

**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)	
al.,)	
)
Defendants.)	
_____)	

**MOTION PURSUANT TO LOCAL RULE 26.2 FOR LEAVE TO FILE APPENDIX OF
EXHIBITS IN SUPPORT OF THE CLASS' MOTION TO COMPEL HOUSEHOLD
DEFENDANTS TO COMPLY WITH THE COURT'S AUGUST 10 AND 22 ORDERS
AND FOR APPROPRIATE SANCTIONS FOR NON-COMPLIANCE, AS A
RESTRICTED DOCUMENT**

Lead Plaintiffs and the Class respectfully move this Court pursuant to Local Rule 26.2 for leave to file the Appendix of Exhibits in Support of the Class' Motion to Compel Household Defendants to Comply with the Court's August 10 and 22 Orders and for Appropriate Sanctions for Non-Compliance (the "Appendix") as a Restricted Document.

Local Rule 26.2 prohibits parties from unilaterally restricting access to publicly filed documents. The Class believes it must file an unrestricted version of the Appendix to comply with this rule and its policy objectives. Defendants, however, have improperly marked virtually every document in this matter as "Confidential" under the November 5, 2004 Protective Order, including publicly filed documents. *See* detailed discussion below why none of the exhibits is confidential. The Class is thus forced to file this motion pursuant to Local Rule 26.2, but believes that the Magistrate should deny this motion. Under this rule, 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* L.R. 26.2 (as amended on April 20, 2006); *see also* L.R. 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 exhibits in the Appendix do not warrant "confidential" treatment because none of the information contained in these exhibits "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 information or otherwise be commercially injurious." Protective Order (Docket. No. 193) at 3. The following descriptions demonstrate why none of the exhibits should have been designated "Confidential" in the first place:

- Exhibit 1 is a recap of HSBC's discussion with the consumer advocate group ACORN trying to urge them not to adopt some Household International, Inc.'s

(“Household”) predatory lending practices upon acquiring Household. No personal privacy or commercially sensitive business information is disclosed.

- Exhibits 2-7 are multiple copies of unfilled form agreements with Equifax Credit Information Services. There is no proprietary information in these documents.
- Exhibit 8 is an email dated September 2002 regarding a “Dress Rehearsal” with a listing of the individuals responsible for the task assigned. Nothing in this email compromises personal privacy interests or is commercially sensitive.
- Exhibits 9-10 are excerpts of Household’s Forms 10-K filed with the Securities and Exchange Commission. It is axiomatic that documents that are required to be publicly filed simply cannot be “Confidential.”
- Exhibits 11-12 are standard forms of interim servicing agreements between Household and Goldman Sachs Mortgage Company. There is no proprietary or commercially sensitive information in these documents.
- Exhibits 13-14 are a marketing agreement for an incentive program and a pilot for the QVC Home Shopping Network. There is no commercially sensitive information contained in these agreement. Similarly, Ex. 15 is a two-page excerpt of a service agreement between two of Household’s subsidiaries. No information contained in this exhibit is either commercially sensitive, or information that is not somehow disclosed in Household’s public filings. *See also* Exs. 16-17 (excerpts of draft insurance tracking services agreement). Nothing in these excerpts compromises personal privacy interests or is commercially sensitive.
- Exhibit 18 is an email communicating that the State of Tennessee would be conducting a licensing examination of one of Household’s subsidiaries. The mere

fact that a state was conducting an examination, an event that occurred on a fairly regular basis in every state in which Household did business, is not confidential.

- Exhibit 19 is a job description for the position of Director of Finance for the Auto Finance business unit. Besides being completely irrelevant to the specific documents requested, common sense dictates that such postings are widely circulated in order to seek applicants for jobs.
- Exhibit 20 is an article from a publication called “American Banker,” which is available on the Internet and in hard-copy form to anyone. Exhibit 20 hardly qualifies as “Confidential.”
- Exhibit 21 is an analyst report regarding another company, Banc of America Securities, LLP. The report is available to the public through that company’s brokerage or via subscription, hardly raising concerns of disclosure of any of Household’s information, much less commercially sensitive information.
- Exhibit 22 is a meeting agenda. The Protective Order does not even list meeting agendas as a protected category. *See* Protective Order at 3.
- Exhibit 23 is an incentive program to car dealerships, which obviously was communicated widely to car dealers. Such dissemination would be inconsistent with the objective of maintaining confidentiality.
- Exhibits 24-32 are various versions of Senator Jackie Speier’s Privacy Bill from February 2003 and email discussions regarding the bill. Aside from the fact that such bills and comments on bills are publicly published and discussed, this is not a protected category under the Protective Order in this litigation. *See id.*
- Exhibits 33-35 are messages that were actually sent to customers and a discussion of Dialer “best practices.” Since the Household Defendants publicly brag about their

“best practices,” why now designate them confidential, other than to oppress plaintiffs and impose an undue burden on them?

- Exhibit 36 is an excerpt of operating expenses related to salaries and fringe benefits – information that is provided to the public in consolidated form in Household’s publicly filed financials. In addition, such information should also not be designated “Confidential” because it is stale.
- Exhibit 37 is mostly unintelligible, but appears to be the back of statements provided to Household’s customers which contains only boiler-plate language. This document is not “Confidential.”

As demonstrated above, no valid reason 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 designating documents to be filed under seal.” *See* Committee Comment to L.R. 26.2.

The Court may restrict access to a document only for “good cause shown.” *See* L.R. 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*, Case No. 04 C 6352, 2005 U.S. Dist. LEXIS 30925, at *4 (N.D. Ill. June 23, 2005) (quoting *Doe v. White*, No. 00 C 0928, 2001 U.S. Dist. LEXIS 7726, at *4 (N.D. Ill. June 8, 2001)). Defendants will be hard pressed to articulate any harm they would suffer from documents subject to public disclosure, documents that are publicly advertised or intentionally widely disseminated, or documents that have no commercial value today, let alone the “clearly defined and very serious injury” required by courts in this district. *See Andrew Corp. v. Rossi*, 180 F.R.D. 338, 341 (N.D. Ill. 1998) (citations and internal quotations omitted). The public interest weighs in favor of disclosure since the public pays for the court, has a First Amendment interest in such proceedings, and is

otherwise well served by vigorous oversight of accurate financial reporting by public companies. *See, e.g., Citizens First Nat'l Bank 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”).

Indeed, Judge Guzman has recently denied a similar motion that the Class was forced to file in this litigation because the Household Defendants have been designating entire deposition transcripts as “Confidential” without undertaking a good faith review of what should be so marked. *See* Docket No. 659. Although the Class has filed this motion in compliance with L.R. 26.2, we believe that the Appendix should not be restricted. Accordingly, this Court should follow in Judge Guzman’s footsteps and deny this motion.

DATED: September 18, 2006

Respectfully submitted,

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