

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

**FILED**

OCT 25 2004

**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT**

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

Plaintiff,

v.

HOUSEHOLD INTERNATIONAL, INC., et al.

Defendants.

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

Judge Ronald A. Guzman  
Magistrate Judge Nan R. Nolan

**NOTICE OF FILING**

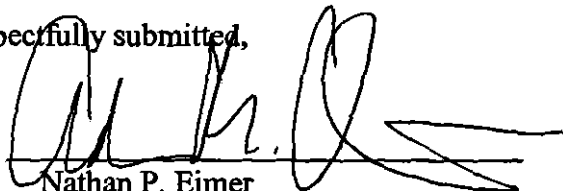
PLEASE TAKE NOTICE that, on October 25, 2004, we filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, an Unopposed Motion of Household Defendants to Amend the Proposed Protective Order, a copy of which is attached hereto.

**DOCKETED**

OCT 27 2004

Respectfully submitted,

By:



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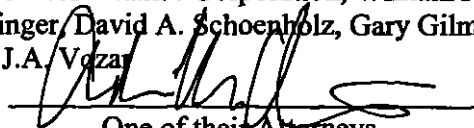
*Attorneys for Household International, Inc.,  
Household Finance Corporation, William F.  
Aldinger, David A. Schoenholz, Gary  
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Submitted by:

Defendants Household International, Inc.  
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**MEMORANDUM OF LAW OF HOUSEHOLD  
DEFENDANTS IN SUPPORT OF THEIR UNOPPOSED  
MOTION TO AMEND THE [PROPOSED]  
PROTECTIVE ORDER**

Defendants Household International, Inc., Household Finance Corporation,  
William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar (collectively, the  
“Household Defendants”) respectfully move this Court to permit the addition of certain  
categories of information to the [Proposed] Protective Order governing the treatment of  
confidential discovery material in this action. Plaintiffs do not oppose this motion.  
Specifically, the Household Defendants request that the Court add the following categories of  
documents eligible for designation as “Confidential Information” pursuant to the [Proposed]  
Protective Order, paragraph 3, to the extent that such documents reveal proprietary and  
commercially sensitive information: (1) customer lists and internal research and data  
regarding consumer borrowing and payment habits; (2) guidebooks, manuals, policies, and/or

training materials regarding underwriting procedures or criteria, loan pricing formulas, loan collection policies and procedures, employee training, and internal audit policies and procedures; (3) proprietary information regarding securitization of loan pools; (4) non-public financial information of Household and/or its employees; (5) employee compensation plans; and (6) Household personnel records, including employee disciplinary records.<sup>1</sup>

***The Court's September 28, 2004, Order Regarding Confidentiality***

On September 28, 2004, this Court issued an Order ruling on the parties' "Joint Submission Regarding Protective Order," and set forth four specific categories of protected documents for inclusion in the Protective Order. The Court ruled that the defendants' proposed protective order "does not provide any specific categories of 'confidential, proprietary, or private information' that they seek to protect from public disclosure." (Order at 2.) However, the Court also stated that if the defendants believed additional categories of information should be protected they should file a motion defining the types of documents they seek to protect and providing an analysis of the propriety of secrecy for each category of information. (Order at 3.)

The Household Defendants thus submit this unopposed motion to amend the [Proposed] Protective Order, which is being jointly submitted by the parties simultaneously herewith. Counsel for the Household Defendants and Lead Plaintiffs have had several meet and confer communications regarding the additional categories, and Plaintiffs do not oppose the categories set forth herein.

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<sup>1</sup> In filing this motion, the Household Defendants do not admit the relevance or responsiveness of the categories of documents set forth herein. Rather, the Household Defendants attempt to categorize the universe of documents that are potentially responsive to Plaintiffs' document demands. The Household Defendants reserve all rights with respect to Plaintiffs' document demands, and refer to the Household Defendants' Responses and Objections thereto.

## ARGUMENT

### I. Categories of Household Materials That Qualify for Confidential Treatment

The Federal Rules of Civil Procedure allow a district court to issue protective orders for trade secrets and other confidential discovery material when good cause is shown. Fed. R. Civ. P. 26(c)(7); *see also Andrew Corp. v. Rossi*, 180 F.R.D. 338, 340 (N.D. Ill. 1998) (noting that a protective order is appropriate when (1) the information sought to be protected is a trade secret or other confidential information; and (2) there is good cause for a protective order). For large productions — such as this one — good cause need not be found on a document-by-document basis. *Citizens First National Bank v. Cincinnati Insurance Co.*, 178 F.3d 943, 946 (7th Cir. 1999). In cases with “thousands” of documents, “[t]here is no objection to an order that allows the parties to keep their trade secrets (or some other properly demarcated category of legitimately confidential information) out of the public record, provided the judge: (1) satisfies himself that the parties know what a trade secret is and are acting in good faith in deciding which parts of the record are trade secrets and (2) makes explicit that either party and any interested member of the public can challenge the secreting of particular documents.” *Id.* at 946.

