

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

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LAWRENCE E. JAFFE PENSION PLAN, On )  
Behalf of Itself and All Others Similarly )  
Situating, )

Plaintiff, )

vs. )

HOUSEHOLD INTERNATIONAL, INC., et )  
al., )

Defendants. )

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Lead Case No. 02-C-5893  
(Consolidated)

CLASS ACTION

Judge Ronald A. Guzman  
Magistrate Judge Nan R. Nolan

**DEFENDANTS' STATUS REPORT: OCTOBER 26, 2005 STATUS CONFERENCE**

A status conference has been set for October 26, 2005. Defendants forwarded a draft status report to Plaintiffs on October 19 for Plaintiffs to include any additions they wanted so that the parties could comply with the Court's directive and file a joint status report.<sup>1</sup> Plaintiffs responded as follows: "Plaintiffs will not be joining defendants' draft status report circulated yesterday because it fails to accurately represent the status of ongoing proceedings." Defendants regret that the Court must be burdened by two status reports despite Defendants' efforts. Defendants hereby submit their Status Report to update the Court on the issues outstanding.

**A. Summary of the Case**

The Parties refer the Court to the Joint Status and [Proposed] Rule 26(f) Discovery Plan ("Rule 26(f) Plan") filed on May 20, 2004 for a summary of the case. In addition, on December 3, 2004, the Court entered an order certifying a class of all claims under §§ 10(b) and 20(a) of the Exchange Act for the period October 23, 1997 through October 11, 2002. On August 22, 2005, the Court entered an order granting the Modification to Stipulation and Order Regarding Class Action Certification, which eliminated a contingency allowing Defendants to move for decertification of the certified class.

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<sup>1</sup> References herein to "Defendants" are to Defendants Household International, Inc., Household Finance Corp., William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar. References herein to "Plaintiffs" are to Lead Plaintiffs Glickenhau & Company, PACE Industry Union Management Pension Fund and The International Union of Operating Engineers Local No. 132 Pension Plan.

**B. Status of Pending Motions Before the Honorable Ronald A. Guzman**

**1. Defendants' Motion to Dismiss Pursuant to the Supreme Court's Recent Decision in *Dura Pharmaceuticals, Inc. v. Broudo***

Briefing on this motion was completed on September 16, 2005.

**2. Defendants' Motion Pursuant to the Seventh Circuit's Recent Decision in *Foss v. Bear Stearns* to Dismiss the Complaint In Part**

Briefing on this motion was completed on September 16, 2005.

**C. Status of Pending Motions Before the Honorable Nan R. Nolan**

**1. Defendants' Motion for Costs, Expenses and Fees**

On October 13, 2005, Defendants filed a motion for costs, expenses and fees pursuant to Federal Rule of Civil Procedure 30(g)(1) and 28 U.S.C. § 1927 in connection with Plaintiffs' last-minute unilateral cancellation of the previously-noticed depositions of Walt Rybak and Curt Cunningham and despite the fact that Defendants told Plaintiffs repeatedly that the documents they claimed were not produced did not exist. Defendants request that the Court set a briefing schedule and a date on which to hear oral argument in connection with this motion.

**2. Defendants' Motion for Partial Reconsideration of the Court's September 28, 2005 Order Regarding Defendants' Motion to Amend the Protective Order**

The Court granted Defendants' motion to amend the Protective Order to add the category of Household organizational charts on September 28, 2005. On October 12, 2005, Defendants filed a motion for partial reconsideration of the limited part of the Court's September

28, 2005 Order that directed Defendants to review and redesignate, if necessary, the confidentiality designations of more than three million pages produced to Plaintiffs to date, insofar as the Court's direction was based upon documents produced to Plaintiffs under an Interim Order which provided that all discovery material produced thereunder was to be deemed confidential, and because it would allow Plaintiffs to circumvent the express terms of the Protective Order which require Plaintiffs to attempt to resolve issues regarding confidentiality designations with Defendants prior to raising them with the Court. Plaintiffs' response was filed on October 17, 2005. Defendants' reply is due on October 25, 2005.

**3. Plaintiffs' Motion to Compel Responses to First Set of Interrogatories From Household Defendants**

Briefing on this motion was completed on September 27, 2005.

**4. Plaintiffs' Motion to Compel the Household Defendants to Produce Documents Withheld on the Basis of Privilege**

Briefing on this motion was completed on July 21, 2005.

**5. Plaintiffs' Motion to Compel the Household Defendants to Produce Electronic Evidence in Native Electronic Format**

(i) Plaintiffs acknowledged that there is no existing dispute with regard to the production of native format spreadsheets and withdrew that part of their motion. The sole issues outstanding on this motion are the 16 search terms and 165 custodians still in dispute in connection with the protocol to be used for the production of native format e-mails. Briefing on this issue was completed on July 21, 2005.

Defendants have begun the collection, review and production of native format e-mails pursuant to the 219 search terms and 119 custodians set forth in Defendants' search term protocol and have already produced approximately 850 native format e-mails and attachments to Plaintiffs. Plaintiffs declined Defendants' offer for Plaintiffs to prioritize the list of 119 agreed-upon custodians.

