

**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.)	
_____)	

**LEAD PLAINTIFFS' MOTION AND MEMORANDUM TO FILE CERTAIN EXHIBITS
AND EXCERPTS OF THEIR BRIEF IN SUPPORT OF THEIR MOTION
REQUESTING EVIDENTIARY SANCTIONS FOR HOUSEHOLD DEFENDANTS'
DESTRUCTION OF EVIDENCE UNDER SEAL PURSUANT TO LOCAL RULE 26.2**

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Plaintiffs respectfully move this Court pursuant to Local Rule 26.2 for leave to file their Motion Requesting Evidentiary Sanctions for Defendants' Spoliation of Evidence ("Spoliation Brief") and exhibits in support thereof as restricted documents pursuant to Local Rule 26.2.

In compliance with Local Rule 26.2, plaintiffs have filed significant portions of the Spoliation Brief in redacted form. They have also filed Exhibits 1-17, 19-28, 30-35, 37, 39-45, 47-55, 58-63, 67, 69, 72-74, 78, 80, 82, 87-92 and 100-104 under seal. Exhibits 18, 29, 36, 38, 46, 56-57, 64-66, 68, 70-71, 75-77, 79, 81, 83-86, 93-96, 99 and portions of Exhibits 97-98 are filed in unredacted form. However, with the exception of some non-public customer information, the Spoliation Brief and attached Exhibits do not contain information worthy of protection both under the Protective Order in this case and the applicable law and policies governing confidentiality. For the reasons articulated below, only Exhibits 47, 60 and 69 should be filed under seal. All other 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 the Spoliation Brief in compliance with this Rule and its policy objectives. Notwithstanding the fact that the information detailed in the Spoliation Brief does not infringe on any privacy or competitive interests, because defendants have designated numerous documents as "confidential," plaintiffs are forced to file this motion pursuant to Local Rule 26.2.

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 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 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).¹

¹ Here, as elsewhere, internal quotations and citations are omitted and all emphasis is added, unless otherwise noted.

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 the Spoliation Brief and its exhibits.²

II. ARGUMENT

A. Only Certain Portions of the Spoliation Brief Contain “Confidential Information” as Defined by the Protective Order

On November 5, 2004, this Court entered a Protective Order (the “Protective Order”) governing this action. Dkt. No. 193. The Protective Order provides that all pleadings and briefs must be filed publicly. Protective Order, ¶22. It further provides that a party “filing a document which contains Confidential Information may redact only the Confidential Information.” *Id.*

The Protective Order narrowly defines Confidential Information as follows:

Confidential Information: To the extent such information 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, confidential information is defined as : (1) the personal financial information of non-parties; (2) the personal financial information of Household’s shareholders; (3) Household’s proprietary software; (4) customer lists and internal research and data regarding consumer borrowing and payment habits; (5) 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; (6) proprietary information regarding securitization of loan pools; (7) non-public financial information of Household and/or its employees; (8) employee compensation plans; (9) Household personnel

² The vast majority of exhibits filed concurrently with the Spoliation Brief contain no confidential information whatsoever. Plaintiffs do not oppose redacting portions of documents that contain private customer or account information, but oppose the filing of the entire document under seal.

records, including employee disciplinary records; (10) documents or other information protected under the Illinois Accountants Privilege; (11) audit workpapers generated by Andersen in connection with its audits of the year-end financial statements of Household International, Inc.; (12) internal proprietary material of Andersen reflecting or disclosing audit processes or methodology for the conduct of audits or the disclosure of the results of such a process, including, but not limited to audit manuals; and (13) the personal and non-public financial information of Andersen and/or its various members/employees. In the event any party believes that additional categories should be protected from disclosure, they shall file an appropriate motion in accordance with Magistrate Judge Nolan's September 28, 2004 Order.

Protective Order, ¶3.³

On May 11, 2006, the Court modified the Protective Order, clarifying that the Protective Order governs and applies to non-public documents and information released by the Office of the Comptroller of the Currency, Office of Thrift Supervision ("OTS") and Federal Deposit Insurance Corporation for use in this action. *See* May 11, 2006 Order at 2. On October 17, 2006, the Court modified the Protective Order again, confirming that the confidentiality of non-public documents and information produced by various state regulatory agencies cannot be challenged. *See* October 17, 2006 Order at 2.

The Spoliation Brief refers to and discusses exhibits that defendants have designated as confidential under the Protective Order. Accordingly, in compliance with Local Rule 26.2 and this Court's orders, plaintiffs have filed a redacted version of their Spoliation Brief. The only information plaintiffs believe should be redacted relates to personal customer information. While the Spoliation Brief does contain facts related to state regulatory investigations, the very fact that the investigations took place is not Confidential Information under the October 17, 2006 modification on to the Protective Order. Even if such facts were protected at one time, a discussion of such facts and what the state regulatory investigations revealed over six years ago, is long since stale.

