

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, )

Plaintiff, )

v. )

HOUSEHOLD INTERNATIONAL, INC., )  
et al., )

Defendants. )

DOCKETED  
JAN 11 2005

FILED

05 JAN 10 PM 2:26

U.S. DISTRICT COURT

No. 02 C 5893

Judge Ronald A. Guzman  
Magistrate Judge Nan R. Nolan

NOTICE OF FILING

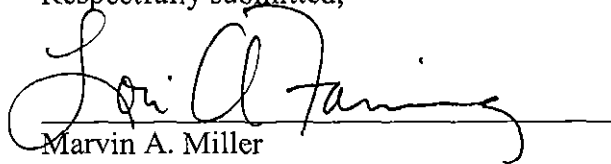
To: Counsel on the Attached Service List

PLEASE TAKE NOTICE that on Monday, January 10, 2005, we filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Chicago, Illinois, the *Lead Plaintiffs' Opposition to Household Defendants' Motion to Amend the Protective Order*, a copy of which is hereby served upon you.

Dated: January 10, 2005

Respectfully submitted,

By:



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**CERTIFICATE OF SERVICE**

I, Lori A. Fanning, one of the attorneys for plaintiffs, hereby certify that I caused the *Lead Plaintiffs' Opposition to Household Defendants' Motion to Amend the Protective Order* to be served upon all counsel on the attached service list by e-mailing a copy in pdf format this 10<sup>th</sup> day of January, 2005, except the following which was served by facsimile transmission:

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

U.S. DISTRICT COURT  
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02-CV-5893

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
	Magistrate Judge Nan R. Nolan
vs. )	
HOUSEHOLD INTERNATIONAL, INC., et )	
al., )	
Defendants. )	

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**LEAD PLAINTIFFS' OPPOSITION TO  
HOUSEHOLD DEFENDANTS' MOTION TO AMEND THE PROTECTIVE ORDER**

Lead plaintiffs, the Glickenhau Institutional Group, submit this opposition to the Motion of Household Defendants to Amend the Protective Order ("Motion") to add a new category: Household organizational charts containing non-public employee information.<sup>1</sup> In support of their opposition, lead plaintiffs state as follows:

**I. INTRODUCTION**

The Household Defendants' Motion must be denied for the following reasons, each alone sufficient to support the denial:

- The organizational charts for which the Household Defendants seek protection do not constitute trade secrets or other confidential material.
- The Household Defendants failed to establish good cause for the amendment of the Protective Order.

<sup>1</sup> Household Defendants include Household International, Inc., Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar.

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- Lead plaintiffs' interest in freely using Household's organizational charts to prosecute lead plaintiffs' case outweighs any interest the Household Defendants have in maintaining the confidentiality of the charts.

## II. PROCEDURAL BACKGROUND

On May 17, 2004, lead plaintiffs served their First Request for Production of Documents on the Household Defendants. One of the items requested was "all organizational charts and employee directories." Shortly thereafter, on June 10, 2004, the Household Defendants circulated an initial draft Stipulated Protective Order and the parties initiated discussions on a mutually agreeable protective order. After numerous meet and confer sessions and a directive by the Court ordering a joint submission regarding disputed provisions in the protective order, this Court issued an Order relating to the provisions disputed by the parties on September 28, 2004. The Household Defendants as well as defendant Arthur Andersen ("Andersen") subsequently proposed several additional categories of protected documents in a Motion to Modify Protective Order on October 25, 2004. Lead plaintiffs did not oppose this motion. The Court entered a final Protective Order on November 5, 2004.

At no time during the five-month long negotiation over the terms of the Protective Order did the Household Defendants propose that organizational charts be included as a category of protected documents, despite lead plaintiffs' repeated requests for the production of this material.<sup>2</sup> The Household Defendants only indicated their desire to designate Household organizational charts as "confidential" during the Fed. R. Civ. P. 30(b)(6) deposition of Steve Matasek on November 12,

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<sup>2</sup> Lead plaintiffs requested organizational charts and employee directories through Request No. 8 of Plaintiffs' First Request for Production of Documents to Household Defendants served on May 17, 2004. The Household Defendants continually delayed production and then produced only minimal documents in a piecemeal fashion. Lead plaintiffs reiterated to the Household Defendants lead plaintiffs' immediate need for a complete set of these documents countless times, including during meet and confers that took place on August 10, August 12, October 20, October 21, and November 2, 2004, and through letters dated August 5, August 13, and August 27, 2004. To date, the Household Defendants have not fully responded to this document request.

