securities and thereby affected all members of the class. *Id.* at 14-15. Plaintiffs, like the other class members, were damaged as a result of defendants' unlawful conduct during the Class Period, and plaintiffs will have to prove the same wrongdoing as the absent class members in order to establish defendants' liability. *Id.* at 15.

17. Moreover, the measure of damages is prescribed by statute. Section 11(e) provides:

> The suit authorized under subsection (a) of this section may be to recover such damages as shall represent the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought.

15 U.S.C. §77k(e).

18. Courts in this Circuit apply the statutory formula for damages set forth in §11(e). *See Levitan v. McCoy*, No. 00 C 5096, 2003 WL 1720047, at *8 (N.D. Ill. Mar. 31, 2003) (citing statute for measure of damage). Lead plaintiffs' theory of damages liability will also follow this statutory formula. Defendants' contention that they do not know the theory of liability for damages to the class for the §11 claims, is similarly unfounded.

IV. Conclusion

19. As of September 1, 2004, lead plaintiffs have already provided to Household defendants documents sufficient to demonstrate the factual basis of lead plaintiffs' damages, the purchase and sale information. With this submission, lead plaintiffs have more than adequately satisfied their initial disclosures obligation. *See Crouse Cartage Co. v. Nat'l Warehouse Inv. Co.*,

No. IP02-071CTK, 2003 WL 23142182, at *1 (S.D. Ind. Jan. 13, 2003) ("A major purpose of the [rule] is to accelerate the ***exchange of basic information about the case*** ....") (alteration in original). Anything more at this stage of the litigation is either premature or protected as work product.

DATED: September 7, 2004

Respectfully submitted,

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
PATRICK J. COUGHLIN (90785466)
AZRA Z. MEHDI (90785467)
LUKE O. BROOKS (90785469)
SYLVIA SUM (90785892)

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
401 B Street, Suite 1700
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 G. SOICHER
305 Madison Avenue, 46th Floor
New York, NY 10165
Telephone: 212/883-8000
212/697-0877 (fax)

Attorneys for Plaintiff

T:\CasesSF\Household Intl\BRF00013325.doc

SEE CASE FILE FOR EXHIBITS