As discussed below, the vast majority of the information referred to in the Spoliation Brief is not Confidential Information that warrants protection. A significant portion of the Spoliation Brief concerns various document destruction campaigns undertaken by defendants during the Class Period. Spoliation of evidence is not a protected category of information under the Court's orders. Other information designated confidential by defendants concerns publicly filed complaints alleging

³ Only Exhibits 47, 60 and 69 fall into either category of information for which the Court modified the Protective Order. Plaintiffs do not challenge the confidentiality of these Exhibits.

that Household International, Inc. (“Household” or the “Company”) engaged in predatory lending practices. Publicly filed complaints are not confidential and are not protected from disclosure. Finally, a third category of miscellaneous documents that could arguably fall within the ambit of the Protective Order no longer warrants protection due to passage of time.

Significantly, the information contained in the Spoliation Brief derived from the exhibits is related to facts – what defendants knew and when they knew it – or what defendants did and when they did it. *See, e.g., Aug v. Nat’l R.R. Passenger Corp.*, 425 F. Supp. 946, 952 (D.D.C. 1976) (The court denied privilege based on deliberative process claim and required that “[defendant] must make available to the plaintiff *purely factual material* that is not inextricably intertwined with the deliberative processes of the Board. This would include but would not be limited to the following: date and time of meeting, location, those present, presiding officers, etc.” In instances, where the documents contain information relating to the substance of those meetings, such information is now stale and not worthy of protection. As discussed in detail *infra*, because the exhibits themselves do not warrant protection as confidential documents, it follows that the facts derived from those exhibits should similarly not be protected. Even if a portion of an exhibit warrants confidential treatment, the discussion of facts extracted from those exhibits does not warrant such protection. Therefore, the Spoliation Brief should not be filed under seal.

B. The Majority of Exhibits Filed in Support of Plaintiffs’ Motion Do Not Contain Any “Confidential Information” and Should Be Filed Publicly⁴

1. Certain Exhibits Are Not Confidential Because They Relate to Defendants’ Numerous Document Destruction Campaigns

Exhibits 30, 41-44, 50-55, 57-59, 72-73 and 82 refer to the destruction of documents at Household. These exhibits do not contain any Confidential Information. Defendants concede this, as is apparent from their prior agreement to de-designate HHS-E 0012555.0001, an e-mail chain from Chief Financial Officer (“CFO”) Dave Schoenholz which instructs Household’s General Counsel Ken Robin and Household’s Chief Information Officer Ken Harvey to destroy documents. Other documents listed below relate to the same issue – the destruction of documents. Therefore, each of the following exhibits should be unrestricted and filed in its entirety:

⁴ These Exhibits that should be filed publicly are as follows: 1-2, 4-7, 9-16, 21, 23, 25, 27-28, 30-31, 33, 40-45, 50-55, 57-59, 67, 72-73, 78, 82, 87-91, 101 and 102.

