

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

LAWRENCE E. JAFFE PENSION PLAN,	)	
on Behalf of Itself and All Others Similarly	)	
Situated,	)	
	)	Case No. 02-C-5893
	)	
Plaintiff,	)	
	)	
v.	)	Judge Jorge L. Alonso
	)	
HOUSEHOLD INTERNATIONAL, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

**MEMORANDUM OF LAW IN SUPPORT OF  
INDIVIDUAL DEFENDANTS’ MOTION IN LIMINE TO  
BAR EVIDENCE REGARDING THEIR FINANCIAL CONDITION**

Defendants William F. Aldinger, David A. Schoenholz, and Gary Gilmer (collectively, “Individual Defendants”) respectfully move this Court in limine to preclude Plaintiffs from introducing evidence, making argument, or eliciting testimony regarding Individual Defendants’ respective financial conditions, including but not limited to their personal wealth, income, compensation, assets, stock options, or benefits (collectively, Individual Defendants’ “Financial Condition”). Individual Defendants’ Financial Condition has no relevance to the issues identified for retrial, and, if presented to the jury, such evidence would unfairly prejudice Individual Defendants and unnecessarily invade their privacy. Consequently, Plaintiffs should be barred from introducing evidence of Individual Defendants’ Financial Condition at retrial.

**LEGAL STANDARD**

Federal Rule of Evidence (“FRE”) 401 provides that evidence is relevant if: “(a) it has any tendency to make a fact more or less probable than it would be without the evidence; *and (b)*

*the fact is of consequence in determining the action.*” Fed. R. Evid. 401 (emphasis added). Whether a fact is “of consequence” in determining an action’s outcome depends upon the substantive law governing the issues in the case. *See Sherrod v. Berry*, 856 F.2d 802, 804 (7th Cir. 1988). Thus, relevant evidence provides a link to a matter “properly provable in the case.” *Baldonado v. Wyeth*, No. 04 C 4312, 2012 WL 3779100, at \*7 (N.D. Ill. Aug. 31, 2012) (citation omitted). Evidence that falls short of this standard must be excluded. *See id.* Fed. R. Evid. 402.

Even relevant evidence can be inadmissible, however. FRE 403 states that relevant evidence can be excluded if its “probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. The Seventh Circuit has construed FRE 403 as excluding evidence that would “induce [a] jury to decide the case on an improper basis, commonly an emotional one, rather than on the evidence presented . . . .” *Rascon v. Hardiman*, 803 F.2d 269, 278 (7th Cir. 1986) (citation omitted).

## ARGUMENT

### **I. This Court Should Exclude Evidence or Argument Regarding Individual Defendants’ Financial Condition at Retrial Because It Is Irrelevant.**

Evidence of a party’s wealth is generally inadmissible under FRE 401’s relevancy standard. *See Mountain Funding, Inc. v. Frontier Ins. Co.*, No. 01 C 2785, 2004 WL 868366, at \*3 (N.D. Ill. Apr. 22, 2004) (holding that reference to a defendant’s financial condition “generally will not be permitted because it is irrelevant”); *see also Rush Univ. Med. Ctr. v. Minnesota Mining & Mfg. Co.*, No. 04 C 6878, 2009 WL 3229435, at \*3 (N.D. Ill. Oct. 1, 2009) (holding that party’s financial condition was not relevant to substantive legal claim at issue). This is particularly true in cases where, as here, punitive damages are unavailable. *See Koblosh v. Adelsick*, No. 95 C 5209, 1997 WL 311956, at \*2 (N.D. Ill. June 5, 1997) (barring evidence of

defendant's financial condition absent a "colorable claim for punitive damages"); *El-Bakly v. Autozone, Inc.*, No. 04 C 2767, 2008 WL 1774962, at \*5 (N.D. Ill. Apr. 16, 2008) (same).

