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

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| LAWRENCE E. JAFFE PENSION PLAN, |) | |
| on Behalf of Itself and All Others Similarly |) | |
| Situated, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| HOUSEHOLD INTERNATIONAL, INC., et al. |) | |
| |) | |
| Defendants. |) | |

Case No. 02 C 5893
Magistrate Judge Nan R. Nolan

ORDER

In this securities fraud class action, the Household Defendants seek to amend the November 5, 2004 Protective Order to add the additional category of “Household organizational charts containing non-public employee information” as “Confidential Information.” Having carefully considered the arguments of Lead Plaintiffs and the Household Defendants, the Court grants the Household Defendants’ Motion [196-1].

DISCUSSION

Modification of a protective order to include an additional category of protectable information requires a finding of good cause by the court. Fed. R. Civ. P. 26(c). Good cause “is difficult to define in absolute terms, it generally signifies a sound basis or legitimate need to take judicial action.” In re Alexander Grant & Co. Litig., 820 F.2d 352, 356 (11th Cir. 1987). In determining whether good cause exists, the court must balance the public’s interest in the proceeding against the “property and privacy interests of the litigants.” Citizens First Nat’l Bank of Princeton v. Cincinnati Ins. Co., 178 F.3d 943, 945 (7th Cir. 1999). “Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.” Seattle Times Co. v. Rhinehart, 467

U.S. 20, 36 (1984).

The organizational charts the Household Defendants seek to classify as “Confidential Information” under the Protective Order provide employee names, job titles, the hierarchical structure of various departments, and in some cases, the locations of the employees, the general number of employees budgeted for each department, the number of vacant positions, and employee telephone extensions. The Household Defendants argue that good cause exists to protect the organizational charts from public disclosure because a recruiter and/or competitor could use the organizational charts to more easily raid Household’s employees and such loss of skill could be costly.

The Household Defendants’ request is supported by the affidavit of Michael Woodward (“Woodward”), Vice President of Human Resources for HSBC-North America. Woodward has been employed by subsidiaries of Household International, Inc., now known as HSBC Finance Corporation, for over 24 years. Woodward Aff. ¶ 1. Woodward explains that Household subsidiaries have previously lost entire departments to raids by recruiting firms and/or competitors. Woodward Aff. ¶ 7. Woodward further states that “[d]issemination of the non-public information in the Human Resources organizational charts would provide a road map directly to employees with specific expertise for these recruiters and others seeking to hire people with relevant experience.” Id.

Household has taken steps to maintain the secrecy of the organizational charts. According to Woodward:

Human Resources creates for its own internal use detailed organizational charts that contain employee names, areas of responsibility, and reporting structures. Human Resource’s organizational charts are confidential and not knowingly distributed outside of Household companies. Human Resources does not make the charts available to outside persons, not even consultants or agencies used in our own recruiting and employee development processes. Indeed, Human Resources has received repeated requests for the organizational charts from outside consultants and agencies with whom

we are doing business, and we always refuse these requests. The charts are distributed or made available internally for business purposes only.

Woodward Aff. ¶ 5. Finally, Woodward explains that “[m]any persons employed by Household’s subsidiaries are highly skilled professionals with transferable expertise, and the cost to Household to replace these employees is substantial.” Woodward Aff. ¶ 6. Woodward estimates that the cost of replacing one Technology and Services professional is approximately \$50,000. *Id.*

Lead Plaintiffs oppose the Household Defendants’ requested modification of the Protective Order. They say that the organizational charts do not merit confidential treatment and that no good cause exists to protect the organizational charts from public disclosure. Lead Plaintiffs argue that the Household Defendants have not shown actual as opposed to speculative harm or injury. Lead Plaintiffs point out that Woodward fails to provide a single example of Household’s past loss of employees to a recruiting firm and/or competitor. In response to the Household Defendants’ supplemental submission, Lead Plaintiffs argue: (1) the sample size used by the Household Defendants is so small that the resulting information cannot be used to make a statistically reliable assumption about Household’s annual turnover rate as a whole, (2) other documents produced in this litigation demonstrate that the turnover rate for a number of the larger Household subsidiaries or business units was so high that it makes the Household Defendants’ analysis for the HTS business unit irrelevant, and (3) evidence from Household’s document production demonstrates that employee attrition at Household was primarily for reasons other than poaching by competitors.