- Exhibit 30 is a memo regarding Andrew Kahr sent from David A. Schoenholz dated March 12, 2001, stamped received by Kenneth H. Robin April 24 and 25, 2001. In the memo, defendant Schoenholz discusses publicly available information about Providian Finance Corporation (“Providian”), Kahr’s former company. He goes on to discuss Kahr’s work at Household and concludes that documents created by Kahr should be destroyed.
- Exhibits 41 and 42 are bulletins sent to all Household Finance Corporation (“HFC”) sales offices and Household Finance Corporation Processing Services (“HFCPS”) management from Rob O’Han, dated May 24, 2001. These bulletins order the destruction of documents.
- Exhibits 43 and 44 consist of Policy & Compliance cover sheets regarding a bulletin about sales practices dated May 24, 2001 sent the same day to all HFC sales offices and HFCPS management by O’Han and to all Beneficial Finance Corporation (“BFC”) sales offices and management by Mike Eden and Ned Hennigan. These cover sheets and memoranda authorize and order the destruction of documents.
- Exhibit 50 is a series of e-mails among Ned Hennigan, Rob O’Han and Mike Eden, dated June 18, 2001, regarding the a responsible lending summit. These e-mails refer to the destruction of documents.
- Exhibit 51 is a fax from Rob O’Han to Tom Detelich, dated June 18, 2001 and consists of separate printed e-mails to Rob O’Han from Craig Castelein, Mike Pinto, Dennis Hueman, Ronald Davis and Ronald Ferrari, respectively. The faxed e-mails relate to the destruction of documents.
- Exhibit 52 is a collection of e-mails to defendant Gary Gilmer, Chief Executive Officer (“CEO”) of Household’s Consumer Lending Business unit, and Brenda Clayton from various individuals in response to an e-mail from Gary Gilmer regarding unauthorized materials, dates ranging from June 15, 2001 to June 18, 2001. These e-mails contain an order to destroy documents and/or refer to the destruction of documents.
- Exhibit 53 is an e-mail from Dennis Heuman to Gary Gilmer regarding unauthorized materials. This e-mail refers to the destruction of documents.
- Exhibit 54 is an e-mail regarding the a responsible lending summit held by Household on June 20, 2001 to Thomas Detelich and Teri Molloy, from Ned M. Hennigan. The e-mail describes a presentation made and refers to the destruction of documents. Exhibit 54 also includes an e-mail chain regarding responsible lending originating from Robert P. O’Han on June 28, 2001, sent to Craig Castelein, Ronald Ferrari, Paul Pichoske, Ronald Davis, Dennis Hueman, Mike Pinto and Lisa Sodeika, forwarded to Thomas M. Detelich on June 28, 2001, attaching Ned Hennigan’s Power Point presentation regarding lending practices presented at a responsible lending summit. The presentation contains some summary information regarding complaints and refers to the purge of sales materials.
- Exhibit 56 is a collection of e-mails to Ned Hennigan and/or Brenda Clayton regarding conference calls or the responsible lending summit, dates ranging from June 22, 2001 to June 26, 2001. These e-mails refer to the destruction of documents.
- Exhibit 57 is an e-mail to Melissa Rutland Drury and others from her District Sales Manager Beth Hansgen dated July 5, 2001. This e-mail orders the destruction of electronic documents.

- Exhibit 58 is a collection of e-mails regarding the purge of unauthorized sales materials sent to Brenda Clayton from various recipients, dates ranging from July 2, 2001 to July 13, 2001 . These e-mails refer to the destruction of documents.
- Exhibit 59 is an e-mail regarding the responsible lending summit to Ned Hennigan, Mike Eden, Robert O'Han, Ronald Ferrari, Ronald Davis, Paul Pichoske, Craig Castelein, Dennis Hueman, Steve Nesbitt, Robin Allcock, Lisa Sodeika, Paul Creatura, Kathleen Curtin, Kenneth Walker and others, copying Gary Gilmer, from Tom Detelich, dated June 22, 2001, attaching a chart of decisions made at the responsible lending summit. The chart refers to the destruction of documents.
- Exhibit 72 is a bulletin regarding the use of sales forms to all HFC sales employees, from Rob O'Han dated April 2, 2002. This e-mail gives explicit instructions regarding the destruction of documents.
- Exhibit 73 is an e-mail to all BFC sales offices and management from Mike Eden and Ned Hennigan, BFC Sales, regarding the elimination of word processing software from branch computers, April 16, 2002. This e-mail orders the destruction of electronic information and documents.
- Exhibit 82 is an e-mail regarding Andrew Kahr's memos from Mark Leopold to Dave Schoenholz, copying Kenneth Robin and Ken Harvey, dated July 1, 2002. This e-mail refers to the destruction of documents.

2. Memos from Consultant Andrew Kahr Are Non-Confidential

Exhibits 7, 9-13, 15 and 28 are memos from Andrew Kahr, a controversial consultant retained by defendants to generate initiatives to stimulate growth at Household. Spoliation Brief at 4-5, 45-54. As discussed in the Spoliation Brief, Kahr proposed ten specific initiatives and communicated his aggressive approach to implementing those initiatives through memos to senior management. *Id.* at 47. The information contained in Kahr's memos does not fall within any category of protected information under the Protective Order. Thus, these memos should be filed publicly in their entirety:

- Exhibit 7 is a memo from Andrew Kahr to Joe Vozar regarding changing HFC mortgage forms to impose high prepayment penalties, dated March 20, 1999.
- Exhibit 9 is a memo from Andrew Kahr to Dick Schaffer, et al. regarding Kahr's seventh proposed initiative, dated May 8, 1999.
- Exhibit 10 is a memo from Andrew Kahr to Joe Vozar, et al. regarding late fees and communications, dated May 28, 1999.
- Exhibit 11 is a memo from Andrew Kahr to Gary Gilmer, et al. regarding customer statements, dated May 28, 1999.
- Exhibit 12 is a memo from Andrew Kahr to Dick Schaffer, et al. regarding Kahr's seventh proposed initiative, dated May 30, 1999.
- Exhibit 13 is a memo from Andrew Kahr to Vineet Saxena, Dave Schoenholz and others regarding contract language for alternative mortgages.