Individual Defendants anticipate that, at retrial, Plaintiffs will seek to introduce evidence of their Financial Condition, including annual compensation and proceeds generated from stock sales and the exercise of stock options. For instance, Plaintiffs' have included in their pretrial exhibit list certain documents relating to Individual Defendants' personal income, executive-compensation materials, and Mr. Aldinger's testimony before the Securities and Exchange Commission concerning profits earned as a result of a merger with HSBC. (*See* excerpts from Plaintiffs' pretrial exhibit list, attached as Ex. A).<sup>1</sup> Evidence of Individual Defendants' Financial Condition is not relevant on retrial because, even if it were to make "a fact more or less probable than [that fact] would be without the evidence" (a dubious proposition in itself), such evidence would not be "of consequence" in determining the action. Fed. R. Evid. 401. In other words, there is no demonstrable link between Individual Defendants' finances and any issue "properly provable" at retrial. *Baldonado*, 2012 WL 3779100, at \*7. Evidence of Individual Defendants' Financial Condition is therefore irrelevant under FRE 401 and should be excluded from retrial pursuant to FRE 402.<sup>2</sup>

Indeed, the only issue to which evidence of Individual Defendants' Financial Condition could even potentially be relevant—the degree of scienter with which each made any actionable

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<sup>1</sup> Plaintiffs' pretrial exhibit list is not exhaustive, and nothing contained therein, or in this Motion, should be construed as limiting Individual Defendants' right to object to additional evidence concerning their Financial Condition, which right Individual Defendants expressly reserve.

<sup>2</sup> Additionally, Plaintiffs' proposed exhibits include multiple documents relating to Individual Defendants' Financial Condition *before* the relevant class period. (*See* Ex. A). Such evidence is irrelevant, unfairly prejudicial, and devoid of probative value. Consequently, it should be excluded pursuant to FRE 402 and 403.

statements—has already been settled among the parties by way of stipulation. (*See* parties’ stipulation, attached as Ex. B) [Dkt. 2122]. The remaining issues for retrial do not even tangentially implicate Individual Defendants’ Financial Condition.

**II. This Court Should Exclude Evidence or Argument Regarding Individual Defendants’ Financial Condition at Retrial Because It Is Unfairly Prejudicial.**

Courts in this circuit and elsewhere have recognized that evidence of—or reference to—a party’s financial condition can result in unfair prejudice by appealing to the sympathy of jurors. *See e.g., Adams Labs., Inc. v. Jacobs Eng’g Co.*, 761 F.2d 1218, 1226 (7th Cir. 1985) (citation omitted) (“Courts have held that appealing to the sympathy of jurors through references to the relative wealth of the defendants in contrast to the relative poverty of the plaintiffs is improper and may be cause for reversal.”); *Draper v. Airco, Inc.*, 580 F.2d 91, 95 (3d Cir. 1978) (same); *Garcia v. Sam Tanksley Trucking, Inc.*, 708 F.2d 519, 522 (10th Cir. 1983) (holding that “[r]eference to the wealth or poverty of either party, or reflection on financial disparity, is clearly improper argument”); *Koufakis v. Carvel*, 425 F.2d 892, 902 (2d Cir. 1970) (holding that arguments suggesting a defendant should pay damages because “he is rich and the plaintiff is poor” are grounds for a new trial). Evidence of a party’s relative wealth or poverty is also likely to distract a jury from the real issues in the case. *Rush Univ. Med. Ctr.*, 2009 WL 3229435, at \*3.

Assuming that evidence relating to Individual Defendants’ Financial Condition were relevant at retrial—it is not—admitting such evidence would open the door to economic or class resentments on the part of the jury and thus would be unfairly prejudicial. This is precisely the type of emotional appeal that FRE 403 seeks to exclude. *See Rascon*, 803 F.2d at 278. Moreover, even if evidence of Individual Defendants’ Financial Condition were not unfairly prejudicial, such evidence offers little, if any, probative value. And the meager probative value added would be substantially outweighed by the risk of confusion, undue delay, wasting time, and distracting

the jury from the real issues in the case. *See Rush Univ. Med. Ctr.*, 2009 WL 3229435, at \*3; *Pivot Point Int'l, Inc. v. Charlene Products, Inc.*, 932 F. Supp. 220, 223 (N.D. Ill. 1996) (noting that introduction of financial and tax information carried “substantial potential to invade privacy . . . [and to] distract the jury from the essential issues of the case.”). Consequently, evidence of, or argument regarding, Individual Defendants’ Financial Condition should be barred from retrial pursuant to FRE 403.