The Court finds that the organizational charts contain information entitled to confidential protection during the nondispositive pretrial phase of this case. Household has sufficiently shown that it treats the organizational charts as confidential and that the information contained in the

organizational charts would be valuable to competitors interested in raiding its employees. Household has taken steps to maintain the secrecy of the information and it has not been shown that similar information could be developed through resort to public sources (with the exception of the highest executive levels which is publicly available through Household's filings with the Securities and Exchange Commission). Household's production of certain organizational charts in confidence to its accountants does not undermine its claim that the organizational charts are treated as confidential.

Moreover, the harm alleged, potential employee raiding, is clearly defined and very serious. Household's interest in preventing a recruiter and/or competitor from raiding its employees is reasonable and valid. The information contained in the organizational charts possesses economic value because its disclosure might give "other firms an unearned competitive advantage" in recruiting Household employees. Smithkline Beecham v. Pentech Pharmaceuticals, Inc., 261 F. Supp.2d 1002, 1008 (N.D. Ill. May 8, 2003) (Posner, J., sitting by designation). The release of the organizational charts could therefore cause Household substantial competitive harm by increasing its vulnerability to employee raiding.

On the current record, the Court is convinced that Household's concerns are legitimate. The raiding of employees has been a problem faced by Household subsidiaries in the past. Employee raiding could be particularly damaging in areas of highly skilled employees, such as Technology and Services professionals. Although raiding has apparently occurred in the past without access to these documents, the use of the organizational charts would presumably provide a more efficient and comprehensive method for employee raiding. By identifying precise jobs, the organizational charts identify the employees' probable experience and training. Some of the organizational charts even provide employees' locations.

Sterbens v. Sound Shore Medical Center of Westchester, 2001 WL 1549228 (S.D.N.Y. Dec. 5, 2001), relied on by Lead Plaintiffs, does not compel a different result. In Sterbens, the defendants sought protection for organizational diagrams and “position control documents,” which consisted of records of administrative positions within the finance department, the occupants of those positions, and the number of hours of weekly employment associated with each position for four years. The defendants contended that disclosure of these documents to non-parties would “injure [their] business because the information contained in them could be used by competitors to ‘lure away employees and potential patients’” Id. at *2. The magistrate judge found good cause lacking because defendants made only “conclusory allegations respecting the adverse consequences to [them] that disclosure of this material to non-parties would have.” Id.

The Household Defendants have made a much stronger showing of good cause than the defendants in Sterbens. The Household Defendants’ request is supported by the affidavit of the Vice President of Human Resources for HSBC-North America, Michael Woodward. Woodward states that Household subsidiaries have previously lost entire departments to raids by recruiting firms and/or competitors. Although Woodward’s affidavit could have been more thorough by providing examples of prior employee raids by recruiters and/or competitors, the Court has no reason to doubt the correctness of Woodward’s statement on the current record. Woodward further states that many persons employed by Household subsidiaries are highly skilled professionals with transferable expertise. He estimates that the cost of replacing one Technology and Services professional is approximately \$50,000, which includes recruitment and training costs, and accounts for the learning curve inherent with every new hire. Woodward concludes that “it is a constant concern to try to retain employees.” Woodward Aff. ¶ 6.

Lead Plaintiffs raise some good points regarding the currency and accuracy of some of the information contained in the organizational charts, but in the end, the court finds good cause to classify the organizational charts as “Confidential Information” at this stage of the proceedings. Some of the information contained in the organizational charts is outdated so as to diminish any harm from its current disclosure. Yet, some portions of the organizational charts are still accurate and could be relevant to a recruiter and/or competitor. The fact that some of the information contained in the organizational charts is accurate is enough to find good cause to protect the organizational charts at the nondispositive pretrial stage of the litigation.