- Exhibit 15 is a memo from Andrew Kahr to Dave Schoenholz regarding revenue recognition for prepayment penalties, dated February 2, 2000.
- Exhibit 28 is a memo from Andrew Kahr to Paul Makowski copied to Dave Schoenholz regarding obtaining credit reports for loss mitigation purposes, dated February 19, 2001.

3. Exhibits 16 and 54 Concerning Defendants' So-Called "Responsible Lending" Efforts Are Not Confidential

Exhibits 16 and 54 relate to Household's self-described reputation as such a "responsible lender." Given that defendants were publicly promoting Household as a responsible lender both during and after the Class Period, there is no justifiable reason for maintaining the confidentiality of documents related to their so-called responsible lending measures, especially in light of the fact that what defendants meant by "responsible lending" was to destroy any evidence that would threaten their self-proclaimed reputation. Therefore, each of the following exhibits should be unrestricted and filed in its entirety:

- Exhibit 16 is a memo to Gary Gilmer, Dave Schoenholz, Larry Bangs and Janet Burak, from Paul Creatura regarding testimony on predatory lending given by Ellen Seidman, dated May 25, 2000. The memo attaches the May 24, 2000 testimony of Ellen Seidman, Director of the OTS, before the House of Representatives Committee on Banking and Financial Services. The brief memo suggests that the testimony is provided in preparation for a meeting among the recipients.
- Exhibit 54 is an e-mail to Robert O'Han from Ned Hennigan (Mike Eden and Brenda Clayton copied) regarding an agenda for the responsible lending summit, dated June 18, 2001. Exhibit 54 also includes an e-mail to Thomas Detelich, Brenda Clayton, Teri Molloy and Dana Williams, from Ned Hennigan that contains an outline of a presentation to be given at the responsible lending summit. Additionally, Exhibit 54 contains a printout of a slideshow presentation regarding responsible lending practices.

4. Exhibits Are Not Confidential Where They Do Not Contain Any Information Which Could Arguably Fall Within the Ambit of the Protective Order

Exhibits 1-2, 4-6, 14, 21, 23, 25, 27, 31, 33, 38, 40, 45, 67, 78, 101 and 102 do not contain any information that could fall under any of the categories of information that qualifies for confidential treatment under the Protective Order. Therefore, each of the following exhibits should be unrestricted and filed in its entirety:

- Exhibit 1 is a compilation of template forms, including loan proposals, solicitation letters, etc. These documents do not contain any personal customer information, but are merely forms.
- Exhibit 2 is a chronology of events leading up to a settlement agreement between Household and the multistate group of Attorneys General ("AGs"). The chronology consists entirely of dates and facts that are not, and should not be considered, confidential.

- Exhibit 4 is a memo to Bill Aldinger, Dave Schoenholz, Joe Vozar, et al., from Gary Gilmer regarding initiatives to accelerate growth of Household's U.S. Consumer Finance division, dated January 27, 1999. The memo announces the retention of consultant Andrew Kahr and attaches a list of ten of Kahr's initiatives for potential implementation.
- Exhibit 5 is a preliminary draft agenda for a February Senior Management meeting, distributed to Gary Gilmer, Ken Robin, Larry Bangs, Colin Kelly and Bobby Mehta, from David Schoenholz, dated January 29, 1999. The agenda notes that Kahr will speak at the meeting along with defendant Gilmer.
- Exhibit 6 is a memo to Bill Aldinger, Dave Schoenholz, Gary Gilmer, Ken Robin and others, from Randy Raup, regarding the minutes of February 1999 Senior Management Meeting, dated March 18, 1999. The meeting minutes note what was discussed at the meeting and who is responsible for heading the implementation of Andrew Kahr's initiatives.
- Exhibit 14 is an e-mail chain which discusses the introduction of a closed-end alternative mortgage product as well as the impact the program would have on penalties and fees.
- Exhibit 21 is a slideshow presentation created by PricewaterhouseCoopers LLP, Correspondent Lending Roundtable regarding risks raised by predatory lending, dated October 31, 2000. The printed version of a slideshow presentation noted what predatory lending refers to, explained why defendants should be concerned about predatory lending, detailed the risks regarding predatory lending and then outlined what Household should do regarding the risks.
- Exhibit 23 is a memo from Larry Bangs to the Responsible Lending Committee regarding a meeting with ACORN, dated January 5, 2001. The memo was distributed to Kay Curtin, Ken Robin, Lisa Sodeika, Janet Burak and two individuals from a public relations firm, among others, and copied to defendants Aldinger, Gilmer and Schoenholz. In the memo, Larry Bangs summarizes a meeting with two individuals from Association of Community Organizations for Reform Now ("ACORN").
- Exhibit 25 is a compilation of January 2001 communications between Household and the ACORN. This exhibit includes a letter to Mike Shea, Executive Director-ACORN Housing, and Lisa Donner, Campaign Coordinator-ACORN Housing, from Larry Bangs, Vice Chairman of Household International (Gary Gilmer and Paul Creatura blind copied) regarding a summary of issues discussed at January 24, 2001 meeting, dated January 30, 2001. Following the letter is: (1) an agenda for a January 24, 2001 meeting between ACORN and Household; (2) a January 12, 2001 e-mail from Larry Bangs to the Responsible Lending Committee regarding plans for a meeting with ACORN; and (3) a January 8, 2001 fax from ACORN to Household detailing a list of nine of ACORN's concerns regarding Household's lending practices.
- Exhibit 27 is an e-mail from Bruce McNair to Laura Williams and presentation regarding pay right rewards, dated February 7, 2001.
- Exhibit 31 is a memo to the Board of Directors from Bill Aldinger dated March 15, 2001. The memo briefly mentions the names of two articles and attaches a news article from the *American Banker*, "Household Brings Big Guns into Image War" which is publicly available.

