

**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 a,)	
)
Defendants.)	
)
_____)	
)

**LEAD PLAINTIFFS' MOTION AND MEMORANDUM TO FILE CERTAIN EXHIBITS
AND EXCERPTS OF THEIR MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTIONS *IN LIMINE* UNDER SEAL PURSUANT TO
LOCAL RULE 26.2**

Plaintiffs respectfully move this Court pursuant to Local Rule 26.2 for leave to file their oppositions to defendants' motions *in limine* and exhibits in support thereof as restricted documents pursuant to Local Rule 26.2. In compliance with Local Rule 26.2, plaintiffs have filed portions of their oppositions to defendants' motions *in limine* in redacted form and the supporting exhibits under seal. None of plaintiffs' oppositions to defendants' motions *in limine* contain information worthy of protection under either the Protective Order in this case or the applicable law and policies governing confidentiality. For the reasons articulated below, all exhibits should be filed publicly.

I. LEGAL STANDARD

Local Rule 26.2 prohibits parties from unilaterally restricting access to publicly filed documents. Plaintiffs believe they must file an unrestricted version of their oppositions to defendants' motions *in limine* in compliance with this Rule and its policy objectives. Despite the fact that none of the oppositions to defendants' motions *in limine* filed concurrently herewith infringe on any genuine privacy or competitive interest, because defendants have designated nearly every document produced in this case as "confidential," plaintiffs are forced to file this motion pursuant to Local Rule 26.2.

Pursuant to Local Rule 26.2, as amended on April 20, 2006, only the Court may determine that a particular document or exhibit merits restricted status before any party may file such materials under seal. *See* LR 26.2 (as amended April 20, 2006); *see also* LR 26.2 Committee Comments ("only the particular document that has been previously determined by the court to be deserving of protection may be filed under seal"). The Court restricts access to a document only for "good cause shown." *See* LR 26(b). To determine whether good cause exists, "a district court must balance the harm to the party seeking the protective order against the importance of disclosure to [the] public." *McGee v. City of Chicago*, No. 04 C 6352, 2005 U.S. Dist. LEXIS 30925, at *4 (N.D. Ill. June 23,

2005) (bracket in original). As discussed below, good cause does not exist to restrict from public access plaintiffs' oppositions to defendants' motions *in limine* .

II. ARGUMENT

On November 5, 2004, the Court entered a Protective Order to govern these proceedings. Under the Protective Order, "Confidential Information" includes information that "'compromises personal privacy interests or contains *commercially sensitive business information*, the disclosure of which would cause the party or person *competitive harm*, impair the *commercial value* of the information or otherwise be *commercially injurious*.'" Protective Order, ¶3 (emphasis added). Pursuant to the Protective Order, the only documents entitled to protection are those for which the producing party believes, *in good faith*, to contain "Confidential Information." Protective Order, ¶10. The burden of demonstrating the confidentiality of a document rests on the "designating party." Protective Order, ¶20. Despite the Protective Order's clear mandates, defendants subsequently designated virtually every bit of information produced in this litigation as "Confidential."

As a result of defendants' wholesale confidentially designations, plaintiffs' oppositions to defendants' motions *in limine* refer to and discuss exhibits and deposition testimony that defendants have designated confidential under the Protective Order. Defendants have failed to justify the continued need for confidentiality of the exhibits and deposition testimony referred to in plaintiffs' oppositions to defendants' motions *in limine*. Indeed, none of the exhibits or deposition testimony contain the type of *truly* confidential information subject to continued protection as contemplated by the Protective Order, this Court and Seventh Circuit precedent. *See, e.g.* June 30, 2008 Hr'g Tr. at 14:13-20 (admonishing the parties that many of the documents would not continue to be considered confidential at trial, "absent *really extraordinary circumstances*" such as "Coca-Cola's formula") (emphasis added). Moreover, defendants will be hard pressed to articulate any harm (let alone the "clearly defined and very serious injury" required by courts in this District) that they would suffer

today as a result of the public disclosure of stale information and facts from six to eight years ago. *See Andrew Corp. v. Rossi*, 180 F.R.D. 338, 341 (N.D. Ill. 1998). The public interest weighs in favor of disclosure since it pays for the Court and has a First Amendment interest in such proceedings. *See, e.g., Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 944-45 (7th Cir. 1999) (“the public at large pays for the courts and therefore has an interest in what goes on at all stages of a judicial proceeding”). The public’s heightened interest in this securities fraud class action far outweighs defendants’ minimal (or nonexistent) need for confidentiality. Given that the parties are at the eve of a public trial in this matter, plaintiffs respectfully request that the Court permit unrestricted access to plaintiffs’ oppositions to defendants’ motions *in limine* and supporting exhibits.

III. CONCLUSION

No valid cause exists in this case to warrant an exception to the broadly accepted principle followed by the Seventh Circuit, and reflected in Local Rule 26.2 discouraging “parties from being overly-generous in designated documents to be filed under seal.” *See* LR 26.2 Committee Comments. Accordingly, plaintiffs have filed this motion in compliance with LR 26.2, requesting that plaintiffs’ oppositions to defendants’ motions *in limine* be unrestricted.

DATED: February 10, 2009

Respectfully submitted,

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DECLARATION OF SERVICE BY ELECTRONIC MAIL 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 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 West Broadway Suite 1900, San Diego, California 92101.

2. That on February 10, 2009, declarant served by electronic mail and by U.S. Mail to the parties the **LEAD PLAINTIFFS' MOTION AND MEMORANDUM TO FILE CERTAIN EXHIBITS AND EXCERPTS OF THEIR MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS IN LIMINE UNDER SEAL PURSUANT TO LOCAL RULE 26.2.**

The parties' email addresses are as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of February, 2009, at San Diego, California.

/s/ Teresa Holindrake

TERESA HOLINDRAKE