“When deciding whether proprietary business information requires protection as a Rule 26(c)(7) trade secret, courts have often looked to § 757 of the Restatement of Torts for guidance.” *Andrew Corp.*, 180 F.R.D. at 341. According to the Restatement, a trade secret is any “formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” Restatement (First) of Torts § 757 cmt. b (1939); *see also Andrew Corp.*,

180 F.R.D. at 341. To determine what material thus qualifies as confidential, relevant factors include “the extent to which it is known outside of the business; the extent to which it is known by employees and others involved in the business; the measures taken to guard the information’s secrecy, the value of the information to the business or its competitors; the amount of time, money, and effort expended in the development of the information; and the ease or difficulty of duplicating or properly acquiring the information.” *Andrew Corp.*, 180 F.R.D. at 341.

**A. Customer Lists and Internal Research and Data Regarding Consumer Borrowing and Payment Habits**

Household’s customer lists and internal research regarding consumer borrowing habits merit trade secret protection. Courts in this circuit have held that customer lists are protectable trade secrets. *E.g., Star Scientific, Inc. v. Carter*, 204 F.R.D. 410, 414 (S.D. Ind. 2001). Furthermore, “research and data . . . such as consumer purchasing habits and sales techniques are protectable trade secrets since the information is created to enhance [the litigants’] business and give them a competitive edge over other[s]” in the same line of business. *Id.* at 415. In this case, such information, compiled at Household’s expense, has obvious competitive value.

Moreover, only Household employees who need to know such information have access to it. Allowing broad access to this information — information that Household’s competitors would otherwise have to develop using their own resources — would amount to a windfall for those competitors. *Star Scientific*, 204 F.R.D. at 417 (finding that dissemination of product research and development is a windfall for the party who did not expend the

effort). This category of information should therefore be included as “Confidential Information” in paragraph 3 of the Protective Order.

**B. Guidebooks, Manuals, Policies, and/or Training Materials Regarding Underwriting Procedures or Criteria, Loan Pricing Formulas, Loan Collection Policies and Procedures, Employee Training, and Internal Audit Policies and Procedures**

The materials in this category are analogous to those protected by the court in *Hamilton v. State Farm Mutual Automobile Insurance Co.*, 204 F.R.D. 420 (S.D. Ind. 2001). In *Hamilton*, the district court found that insurer State Farm’s claims handling materials were trade secrets entitled to protection.<sup>2</sup> Specifically, the court noted that:

“(1) the claims handling procedures and materials were developed with considerable time, effort, and expense, thus possess economic value; (2) the materials were developed, created, and maintained for business use and considered confidential and proprietary; (3) the documents contain claims handling philosophies and strategies unique to State Farm; (4) access of the materials by a competitor would result in economic value to the competitor and place it in a competitive advantage; and (5) the materials are in locking file cabinets and/or in areas not open to the public.” *Id.* at 423.

The guidebooks, manuals, policies, and/or training materials in this category are to Household what the claims handling materials were to State Farm – valuable proprietary materials for internal business use only. To allow a competitor access to these materials by failing to accord such documents confidential treatment will “result in economic value to the competitor and place it in a competitive advantage.” *See id.*; *see also Bank of New York v. Meridien BIAO Bank Tanzania, Ltd.*, 171 F.R.D. 135 (S.D.N.Y. 1997) (holding

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<sup>2</sup> Although the district court in *Hamilton* looked to Indiana law for the definition of a trade secret, Indiana law encompasses factors substantially similar to those considered in this district. Under Indiana law, a trade secret has four characteristics: (1) information, (2) which derives independent economic value, (3) is not generally known or readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (4) is the subject of efforts reasonable under the circumstances to maintain its secrecy. *Id.* at 423.



that bank's internal audit procedures manual and credit policy manuals constituted confidential and proprietary information the disclosure of which would harm the bank's business because, *inter alia*, knowledge of bank policies would diminish the bank's competitive edge).

**C. Proprietary Information Regarding Securitization of Loan Pools**

Certain documents and information pertaining to the securitization of Household's loan pools is commercially sensitive and proprietary and should be covered by the protective order. For example, documents reflecting (1) pricing and terms information and negotiations; and (2) pool analysis and underwriting information, are commercially sensitive and have substantial competitive value, the public disclosure of which would damage Household's securitization business and result in a windfall to Household's competitors. *See Empire of Carolina, Inc. v. Mackle*, 108 F.R.D. 323, 326-27 (S.D. Fla. 1985) (internally generated investigatory work, analyses and correspondence regarding strategic investment decisions merits confidential treatment). These materials should thus be protected. *See, e.g., Miles v. Boeing Co.*, 154 F.R.D. 112, 114 (E.D. Pa. 1994) (subject of confidential business information, for purposes of determining whether protective order should be issued, is broad, including a wide variety of business information; competitive disadvantage is a type of harm cognizable under Rule 26).