- Exhibit 33 is an e-mail chain originating with Lisa Sodeika regarding the FTC complaints against Citi/Associates, dated March 29, 2001. The original e-mail went to a large distribution group including Joe Vozar, Kathleen Curtin, Tom Detelich and Paul Creatura. It was then forwarded to several other recipients by Donna Taillon, Secretary to Gary Gilmer and Lisa Sodeika. In the e-mail, Lisa notes that a meeting is being set up to review Household's practices against the allegations of the FTC/Citi complaint.
- Exhibit 38 is a memo to Bill Aldinger, Dave Schoenholz, Ken Robin, Lisa Sodeika, Craig Stroom, Larry Bangs, et al., from Gary Gilmer regarding his thoughts on certain predatory lending events, dated May 17, 2001. In the memos defendant Gilmer expresses his concerns regarding predatory lending publicity and ACORN specifically. He goes on to set forth strategies for dealing with ACORN and the potential consequences of certain strategies.
- Exhibit 40 is an e-mail from Rob O'Han to Mike Pinto on May 22, 2001 regarding unauthorized HOLPs, a fax from Ken Walker to Rob O'Han with handwritten notes and a fax from Mike Pinto, DGM for the Mid-Atlantic HFC District, attaching equivalent rate worksheets, dated May 22, 2001.
- Exhibit 45 is an e-mail chain originating from Philip Swetz to Paul Pichoske which is then forwarded to Robert O'Han regarding effective rate, dated May 24, 2001. The e-mail discusses a scenario used to present customers with an equivalent interest rate.
- Exhibit 67 is a letter to Tom Schneider, Director, from Chuck Cross, Supervisor, DCS Investigation/Enforcement, Department of Financial Institutions regarding document subpoena, dated February 22, 2002. The subpoena seeking information regarding specific complaints is attached to the letter.
- Exhibit 78 is an agenda for a meeting between Household and the Washington State Department of Finance ("DFI") on May 23, 2002 and a list of material issues to be addressed in the Washington state enforcement action.
- Exhibit 101 consists of excerpts from defendants' privilege logs produced to plaintiffs in this case. The privilege log excerpts describe documents that defendants claim are privileged but the descriptions of those documents do not contain any confidential information.
- Exhibit 102 is an e-mail from Walt Rybak to various recipients regarding file retention in light of class actions filed by ACORN, dated August 7, 2002. The e-mail does not contain any information that could be properly deemed confidential.

5. Non-Confidential Excerpts from Deposition Testimony

Exhibits 87-91 are excerpts of deposition testimony transcripts that defendants have blanketly designated "Confidential." This is improper and plaintiffs have consistently objected to this practice throughout the litigation. The Protective Order requires defendants to make good faith confidentiality designations of only those portions of the transcript that warrant protection. The excerpts quoted and cited by plaintiffs do not contain any Confidential Information. Therefore, references and quotations from these deposition transcripts should not be redacted from the Spoliation Brief, and the exhibits should be filed publicly:

- Exhibit 87 is an excerpt from the December 12, 2005 deposition transcript of Christine Cunningham regarding who at Household was responsible for issuing document retention instructions.
- Exhibit 88 is an excerpt from the June 22, 2006 deposition transcript of Ned Hennigan regarding the presentation he made at the responsible lending summit.
- Exhibit 89 is an excerpt from the December 7, 2006 deposition transcript of Kenneth Robin regarding his role in the retention of documents at Household and the retention of Andrew Kahr.
- Exhibit 90 is an excerpt from the December 14, 2006 deposition transcript of Kenneth Walker regarding the use of effective rate work sheets as sales tools.
- Exhibit 91 is an excerpt from the January 25, 2007 deposition transcript of Kathleen Curtin regarding her role in document retention decisions at Household.