**CONCLUSION**

For the foregoing reasons, this Court should exclude evidence or argument from retrial, including but not limited to the evidence specifically identified herein, relating to Individual Defendants’ Financial Condition.

Dated: April 22, 2016

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# **EXHIBIT A**

<b>EXHIBIT NUMBER</b>	<b>DESCRIPTION</b>	<b>DEFENDANTS' OBJECTIONS</b>
D0758	Form 4 for Gary D. Gilmer, dated February 14, 2000 - statement for February 2000	Irrelevant (FRE 402); Unfair Prejudice, Confusion of Issues, Waste of Time (FRE 403) because the document does not relate to issues in the retrial
D0759	Form 4 for Gary D. Gilmer, dated October 19, 2000 - statement for October 2000	Irrelevant (FRE 402); Unfair Prejudice, Confusion of Issues, Waste of Time (FRE 403) because the document does not relate to issues in the retrial
D0763	Form 4 for Gary D. Gilmer, dated July 19, 2001 - statement for July 2001	Irrelevant (FRE 402); Unfair Prejudice, Confusion of Issues, Waste of Time (FRE 403) because the document does not relate to issues in the retrial
P0772	Compensation Committee Meeting Materials for September 10, 2002	Irrelevant (FRE 402); Unfair Prejudice, Confusion of Issues, Waste of Time (FRE 403) because the document does not relate to issues in the retrial
P0773	Board of Directors Meeting Agenda July 26, 2002 8:30 a.m.	Irrelevant (FRE 403); Unfair Prejudice, Confusion of Issues, Waste of Time (FRE 403) because the document does not relate to issues in the retrial
P0774	Compensation Committee Meeting Materials for January 28, 2002	Irrelevant (FRE 402); Unfair Prejudice, Confusion of Issues, Waste of Time (FRE 403) because the document does not relate to issues in the retrial
D0774	Form 4 for William F. Aldinger, dated August 23, 2000 – Statement for August	Irrelevant (FRE 402); Confusion of Issues, Waste



EXHIBIT NUMBER	DESCRIPTION	DEFENDANTS' OBJECTIONS
	2000	of Time (FRE 403) because the document does not relate to issues in the retrial
D0775	Form 4 for William F. Aldinger, dated January 19, 2001 – Statement for January 2001	Irrelevant (FRE 402); Confusion of Issues, Waste of Time (FRE 403) because the document does not relate to issues in the retrial
P0776	Agenda Item II: Executive Compensation Materials	Irrelevant (FRE 402); Unfair Prejudice, Confusion of Issues, Waste of Time (FRE 403) because the document does not relate to issues in the retrial
D0796	Form 5 for David A. Schoenholz, dated January 21, 2002 - statement for December 2001	Irrelevant (FRE 402); Unfair Prejudice, Confusion of Issues, Waste of Time (FRE 403) because the document does not relate to issues in the retrial
D0797	Form 4 for David A. Schoenholz, dated May 15, 2002 - statement for May 2002	Irrelevant (FRE 402); Unfair Prejudice, Confusion of Issues, Waste of Time (FRE 403) because the document does not relate to issues in the retrial
P1038	E-mail with the subject Revised Tier 1&2 Spreadsheets attaching spreadsheet titled Highly Paid U.S. Employees – Tier 1 – Parachute Calculations	Irrelevant (FRE 402); Unfair Prejudice, Confusion of Issues, Waste of Time (FRE 403) because the document does not relate to issues in the retrial
P1476	Aldinger Deposition Transcript	Irrelevant (FRE 402); Unfair Prejudice, Confusion of Issues, Waste of Time (FRE 403) because the document does not relate to issues in the retrial; Hearsay (FRE