2004. Further, it was not until December 6, 2004 that the Household Defendants proposed to amend the Protective Order to add Household organizational charts as an additional category. Lead plaintiffs outlined their opposition to adding this category to the Protective Order in a December 13, 2004 letter.

On January 3, 2005, the Household Defendants moved this Court to amend the Protective Order to include the category: "Household organizational charts containing non-public employee information." Memorandum of Law of Household Defendants in Support of Their Motion to Amend the Protective Order ("Defs' Mem.") at 1.

### **III. ARGUMENT**

#### **A. Household's Organizational Charts Do Not Merit Confidential Treatment**

The Household Defendants' Motion must be denied because Household's organizational charts do not constitute trade secrets or other confidential material. Indeed, the Household Defendants cite to no case holding that corporate organizational charts merit the protection that they seek here. Instead, courts have explicitly found that information such as that contained in Household's organizational charts does not constitute trade secret or other confidential information. *See, e.g., CNA Fin. Corp. v. Local 743 of Int'l Bhd. of Teamsters Chauffeurs, Warehousemen & Helpers of Am.*, 515 F. Supp. 942, 946 (N.D. Ill. 1981) (list composed of "employees' names, their home addresses, and other confidential information" is not a trade secret); *Sterbens v. Sound Shore Med. Ctr. of Westchester*, No. 01 Civ. 5980 (SAS) (KNF), 2001 U.S. Dist. LEXIS 19987 (S.D.N.Y. Dec. 4, 2001) (no showing was made that tables of organization and "position control documents," consisting of administrative positions, occupants of those positions and number of hours associated with each position contained valuable commercial information), attached hereto as Exhibit A.

In support of their Motion, the Household Defendants assert that their organizational charts "reveal the areas of responsibility of various Household employees – areas in which these employees

have expertise.” Defs’ Mem. at 3. In fact, these charts do no more than provide job positions and are no different from those at issue in *Sterbens*. This information is not enough to be considered for protection as a trade secret. In order to receive protection as a trade secret, the organizational charts must contain much more detailed information about the employees and internal company policy, procedures, and programs. *See, e.g., Metropolitan Life Ins. Co. v. Usery*, 426 F. Supp. 150 (D.D.C. 1976) (protective order granted for documents that revealed sales and production statistics).

The Household Defendants’ Motion not only lacks case law support, but also factual support. Instead of presenting the Court with concrete evidence of injury or harm, the Household Defendants rely on self-serving statements in the form of the affidavit of a current and longtime employee, Michael Woodward. Mr. Woodward *hypothesizes* about the value of the information included in the organizational charts to recruiters and competitors by estimating the cost of replacing certain employees and bemoaning Household’s past loss of employees to recruiting firm and/or competitors. Defs’ Mem. at 3; Affidavit of Michael Woodward in Support of Household Defendants’ Motion to Amend the Protective Order (“Woodward Aff.”), ¶¶6-7. Mr. Woodward does not, however, relate this information to injury or harm suffered from a prior public dissemination of a Household organizational chart. Nor does he support his statement regarding the past loss of employees with any specific examples of when or where this took place, which firms’ and/or competitors’ actions resulted in injury to Household or how many times this has happened. Thus, this testimony is purely speculative and cannot support the amendment of the Protective Order.

In support of their contention that the organizational charts warrant protection, the Household Defendants also claim that the charts are “not knowingly distributed outside of Household.” Defs’ Mem. at 3. The Household Defendants again rely on Mr. Woodward’s affidavit. *Id.* In this instance, Mr. Woodward’s affidavit is not mere speculation, but *just plain wrong*. Household organizational charts have been provided to defendant Andersen on prior occasions. Indeed,

Andersen produced Household's organizational charts to lead plaintiffs in response to requests for production served by lead plaintiffs on Andersen in this case. The numerous charts produced by Andersen clearly go well beyond the highest executive levels of the company and in certain instances provide more information to lead plaintiffs than the Household Defendants' production to date.<sup>3</sup> No doubt Andersen obtained these charts from the Household Defendants. Lead plaintiffs can only speculate as to the Household Defendants' further prior dissemination of the organizational charts.

In sum, the Household Defendants have wholly failed to demonstrate that their organizational charts constitute trade secret or other confidential information.