C. Certain Exhibits in Support of Plaintiffs' Motion Contain Information Which Is Not Confidential or Should No Longer Be Considered Confidential Due to Staleness

Exhibits 3, 8, 19, 24, 26, 34-35, 62, 92 and 100 contain information that could arguably fit within a category of information designated for confidential treatment by the Protective Order. However, even if the information contained in the exhibits listed below was at one time worthy of treatment as Confidential Information, it is no longer worthy of such confidential treatment due to staleness. *See In re Bank One Sec. Litig.*, 222 F.R.D. 582, 592 (N.D. Ill. 2004) (granting motion to unseal documents, noting that “previously sensitive and confidential information can become stale with time”); *Cody Zeigler v. United States Dep’t of Labor*, No. C2-00-134, 2002 U.S. Dist. LEXIS 19059, at *6 (S.D. Ohio Sept. 3, 2002) (“The passage of time can often mitigate the potential for harm that might otherwise have resulted from the release of commercial information.”); *Faulman v. Sec. Mut. Fin. Life Ins. Co.*, No. 04-5083 (AET), 2006 U.S. Dist. LEXIS 35875, at *8 (D.N.J. May 31, 2006) (“The rationale for protecting materials from disclosure is undermined when those materials contain information that is stale.”). Exhibits 3, 8, 19, 24, 26, 34-35, 62, 92 and 100 either contain no Confidential Information or contain stale information which does not warrant protection, and should therefore be filed as unrestricted documents:

- Exhibit 3 is a memo regarding December 1999 to Tom Detelich from Robert O’Han, dated January 11, 1999. The memo contains information related to growth, production and other measures, which arguably falls under the category of “non-public financial information of Household” in the Protective Order. Protective Order, ¶3. However, information related to growth or financial information from 1999 is now nine years old. The information contained in the memo is now stale and making the information public now would not prejudice defendants.

- Exhibit 8 consists of excerpts from the BSM Administration Guide, May 1999. The fact that the excerpts come from a Household manual implies that this exhibit arguably fits within the category of “guidebooks, manuals, policies, and/or training materials regarding underwriting procedures, employee training” under the Protective Order. *Id.* However, the minimal excerpts plaintiffs cite refer only to a description of the rationale for the training.
- Exhibit 19 is a memo regarding predatory lending communications plan to Household, Larry Bangs, Gary Gilmer, Craig Strem and Denis O’Toole, from Michael Deaver, Ken Trantowski, Nick Kalm and Megan Hayden, dated September 11, 2000. This memo from Edelman, a public relations firm, makes numerous recommendations as to how Household should handle communications surrounding predatory lending issues. The memo also contains information related to growth, production and other measures, which arguably falls under the category of “non-public financial information of Household” in the Protective Order. *Id.* However, the recommendations made and the information included in the memo are over eight years old. Importantly, the recommendations come from a public relations firm and were either implemented by Household or they were not. The information contained in the memo is now stale and making the information public now would not prejudice defendants.
- Exhibit 24 is a heavily redacted version of Household’s General Ledger (produced to plaintiffs in redacted form), for fiscal years 1999-2001. This exhibit relates solely to the compensation paid to Andrew Kahr from 1999 to 2001. While arguably this information includes “personal financial information of non-parties,” Andrew Kahr was a highly controversial public figure at the time of his employment by Household. Information related to the amount he was paid by Household is in the public interest and besides, such information is over eight years old and now stale.
- Exhibit 26 is a Household Sales Visit Form auditing a branch in early 2001. Exhibit 26 contains an evaluation of performance which contains some quarterly performance numbers for one branch in late 2000. The memo contains information related to growth, production and other measures, which arguably falls under the category of “non-public financial information of Household” in the Protective Order. *Id.* It does not contain any otherwise Confidential Information, and any financial or performance information is stale such that its disclosure will not harm defendants.
- Exhibits 34 and 35 are Household Periodic Audit Forms, regarding a branch audit conducted in April 2001 and another in March-April 2001. These forms contain small amounts of information related to cash on hand in the branches which arguably fits within the category of “non-public financial information of Household” in the Protective Order. However, references to such small amounts of cash held in individual branches over eight years ago are stale and disclosure of this information will not harm defendants.⁵ In addition, the forms

⁵ See *Bank One*, 222 F.R.D. at 592 (granting motion to unseal documents noting that “previously sensitive and confidential information can become stale with time”); *Lee v. FDIC*, 923 F. Supp. 451, 455 (S.D.N.Y. 1996) (noting that by 1996 “the financial information in question is given for the 1994 year and any potential detriment which could be caused by its disclosure would seem likely to have mitigated with the passage of time”).

were used over eight years ago to conduct routine audits of defendants' branches and are now stale. Disclosure of how defendants conducted their branch audits in 2001 poses no threat of commercial injury now.