<b>EXHIBIT NUMBER</b>	<b>DESCRIPTION</b>	<b>DEFENDANTS' OBJECTIONS</b>
		802); LR 16.1, Pretrial Order Form as to testimony

# **EXHIBIT B**

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

LAWRENCE E. JAFFE PENSION PLAN, on Behalf of Itself and All Others Similarly Situated,	) ) ) )	
	)	Case No. 02-C-5893
Plaintiff,	) )	
v.	)	Judge Jorge L. Alonso
	)	
HOUSEHOLD INTERNATIONAL, INC., <i>et al.</i> ,	) )	
Defendants.	)	

**STIPULATION OF THE PARTIES REGARDING INDIVIDUAL  
DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT**

Defendants David A. Schoenholz ("Schoenholz"), Gary Gilmer ("Gilmer"), and William F. Aldinger ("Aldinger") (collectively "Individual Defendants") and Plaintiffs (together the "Parties") hereby agree that the following stipulated facts be accepted for purposes of retrial in light of the first jury's verdict and the Seventh Circuit's May 21, 2015 ruling:

**Schoenholz:**

1. Schoenholz did not make the statements contained in the December 4, 2001 Goldman Sachs Presentation (Statement No. 23) (*see* Jury Verdict Form, Table A at 18 [Dkt. No. 1611]; Order on issues to be retried [Dkt. No. 2042]); *Glickenhau & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 428 (7th Cir. 2015), reh'g denied (July 1, 2015) ("*Glickenhau*");
2. Schoenholz made the statements attributed to him in various company press releases (Statement Nos. 16, 18, 21, 24, 29, 36, and 37), and he did so recklessly (*see* Jury Verdict Form, Table A [Dkt. No. 1611]; Order on issues to be retried [Dkt. No. 2042]); *Glickenhau*, 787 F.3d at 429;

**Gilmer:**

3. Gilmer did not make the statements contained in various SEC filings (Statement Nos. 15, 17, 20, 22, 27, 32, and 38), press releases (Statements Nos. 16, 18, 21, 24, 29, 36, and 37), or the April 9, 2002 Financial Relations Conference (“FRC”) Presentation (Statement No. 28) or December 4, 2001 Goldman Sachs Presentation (Statement No. 23) (*see* Jury Verdict Form, Table A [Dkt. No. 1611]; Order on issues to be retried [Dkt. No. 2042]); *Glickenhau*s, 787 F.3d at 429;

**Aldinger:**

4. Aldinger did not make the statements contained in the April 9, 2002 FRC Presentation (Statement No. 28) (*see* Jury Verdict Form, Table A at 21 [Dkt. No. 1611]; Order on issues to be retried [Dkt. No. 2042]); *Glickenhau*s, 787 F.3d at 426-28;

5. Aldinger made the statements attributed to him in various company press releases (Statement Nos. 16, 18, 21, 24, 29, 36, and 37), and he did so recklessly (*see* Jury Verdict Form, Table A [Dkt. No. 1611]; Order on issues to be retried [Dkt. No. 2042]); *Glickenhau*s, 787 F.3d at 426-28; and

6. The Parties’ stipulations are set forth in the following table<sup>1</sup>:

Statement No.	Description	Schoenholz	Gilmer	Aldinger
16	04/18/01 Press Release	X		X
18	07/18/01 Press Release	X		X
21	10/17/01 Press Release	X		X
23	12/04/01 Goldman Pres.			X
24	01/16/02 Press Release	X		X
28	04/09/02 FRC Pres.	X		
29	04/17/02 Press Release	X		X
36	07/17/02 Press Release	X		X
37	08/14/02 Press Release	X		X

<sup>1</sup> An “X” indicates that the Defendant made the alleged Statement, whereas the absence of an “X” indicates that the Defendant did not make that Statement. Schoenholz and Aldinger acted recklessly with respect to each Statement they made.

7. The Parties' stipulations are not intended to disturb the jury's verdict with respect to Question Nos. 6, 7, and 8 of the Jury Verdict Form.

Dated: March 16, 2016

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