**B. No Good Cause Exists to Protect Household's Organizational Charts**

Assuming *arguendo* that the Household Defendants established that the organizational charts constitute trade secrets or other confidential information warranting confidential treatment, this Court still must deny the Motion because the Household Defendants fail to show good cause for designating the charts confidential as is required under applicable law. *Andrew Corp. v. Rossi*, 180 F.R.D. 338, 340 (N.D. Ill. 1998). In support of the good cause requirement, the Household Defendants speculate that a competitor or recruiter could "poach Household employees, or even whole support offices, all to Household's disadvantage." Defs' Mem. at 5. Such conclusory assertions do not satisfy the good cause requirement. *Andrew*, 180 F.R.D. at 342. Instead, establishing good cause requires "specific examples of articulated reasoning" and "'clearly defined and very serious injury' to its business." *Id.* at 341 (citations omitted). The Household Defendants have not met this standard.

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<sup>3</sup> Due to the nature of the dispute, lead plaintiffs do not attach organization charts produced by Andersen, but would make them available for *in camera* review by the Court.



The Household Defendants again rely solely on Mr. Woodward's affidavit to support their assertion that good cause exists. Specifically, the Household Defendants rely on Mr. Woodward's speculation about a recruiter or competitor using the information to poach employees. Defs' Mem. at 5; Woodward Aff., ¶7. Such self-serving statements are exactly the type of support that the court dismissed as deficient in *Andrew*. 180 F.R.D. at 341 ("Without more than Andrew's self-serving statements, this Court cannot determine whether such assertions are legitimate, or merely due to an overdeveloped sense of self-importance.").

Moreover, in *Sterbens*, the court dismissed self-serving assertions *virtually identical* to those made here by the Household Defendants here, *i.e.*, that competitors might use the information contained in the organizational charts to "lure away employees," as "conclusory statements ... *fall[ing] short of the specificity required to establish good cause for a protective order.*" 2001 U.S. Dist. LEXIS 19987, at \*5 (emphasis added). Neither of the cases relied upon by the Household Defendants to support their argument here, *Star Scientific, Inc. v. Carter*, 204 F.R.D. 410 (S.D. Ind. 2001) and *Magnavox Co. v. Mattel, Inc.*, No. 80 C 4124, 1981 U.S. Dist. LEXIS 11208 (N.D. Ill. Mar. 24, 1981), addressed the propriety of protecting the confidentiality of organizational charts. Defs' Mem. at 4-5. In sum, the Household Defendants have not demonstrated good cause for designating the organizational charts as confidential.

**C. Adding the Organizational Charts as an Additional Category of Protected Information Would Unnecessarily Burden Lead Plaintiffs**

In determining whether to grant protective orders, courts balance competing interests. *Andrew*, 180 F.R.D. at 340. Here, lead plaintiffs' interest in obtaining and freely using the organizational charts to prosecute their case is strong. The organizational charts are essential to lead plaintiffs' ability to conduct focused discovery in this litigation. For example, as lead plaintiffs previously indicated to this Court, lead plaintiffs will likely seek leave to conduct additional depositions beyond those provided for in the Federal Rules of Civil Procedure. The organizational

charts will be essential to lead plaintiffs' explanation to this Court of their need to conduct further discovery. Should this Court allow the Household Defendants to designate all organizational charts as confidential, lead plaintiffs would be forced to file any such motion under seal.

Designating the Household organizational charts as confidential will burden lead plaintiffs by unnecessarily impacting their usability. In particular, lead plaintiffs may only show protected documents to people who sign the confidentiality agreement and must file the documents under seal. (Protective Order, ¶¶6, 8). The burden of filing documents under seal is real as is evidenced by the Household Defendants' Motion. Through their Motion, the Household Defendants attempt to show the Court the value of the charts. What would better demonstrate this than an example, *i.e.*, sample Household organizational charts for the Court to review? However, the Household Defendants failed to present an example to the Court. The only two plausible explanations for this are that they in fact are not valuable trade secrets, or that the process of filing under seal was too burdensome. Either way, the Motion must be denied.

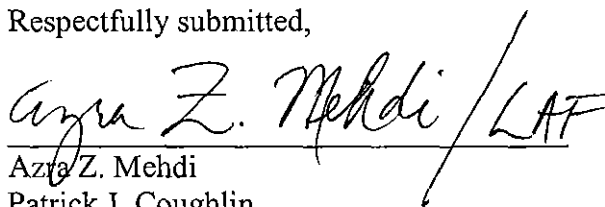
#### IV. CONCLUSION

For the reasons stated above, the Household Defendants' motion to amend the protective order to include Household's organizational charts containing non-public employee information, must be denied in its entirety.

Dated: January 10, 2005

Respectfully submitted,

By:

A handwritten signature in black ink that reads "Azra Z. Mehdi / LAF". The signature is written over a horizontal line.

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*See Case  
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Exhibits*