- Exhibit 62 consists of excerpts from Household's 2001 Information and Records Management Manual which includes the Table of Contents, and excerpt of the Information and Records Management Manual. The fact that the excerpts come from a Household manual implies that this exhibit arguably fits within the category of "guidebooks, manuals, policies, and/or training materials regarding underwriting procedures, employee training" under the Protective Order. Protective Order, ¶3. However, the relevant excerpts of the manual deal exclusively with the fact that defendants had a document retention policy and what that policy was with respect to litigation.
- Exhibit 92 is an excerpt from the deposition transcript of David Schoenholz (Volume 1) regarding the retention of Andrew Kahr and the compensation Kahr received. As noted above, this information is in the public interest and became stale long ago.
- Exhibit 100 is a timeline of events related to state regulatory and AG investigations. The timeline is merely a list of facts and dates. While information produced by the various state regulatory agencies warrants confidential treatment provided by the Protective Order, the bare facts that defendants were subject to particular subpoenas or requests from those regulatory agencies are not Confidential Information and should not be shielded from the public.

D. Certain Exhibits in Support of Plaintiffs' Motion Contain Some Confidential Information that Should Be Redacted for Public Filing⁶

Documents in this category should be considered non-confidential with the exception of small amounts of detailed customer or account information which should be redacted so that the remainder of the non-confidential information can be publicly filed:

- Exhibit 17 is a letter faxed to Household Realty Corp. and Household Finance Corp. III on July 24, 2000 from Richard Davis III regarding customers by the last name of Chenvert, dated July 24, 2000. The faxed letter refers to account and loan details for the Chenverts. References to such identifying customer information should be redacted, but the remainder of the exhibit should be filed publicly.
- Exhibit 20 is an e-mail chain regarding ACORN complaints among Amy Moss, Dennis Hueman, Robert O'Han and Ron Bruckert, forwarded to Kathleen Curtin and Thomas Detelich, dated September 13 and 14, 2000. The e-mails concern potential litigation against HFC and contain a small amount of customer information. The portions of Exhibit 20 that refer to identifying customer information should be redacted, but the exhibit should not be filed under seal.
- Exhibit 22 is an e-mail and attachment regarding November 21, 2000 ACORN protests to Mike C. Eden, Ned M. Hennigan and Robert P. O'Han, copying Thomas M. Detelich and

⁶ These Exhibits include 17, 20, 22, 32, 37, 39, 48-49, 61, 63, 74, 80, 103 and 104.

Kathleen K. Curtin, from Lisa M. Sodeika, dated November 24, 2000. Exhibit 22 contains facts related to ACORN's issues with Household that defendants were aware of in November 2000, prior to the destruction of documents complained of in the Spoliation Brief. Those facts are not Confidential Information so as to warrant restricted access to the document. While the attachment to Ms. Sodeika's e-mail contains some customer information, the majority of the information contained in Exhibit 22 is not Confidential Information. Therefore, the portions of Exhibit 22 that refer to identifying customer information should be redacted, but the exhibit should not be filed under seal.