(ii) On October 11, 2005, Plaintiffs "renewed" their motion to compel in its entirety, although Plaintiffs did not notice the "renewed" motion for presentment to the Court. Because Plaintiffs have previously acknowledged that no outstanding dispute exists with regard to the production of native format spreadsheets, and because Defendants have already begun production of native format e-mails pursuant to the search terms and custodians set forth in Defendants' search term protocol, Defendants do not believe Plaintiffs' renewed motion should be heard insofar as the only issue still outstanding on this renewed motion — the 16 search terms and 165 custodians still in dispute — remains the issue that has already been fully briefed in Plaintiffs' original motion, on which the Court's ruling is currently pending.

To the extent that Plaintiffs' renewed motion to compel is directed to Housemail, the Household Defendants do not understand the purpose of the motion. The parties have an agreement regarding native format production that provides that Housemails be produced in paper form. Housemails have been and are being produced in paper form. As we have set forth in prior correspondence with the Court and in our motion for costs, expenses, and fees (*see* Section C.I., above), there are no live Housemails for which to perform an electronic search and production. Thus Plaintiffs' renewed motion should not be heard and the Court should proceed to decide the motion as briefed.

**6. Plaintiffs' Motion to Compel the Household Defendants to Produce Source Logs for Documents Produced in this Litigation**

Plaintiffs acknowledged that there is no existing dispute with regard to Plaintiffs' request that Defendants produce "source logs" and withdrew that part of their motion. The sole issue outstanding on this motion was Plaintiffs' request that Defendants verify completion of the production of documents pursuant to Plaintiffs' First Document Demand. Briefing on this issue was completed on July 21, 2005. Pursuant to the Court's direction at the August 24, 2005 status conference, Defendants filed a supplemental response on September 2, 2005 informing the Court, *inter alia*, that Defendants expected to complete targeted follow-up with respect to the production of hard copy documents responsive to Plaintiffs' First Document Demand by September 30, 2005, which targeted follow-up was completed by that date. Thus, this motion is resolved.

**D. Status of Discovery**

**1. Document Production**

Defendants have already produced more than 3.2 million pages of hard copy documents, more than 3,400 native format spreadsheets, approximately 850 native format e-mails and attachments, and more than 4,500 pages of other electronic documents in response to Plaintiffs' First and Second Document Demands. Defendants are continuing to collect, review and produce documents responsive to Plaintiffs' requests, and presently expect to be able to complete production of hard copy documents by December 15, 2005, production of native format spreadsheets and production of other electronic documents by December 15,

2005, and production of native format e-mails and attachments by January 20, 2006. Plaintiffs have informed previously that they intend to propound additional document requests.

## **2. Copying and Shipping Expenses**

Plaintiffs advised Defendants for the first time on October 17, 2005 that they refuse to pay for copying and shipping of documents that have been produced to them despite the fact that Defendants notified Plaintiffs on numerous occasions during the past year that they expected Plaintiffs to pay for the copying and shipping of documents that they requested and invoiced them for such documents. This is of course the standard practice in any litigation and clearly supported by authority, and Plaintiffs at no time objected to this. Defendants do not believe it is necessary or appropriate to waste time and money on this issue and request simply that the Court direct Plaintiffs to pay for what they demanded.

## **3. Depositions**

Plaintiffs have taken three depositions. Two additional depositions previously noticed by Plaintiffs — those of Walt Rybak and Curt Cunningham — were unilaterally canceled by Plaintiffs at the last minute, resulting in Defendants' motion for costs, fees and expenses pursuant to Federal Rule of Civil Procedure 30(g)(1) and 28 U.S.C. § 1927 (*see* Section C.1 above). Defendants have already informed Plaintiffs that they will not proffer these witnesses again for deposition absent Order of the Court.

Plaintiffs have informed Defendants that they intend to seek modification of the Fed. R. Civ. P. 30(a)(2)(A) limitation on depositions to permit 50 depositions. Defendants oppose

such modification absent some demonstration by Plaintiffs as to: (i) the identity of the proposed deponent; (ii) his/her relevance to the case; and (iii) why the witness's testimony would not be cumulative of other sources. Based upon this information, Defendants will reconsider the request for additional depositions. Defendants believe that if the Court is prepared to permit additional depositions, it should do so in tranches of five at a time to ensure that there is a need for the depositions consistent with the Federal Rules.

#### **4. Additional Interrogatories**

Plaintiffs served their Second Set of Interrogatories on September 21, 2005. Defendants' response is due on October 24, 2005. Defendants intend to object to these interrogatories insofar as they exceed the 25 interrogatory limit imposed by the Federal Rules.

#### **5. Fact Discovery Cut-Off**

The fact discovery cut-off is currently scheduled for January 13, 2006. Defendants believe there is little chance that fact discovery can be completed by this date given Plaintiffs' continued practice of manufacturing discovery disputes, Plaintiffs' overbroad discovery requests, Plaintiffs' stated intention to serve additional discovery and Plaintiffs' last-minute cancellation of depositions. Plaintiffs previously requested a four-month extension of fact discovery until May 12, 2006. Defendants agree that an extension is warranted, but are neutral as to the date of any such extension.



Dated: October 21, 2005



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**CERTIFICATE OF SERVICE**

Craig S. Kesch, Esq., certifies that on October 21, 2005, he served copies of Defendants' Status Report: October 26, 2005 Status Conference to the parties listed below in the manner stated.



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Craig S. Kesch

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