It is not an efficient use of time to examine all of the organizational charts at depth at the discovery stage to determine exactly which portions of the charts contain current information as opposed to stale information because most discovery never enters the public record or influences a judicial decision. Union Oil Co. of California v. Leavell, 220 F.3d 562, 568 (7th Cir. 2000) (stating “[m]uch of what passes between the parties remains out of public sight because discovery materials are not filed with the court.”); see also Baxter Int’l Inc. v. Abbott Labs., 297 F.3d 544, 545 (7th Cir. 2002) (stating “[s]ecrecy is fine at the discovery stage, before the material enters the judicial record.”). The Seventh Circuit has thus recognized that at the pretrial stage, the court need not make a determination of good cause “on a document-by-document basis.” Citizens, 178 F.3d at 946. In fact, “[i]n a case with thousands of documents, such a requirement might impose an excessive burden on the district judge or magistrate judge.” Id.

Documents that become a part of the public record are a different story because “the public at large pays for the courts and therefore has an interest in what goes on all stages of a judicial proceeding.” Citizens, 178 F.3d at 945. One caveat is therefore in order regarding the organizational

charts. In the event any of the organizational charts are used to support a pleading, motion, or document filed with the court, counsel shall file redacted versions of the organizational charts which remove all references to current information in the public record and unredacted organizational charts under seal. Citizens, 178 F.3d at 945 (noting that documents which contain both protectable and non-protectable information need only have the protectable portions of the documents redacted in order to maintain secrecy). Counsel are directed to meet and confer in an effort to reach an agreement whereby Lead Plaintiffs' counsel shall provide reasonable advance notice to the Household Defendants' counsel of their intent to file with the court or use in a court proceeding any of the organizational charts. The Household Defendants shall then provide the Lead Plaintiffs' counsel with any redacted organizational charts in a timely manner.

A word of caution is appropriate. Although the Court is allowing certain protection for the organizational charts at this stage of the proceedings, whether this information or any other categories of documents covered by the Protective Order ultimately remain protected from public disclosure is undetermined. Blanket protective orders covering defined categories of documents are by their nature granted without a particularized showing of good cause with respect to any individual document. The Protective Order is limited to the pretrial nondispositive stage of litigation. If a dispositive motion is filed or the case proceeds to trial, the district court will determine whether any of the protected information should become a part of the public record. Most relevant information eventually becomes a part of the public record. Baxter, 297 F.3d at 546 (noting that "very few categories of documents are kept confidential once their bearing on the merits of a suit has been revealed."); Union Oil, 220 F.3d at 568 (stating that "most portions of discovery that are filed and form the basis of judicial action must eventually be released."). The Household Defendants should be prepared to justify the

confidentiality of each protected document once this case reaches a dispositive stage. Finally, the added administrative burden of filing unredacted organizational charts under seal is not a sufficient reason for denying the organizational charts confidential treatment under the Protective Order.

Two final matters merit attention. Lead Plaintiffs point out that the Household Defendants have submitted disputed confidential information (the organizational charts) *in camera* rather than filing them under seal pursuant to paragraph 21 of the Protective Order. Defendants shall comply with the Protective Order with respect to any future filings by filing disputed confidential information or confidential information under seal, rather than submitting it *in camera*. Finally, the Court is troubled by Lead Plaintiffs' statement that their ongoing review of the documents produced by the Household Defendants "demonstrates that the Household Defendants have completely ignored the Protective Order's good faith belief requirement in making their designations." In light of the examples of improper designations provided by Lead Plaintiffs at page 8 of their Response to Household Defendants' Supplemental Submission in Support of Their Motion to Amend Protective Order, the Household Defendants are directed to review and redesignate, if necessary, documents produced.

CONCLUSION

For the reasons set forth above, the Household Defendants' Motion to Amend the Protective Order [196-1] is granted.

ENTER:



Nan R. Nolan
United States Magistrate Judge

Dated: September 28, 2005