- Exhibit 32 is a letter from Tom Schneider to Chuck Cross of the Washington DFI regarding a complaint by customers by the last name of Johnston, dated March 19, 2001. The letter addresses concerns raised by the Washington DFI that were later made publicly available in the Washington DFI Report (Exhibit 75 to the Declaration of Azra Z. Mehdi ("Mehdi Decl."), filed herewith). The letter does contain customer account information that should be redacted. The remainder of the letter should be filed publicly.
- Exhibit 37 is an e-mail chain regarding Washington State among Lisa Sodeika, Robin Allcock, Carla Madura, Terry Price, Denis O'Toole, Tom Echols and others, dated May 21, and 22, 2001, attaching a letter from Chuck Cross at the Washington DFI, dated May 17, 2001. Portions of the letter from Chuck Cross contain customer names. The remainder of the letter and the e-mail do not contain Confidential Information. The customer names should be redacted, but the exhibit should not be filed under seal.
- Exhibit 39 is a fax from Tom Schneider to Craig Castelein regarding specific customer complaints raised by the Washington DFI. The Exhibit contains customer information that should be redacted, but the remainder of the Exhibit should be filed publicly.
- Exhibit 48 is a memo regarding March and April 2001 AG, Better Business Bureau and regulatory complaints to Robin Allcock and Tom Schneider, dated May 25, 2001. This memo contains a summary and analysis of various customer complaints. A portion of the memo contains customer names. The customer names should be redacted, but the entire exhibit should not be filed under seal.
- Exhibit 49 is a completed HOLP prepared for a customer along with seven unused sales forms referring to the bi-weekly payment plan and effective interest rates. Only the first page of Exhibit 49 contains any customer information which should be redacted, while the rest of the exhibit should be filed publicly.
- Exhibit 61 is an e-mail from Tim Joselyn to Lisa Sodeika regarding HOLPs, dated October 17, 2001. The Exhibit includes completed HOLPs with handwritten notes and an e-mail regarding minutes from a meeting regarding the redesign of the HOLP. The completed HOLPs contain customer information that should be redacted. The remainder of the exhibit should be filed publicly.
- Exhibit 63 is compilation of communications from 2001 regarding complaints from a customer by the last name of Ortega. The compilation refers to account and loan details for customer Ortega. References to such identifying customer information should be redacted, but the remainder of the exhibit should be filed publicly.
- Exhibit 74 is a fax from Shehad Mohammed to Megan Hayden regarding customer Johnston's complaint and includes an e-mail chain among Craig Castelein, Thomas Detelich,

Carla Madura and Marc Giacobelli, dated January 9, 2001 through January 30, 2001. Exhibit 74 discusses negotiations over Mr. Johnston's loan accounts after he complained. The exhibit contains identifying information related to Mr. Johnson and his accounts with defendant. Those portions of Exhibit 74 that refer to identifying customer information should be redacted, but the exhibit should not be filed under seal.

- Exhibit 80 is a Notice of Complaint Filed sent to Household by the Arizona Attorney General on May 31, 2002. Portions of the exhibit contain customer information that should be redacted, but the remainder of the exhibit should be filed publicly.
- The exhibits to the Declaration of Chantel Dorsey, Mehdi Decl., Ex. 97, are dated materials relating to Household's lending practices. These should not be filed under seal.
- The exhibits to the Declaration of Robert A. Feifer, Mehdi Decl., Ex. 98, are periodic audit forms which are dated and not confidential. These should not be filed under seal.
- Exhibit 103 is a letter from Jordan Ash ACORN to Scott Borchert of the Minnesota Department of Commerce regarding complaints of several customers and Household's lending practices. Portions of the exhibit contain customer information that should be redacted, but the remainder of the exhibit should be filed publicly.
- Exhibit 104 is an e-mail from Mike Shea of ACORN to Elizabeth Schaick for delivery to Larry Bangs, regarding a meeting between ACORN and HFC, dated June 11, 2001. Attached to the e-mail is a letter, a draft meeting agenda and draft Memo of Understanding between ACORN and Household. As outlined in the Spoliation Brief in §III.A.1., communications with ACORN put defendants on notice of their duty to preserve relevant evidence and this letter came within days of defendants' June 2001 orders to destroy relevant evidence. *See* Spoliation Brf. at 23-24.

E. Exhibits 47, 60 and 69 in Support of Plaintiffs' Motion Are Confidential Under the Protective Order or Magistrate Judge Nolan's October 17, 2006 Order Regarding State Regulatory Agencies

Exhibits 47, 60 and 69 are documents from state regulatory agencies. It is unclear whether these documents are confidential under Magistrate Judge Nolan's October 17, 2006 Order. However, erring on the side of caution, plaintiffs respectfully request that Exhibits 47, 60 and 69 be filed under seal.

- Exhibit 47 is a letter from the Minnesota Department of Commerce to Tom Schneider, Director of Policy and Compliance regarding complaints by ACORN, dated May 25, 2001.
- Exhibit 60 is a letter to Rose Patenaude of Household from Daniel Gallatin, Commerce Investigator of the Minnesota Department of Commerce regarding the Department's Subpoena Duces Tecum, dated September 26, 2001.
- Exhibit 69 is a Subpoena Duces Tecum sent to Kathleen Curtin from Bonnie Polta, Enforcement Supervisor, Department of Commerce, State of Minnesota, dated March 13, 2002.

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 designating documents to be filed under seal.” *See* L.R. 26.2 Committee Comments. Accordingly, plaintiffs have filed this motion in compliance with L.R. 26.2, requesting that Exhibits 47, 60 and 69 be filed under seal, and that the Spoliation Brief to be filed either entirely unredacted or only redact non-public customer information.

DATED: November 26, 2008

Respectfully submitted,

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