

**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.)	
_____)	

THE CLASS' REPLY IN SUPPORT OF MOTION UNDER LOCAL RULE 26.2

The fundamental issue and indeed, the only issue, before the Court on this Motion is whether the exhibits attached to the Class' Motion to Compel compliance with the Court's August 10 and 22 Orders should be filed under seal under Local Rule 26.2. Put simply, do these documents warrant confidential treatment under Local Rule 26.2 and the standards of this court and the Seventh Circuit? As neither the Class nor Household argue that the documents are confidential, the answer clearly is "no" and thus, the Court should deny the Motion and direct the Class to file the documents publicly.

As this Court is aware, Local Rule 26.2 was recently amended in April of this year to tighten the requirements for filing documents under seal such that the Court's prior authorization is required for each *document* at issue. *See* Local Rule 26.2(b). As discussed in the Committee comments on this amendment, the amendment is intended to address the burden on the Court associated with the over-designation of documents as confidential under Protective Orders.

Before the Court is the issue of whether the Class' exhibits filed in support of its motion to compel compliance with the Court's August 10 and 22 Orders should be filed under seal. The documents at issue are not confidential and do not meet the standards for confidentiality. The Class points this out in its moving papers. *See* Docket No. 673 at 1-4. Significantly, Household in its Opposition does not dispute this lack of confidentiality as to the exhibits at issue. To the contrary, Household acknowledges that it has over-designated in this case, thus triggering the concerns resulting in the new Local Rule 26.2. These points suffice for the denial of the Class' Motion and public filing of the Class' exhibits.

However, Household makes an argument in support of a new "standing" order, one that would directly conflict with Local Rule 26.2. As noted by the Class earlier, this request for a standing order in an Opposition is procedurally improper and should be rejected out of hand. From a substantive perspective, Household's argument is even weaker, resting as it does on a misrepresentation of the underlying history.

First, this issue does not involve only a few “inadvertently” designated documents. To the contrary, Household has overdesignated in a systematic and knowing manner. Virtually all of its documents have been designated as Confidential without regard to the contents or the standards of confidentiality. This Court’s earlier admonishment that Household restrain its designations had absolutely no impact.

Second, Household cannot affirmatively represent that it has been willing to work with the Class to de-designate. To the contrary, the Class’ attempts to control this issue or to meet and confer have been met by a stonewall and an adamant refusal to de-designate admittedly public documents.

Both of these points are well illustrated by the example of the Sodeika deposition. At Ms. Sodeika’s deposition, the Class marked as an exhibit a letter sent by a third party, ACORN, to a Maryland public official. Other exhibits related to Household’s operations in 2001 and 2002 as well as internal and external communications respecting predatory lending issues. During production, Household designated all of these documents as “Confidential” under the Protective Order although none warrant that designation. After the conclusion of Ms. Sodeika’s deposition, Household designated the totality of the deposition transcript as “Confidential.” In response, the Class requested de-designation of the transcript and the exhibits, including the ACORN exhibit. Household rejected the Class’ request, including as to the ACORN exhibit, and made no effort to defend its designation.

The same pattern holds for the other depositions, where Household has likewise designated the entirety of the transcript as confidential and has rejected without explanation the Class’ requests that Household re-designate. Again, Household’s designations and its rejection of the Class’ efforts to de-designate occurred after this Court warned Household not to over-designate.

In sum, Household’s overdesignated is not caused by “inadvertence,” but purposefully and knowingly. This problem does not impact one or two documents, but literally the entirety of

Household's production. Significantly, Household does not claim that the exhibits at issue in this motion represent any "inadvertent" designation or even attempt to defend their designation. Household's failure to defend the confidentiality of these exhibits speaks volumes about its inability to defend any of its confidential designations.

Further, after having over-designated and refusing to work cooperatively with the Class, Household now in its Opposition proposes a "solution" that would gravely prejudice the Class by a) requiring the Class to identify in advance documents to be used in support of its motions and b) wasting time on countless futile meet and confers. As the Court is aware, the first point would give Household a significant advantage by revealing the Class' work product. As to the second, Household has already demonstrated its own unwillingness to de-designate. Further, given the number of documents at issue, meet and confers on individual documents would be a waste of time. In sum, this "solution" places an unfair burden on the Class, which should not bear any burden resulting from Household's own purposeful creation of this issue. To the contrary, Household should bear the burden associated with its overdesignation.

Equally importantly, Household's proposed solution is directly at odds with the language and purpose of amended Local Rule 26.2. Under that Rule, documents must be truly confidential in order to be filed under seal. The burden of establishing this confidentiality is and has always been Household's. Indeed, Household could have used its Opposition to affirmatively demonstrate why these documents should be filed under seal. That it did not means only that it elected not to defend the indefensible. In any event, Household should be required to defend its designations in response to this Court's legitimate concerns about the number of filings under seal as mandated by Local Rule 26.2. A standing order as proposed by Household would thus violate Local Rule 26.2 and its purpose by allowing the filing of documents under seal without requiring any showing by Household that the documents are truly confidential.

Finally, all rhetoric aside, the Class has not violated the Protective Order. The Class has not filed these documents publicly nor is the Class acting as “judge and jury” as to whether they should be filed publicly. The decision on these documents rests with the Court under Local Rule 26.2 just as it did prior to the amendment of that rule.

In sum, the “standing order” proposed by Household is one big diversionary tactic meant to distract the Court from the issue of whether the Class’ exhibits should be filed under seal. Neither the Class nor Household have argued that these exhibits are confidential and thus, the Court should direct that they be filed publicly in accordance with Local Rule 26.2.

DATED: October 3, 2006

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
PATRICK J. COUGHLIN (90785466)
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154452)
MONIQUE C. WINKLER (90786006)
LUKE O. BROOKS (90785469)
MARIA V. MORRIS (223903)
BING Z. RYAN (228641)

s/ D. Cameron Baker

D. CAMERON BAKER

100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
WILLIAM S. LERACH
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Lead Counsel for Plaintiffs

MILLER FAUCHER AND CAFFERTY LLP
MARVIN A. MILLER
30 North LaSalle Street, Suite 3200
Chicago, IL 60602
Telephone: 312/782-4880
312/782-4485 (fax)

Liaison Counsel

LAW OFFICES OF LAWRENCE G.
SOICHER
LAWRENCE G. SOICHER
110 East 59th Street, 25th Floor
New York, NY 10022
Telephone: 212/883-8000
212/355-6900 (fax)

Attorneys for Plaintiff

T:\CasesSF\Household Intl\REP00035351.doc

DECLARATION OF SERVICE BY EMAIL AND BY U.S. MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on October 3, 2006, declarant served by electronic mail and by U.S. Mail to the parties:

THE CLASS' REPLY IN SUPPORT OF MOTION UNDER LOCAL RULE 26.2

The parties' email addresses are as follows:

TKavaler@cahill.com
PSloane@cahill.com
PFarren@cahill.com
lbest@cahill.com
DOwen@cahill.com
NEimer@EimerStahl.com
ADeutsch@EimerStahl.com
mmiller@millerfaucher.com
lfanning@millerfaucher.com

and by U.S. Mail to:

Lawrence G. Soicher, Esq.
Law Offices of Lawrence G. Soicher
110 East 59th Street, 25th Floor
New York, NY 10022

David R. Scott, Esq.
Scott & Scott LLC
108 Norwich Avenue
Colchester, CT 06415

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of October, 2006, at San Francisco, California.

s/ Marcy Medeiros

MARCY MEDEIROS