**D. Non-Public Financial Information  
Of Household And/Or Its Employees**

In its September 28, 2004 Order, this Court found that "[g]ood cause existed to enter a protective order with respect to public disclosure of . . . (4) the personal and non-public financial information of Andersen and/or its various members/employees." Household

requests the same protection for the same category of its own information. Dissemination of this category of non-public information without a protective order will give unfair advantage to Household's competitors by, for example, providing them with compilations of financial performance data used by Household in monitoring and auditing its lending businesses. Such information includes internal business unit reports and loss reserve information and forecasting. This internal data would not otherwise be available to the public and is known within Household only by those who need it to perform their jobs. To the extent that these documents contain commercially sensitive information regarding Household's operations, these documents should be protected. *See, e.g., Operator Independent Drivers Ass'n v. Bulkmatic Transport Co.*, 2004 WL 1212096, at \*1 (giving "CONFIDENTIAL - ATTORNEYS' EYES ONLY" protection to non-public financial information, including budgets and sales or profit projections or reports);<sup>3</sup> *Gelb v. American Telephone & Telegraph Co.*, 813 F. Supp. 1022, 1034-35 (S.D.N.Y. 1993) (protecting revenue information as "potentially valuable commercial information which, wholly independent of the unlawful conduct alleged by this lawsuit, could alter defendant AT&T's competitive position in the telecommunications market").

#### **E. Employee Compensation Plans**

The documents requested by the plaintiffs contain information relating to salaries, and other compensation awarded to Household's executives and other employees, including stock option and bonus plans. "Since its salary and benefits programs play an integral part in defendant's ability to attract talented employees, this information is

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<sup>3</sup> For the Court's convenience, all unreported cases cited herein are attached at Exhibit A.

competitively sensitive.” *Province v. Pep Boys - Manny, Moe & Jack*, 2000 WL 420626, at \*2 (E.D. Pa. Apr. 12, 2000). Household’s compensation plans are therefore entitled to protection.

**II. Good Cause Exists to Protect Household’s Commercially Sensitive Information and Trade Secrets**

A party must also establish good cause for entry of an order limiting dissemination of information. *Star Scientific*, 204 F.R.D. at 415. Courts require “specific examples of articulated reasoning” to establish good cause under Rule 26(c)(7). *Andrew Corp.*, 180 F.R.D. at 341 (citations omitted). Good cause is generally found upon a showing that the litigant will be competitively disadvantaged if the information is made public. *Star Scientific*, 204 F.R.D. at 415 (finding good cause where plaintiff made showing that if trade secrets and confidential information were subject to public dissemination, plaintiffs would suffer economic harm); *Magnavox Co. v. Mattel, Inc.*, 1981 U.S. Dist. LEXIS 11208, at \*3 (N.D. Ill. Mar. 24, 1981) (holding that the good cause requirement under Federal Rule 26(c)(7) is fulfilled if disclosure of the requested documents would weaken a litigant’s competitive position).

Good cause exists to protect the foregoing categories. As set forth above, disclosure of confidential information from these categories would enable competitors to gain advantage at Household’s expense. With Household’s proprietary information freely available, competitors would gain access to valuable consumer, policy, and financial information they did not pay to develop and seek to undercut Household’s competitive advantage in the market place. For example, a competitor trolling the public file would be able to learn about Household’s loan pricing information and interest formulas, and adopt

them for competitive advantage. Indeed, Plaintiffs' Initial Disclosures list — as persons or entities with discoverable information — competitors of Household, including Associates First Capital, MBNA Consumer Services, Inc., and Providian Financial Corp., as well as scores of other potential witnesses without addresses or business affiliation. It is clear that good cause exists for protection.

### **III. Privacy Interests Mandate Protection for Personnel Files**

Protection may also be warranted for documents and information that implicate privacy interests. When privacy is at stake, a court must balance the harm to the party seeking protection with the importance of public disclosure. *Wiggins v. Burge*, 173 F.R.D. 226, 229 (N.D. Ill. 1997). Although not an exhaustive list, among factors to be considered are (1) the importance of disclosure to public health and safety and (2) whether the person seeking protection is a public official. *Id.*

In the complete absence of factors that would favor disclosure in this case, Household employees have a clear and substantial privacy interest in maintaining the confidentiality of the non-public information in their personnel files. Courts generally recognize this interest. *See, e.g., Davenport v. Indiana Masonic Home Foundation, Inc.*, 2003 WL 1888986, at \*3 (S.D. Ind. Mar. 27, 2003) (issuing a protective order to guard a “legitimate privacy interest in . . . employment and unemployment records”); *Zeid v. MCI Telecommunications Corp.*, 1985 WL 653, at \*1 (N.D. Ill. Apr. 16, 1985) (so ordering a protective order that includes corporate financial records, salary structures, individual employee salaries, employment histories, position titles and descriptions, discipline, employee complaints, and investigations of alleged misconduct “in which Defendants and their current

and former employees have a legitimate proprietary, commercial or privacy interest"). The non-public information in Household's personnel files should therefore remain confidential.

**CONCLUSION**

For the foregoing reasons, the Household Defendants' Motion to Amend the [Proposed] Protective Order to include additional categories of confidential information should be granted.

Dated: October 25, 2004  
Chicago, Illinois

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*See Case File  
for  
Exhibits*