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

PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION FOR BILL OF COSTS

The Seventh Circuit has recognized that Rule 54 gives prevailing parties a strong presumptive entitlement to recover costs. *Beamon v. Marshall & Ilsley Trust Co.*, 411 F.3d 854, 864 (7th Cir. 2005). Defendants, as the losing party in this case, bear the burden of making an ***affirmative*** showing that the costs plaintiffs seek are not appropriate. *Baltimore v. Quinn-Mims*, 10 C 1031, 2012 U.S. Dist. LEXIS 149866, at *2 (N.D. Ill. Oct. 18, 2012) (Guzman, J.). Defendants have failed to meet their burden. Accordingly, plaintiffs' motion for bill of costs should be granted.

To begin, defendants' blanket assertion that plaintiffs "do not provide sufficient documentation to support the claimed costs" (Dkt. No. 1973 at 5) is unsupported by the record and ignores the voluminous exhibits filed in support of plaintiffs' bill of costs. For instance, in support of plaintiffs' request to recover as costs the fees for service of summons and subpoenas, witnesses fees, and fees for transcripts necessarily obtained for use in the case, plaintiffs submitted over two hundred pages of itemized receipts and invoices. *See* Dkt. No. 1913 (Exhibit A). The receipts and invoices reflect the witnesses served with summons and subpoenas, the identity of the witnesses deposed and the date of each deposition, and the transcript fees incurred for deposition and trial transcripts. Additionally, the declaration filed in support of plaintiffs' bill of costs details the pleadings and filings for which plaintiffs are seeking an award of costs, along with the methods used to calculate the number of pages and total taxable costs. *See* Dkt. No. 1913-1 (Declaration of Karen E. Cook); *see also Northbrook Excess & Surplus Ins. Co. v. Proctor & Gamble Co.*, 924 F.2d 633, 643 (7th Cir. 1991) (noting that a party seeking to recover costs is not required to submit a "bill of costs containing a description so detailed as to make it impossible economically" to recover costs); *Angevine v. Watersaver Faucet Co.*, Case No. 02 C 8114, 2003 U.S. Dist. LEXIS 23113, at *21 (N.D. Ill. Dec. 22, 2003) (Guzman, J.) (prevailing party need not submit a bill of costs itemizing each document copied); *Wagner v. Ill. Dep't of Pub. Aid*, Case No. 98 C 7268, 2005 U.S. Dist. LEXIS 6299, at *3 (N.D. Ill. Mar. 28, 2005) (awarding costs to the prevailing party over the

objection of the losing party where bill of cost supported by invoices and payment vouchers reflecting costs incurred). In short, there is nothing "*ipse dixit*" about plaintiffs' request for costs.

Further, while defendants object to the documentation provided for the travel expenses of trial witness Elaine Markell, they do not contend that these expenses are inappropriate. Ms. Markell's travel expenses were both reasonable and necessary. Ms. Markell was a key trial witness and the only non-hostile percipient witness to testify in plaintiffs' case-in-chief. Ms. Markell provided critical insight into Household's improper reaging and restructuring practices. In order to testify at trial, Ms. Markell traveled from her home in Rome, Italy to Chicago, Illinois. Given the unpredictability of the trial schedule, it was also necessary that she arrive in Chicago several days in advance of her scheduled testimony to ensure enough time to prepare to testify and to account for any last-minute or unexpected adjustments in the order of the trial witness schedule. In support of plaintiffs' request to recover as costs Ms. Markell's travel fees, plaintiffs have attached additional documentation specifically identifying the costs incurred. *See* Ex. A. As set forth in Exhibit A, Ms. Markell's counsel, Richard Squire, Esq., provided plaintiffs with an invoice for expenses totaling $13,229.00. Plaintiffs reimbursed Mr. Squire for these expenses. In light of defendants' objections, however, plaintiffs will reduce the amount of taxable costs related to Elaine Markell to $7,000.00, which is supported by the documentation contained in Exhibit A.[1]

Finally, defendants contend computerized legal research fees are not recoverable as costs. Contrary to defendants' assertion, this Court has discretion to award the cost of conducting computerized legal research. *Northbrook Excess*, 924 F.2d at 643 (recognizing that the Supreme Court's decision in *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441 (1987) did not

[1] The reduction of the taxable costs related to Elaine Markell in turn reduces the total fees for witnesses (Exhibit A, Column 3, to the Declaration of Karen E. Cook) to $10,996.13 and the total amount of taxable costs sought to $617,028.78.

"'prevent courts from interpreting the meaning of the phrases used in §1920'"); *Union Pac. R.R. Co. v. Kan. City S. Ry. Co.*, Case No. 07-CV-0320-MJR, 2009 U.S. Dist. LEXIS 111958, at *16 (S.D. Ill. Dec. 1, 2009) (acknowledging that the court has discretion to award the cost of computerized electronic research). Despite defendants' contention, the Seventh Circuit's decision in *Little v. Mitsubishi Motors N. Amer.*, 514 F.3d 699 (7th Cir. 2008), in which the Court of Appeals ***rejected*** the contention that computerized research is not authorized by §1920, remains valid authority. Indeed, the court in *Feldman v. Olin Corp.*, No. 09-168-GPM, 2011 U.S. Dist. LEXIS 17107 (S.D. Ill. Feb. 22, 2011), a case defendants cite, recognized that district courts have relied on *Little* in awarding costs for computerized legal research. *Feldman*, 2011 U.S. Dist. LEXIS 17107, at *8-*9. Although the *Feldman* court ultimately declined to award costs for computerized research, it expressly noted it was doing so "[i]n its discretion." *Id*. at *9. This Court should exercise its discretion – as permitted by the Seventh Circuit and as it has done in the past – and award plaintiffs the cost of conducting legal research during this extensive, 11-year case. *Scheib v. Grant*, No. 92 C 0513, 1993 U.S. Dist. LEXIS 10698, at *8-*9 (N.D. Ill. Aug. 3, 1993) (Guzman, J.) (awarding costs for computerized research); *Bloch v. Frishholz*, No. 06 C 4472, 2008 U.S. Dist. LEXIS 51429, at *12 (N.D. Ill. June 26, 2008) (Guzman, J.) (same); *Board of Trustees, Village of Bolingbrook Police Pension Fund v. Underwood, Neuhaus & Co.*, No. 89 C 6468, 1995 U.S. Dist. LEXIS 1058 (N.D. Ill. Jan. 25, 1995) (Guzman, J.) (same).

In sum, defendants have failed to make any affirmative showing that the costs plaintiffs seek are not appropriate. Defendants' objections to plaintiffs' bill of costs should be overruled.

DATED: January 21, 2014

Respectfully submitted,

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DECLARATION OF SERVICE BY ELECTRONIC 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 Diego, State of California, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 W. Broadway, Suite 1900, San Diego, California 92101.

2. That on January 21, 2014, declarant caused to be served by electronic mail to the parties the following document:

PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION FOR BILL OF COSTS

The parties' e-mail 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 January, 2014, at San Diego, California.

s/ TERESA HOLINDRAKE
TERESA HOLINDRAKE