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FILED IN THE
 U.S. DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON

 JUL 03 2006

 JAMES R. LARSEN, CLERK
 DEPUTY
 RICHLAND, WASHINGTON

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON
 AT SPOKANE

10 PIPER JAFFRAY & CO., a Delaware
 corporation, and UBS FINANCIAL
 11 SERVICES INC., a Delaware corporation,

 12 Plaintiffs,

 13 v.

 14 WILLIAM P. FLEENOR and
 15 D.A. DAVIDSON & CO., a Montana
 corporation,

 16 Defendants.
 17

~~The Honorable James R. Suko~~
 NO. CV-06-5054 ~~ERS~~ EFS

 TEMPORARY
 RESTRAINING ORDER
 [PROPOSED]

19 This matter came before the Court on Plaintiffs' Motion for Temporary
 20 Restraining Order and Expedited Discovery. The Court having considered the
 21 records and files of this proceeding, including the following materials
 22 submitted by Piper Jaffray & Co., Inc. ("Piper Jaffray") and UBS Financial
 23 Services Inc. ("UBS") (collectively "Plaintiffs"):

- 24 (a) Complaint for Immediate Injunctive Relief;
- 25 (b) Plaintiffs' Motion for Temporary Restraining Order and Expedited
- 26 Discovery and Memorandum in Support Thereof;

*July 3, 2006
 Writen Notice of the TPO, having at 2:30 p.m. on
 was given
 to defendants
 with the
 regional
 manager
 of Seattle
 participating
 for hearing
 counsel
 was out
 in leave.
 J.E.F.S.*

- 1 (c) Declaration of Steven M. Phillips in Support of Plaintiffs' Motion for
- 2 Temporary Restraining Order and Expedited Discovery, and subjoined
- 3 attachments;
- 4 (d) Declaration of Robert S. Hanson in Support of Plaintiffs' Motion for
- 5 Temporary Restraining Order and Expedited Discovery;
- 6 (e) Declaration of Michael Maehl in Support of Plaintiffs' Motion for
- 7 Temporary Restraining Order and Expedited Discovery;
- 8 (f) Declaration of Roger D. Mellem in Support of Plaintiffs' Motion for
- 9 Temporary Restraining Order and Expedited Discovery, and subjoined
- 10 attachments; and
- 11 (g) Second Declaration of Roger D. Mellem, Regarding Notice to
- 12 Defendants, and subjoined attachments.

13 (h) *The fact that U.S. stock markets were closed and would not*
 14 *reopen for trading until*
 15 *July 4, 2002*
 16 *Walla Walla*
 17 *JEF*
 18 After considering the above materials and any written opposition from
 19 the Defendants, and hearing oral argument of counsel, this Court has
 20 determined that:

FINDINGS OF FACT

- 21 1. Plaintiff Piper Jaffray is a broker-dealer of securities with its principal
- 22 place of business in Minneapolis, Minnesota, and a member firm of the
- 23 National Association of Securities Dealers, Inc. ("NASD"). Piper Jaffray
- 24 is a Delaware corporation and maintains an office in Walla Walla,
- 25 Washington.
- 26 2. Plaintiff UBS is a broker-dealer of securities with its principal place of
- business in New York, New York, and a member firm of the NASD.
- UBS is a Delaware corporation and does business in the state of
- Washington.
- 3. Defendant Fleenor is a former registered representative and employee of
- Piper Jaffray who operated out of Piper Jaffray's office in Walla Walla,
- Washington.

1 4. Defendant D.A. Davidson & Co. (“D.A. Davidson”) is a Montana
2 corporation transacting business in Washington State.

3 5. On June 23, 2006, Defendant Fleenor voluntarily resigned his
4 employment with Piper Jaffray and became employed as a registered
5 representative with D.A. Davidson.

6 6. Defendant Fleenor entered into a Training Agreement with Piper
7 Jaffray’s predecessor, Piper Jaffray & Hopwood (“PJH”), on or about
8 July 19, 1989 (“Training Agreement”).

9 7. The Training Agreement provides in relevant part at Paragraph E:

10 2. For ninety (90) days from the end of your
11 employment, you will not directly or indirectly solicit, or
12 assist in the solicitation of any customers of PJH to purchase
13 or sell securities, commodities or deferred annuities; and

14 3. For ninety (90) days from the end of your
15 employment, you will not directly or indirectly use for your
16 benefit or any other employer any of the customer or
17 business information obtained by you from PJH during the
18 course of employment by PJH.

19 8. The Employment Agreement also states: “If your employment with
20 PJH ends, either through termination by PJH or through resignation by you,
21 you will surrender all training materials, account records, customer statements
22 and customer files and other documents pertaining to PJH’s customers,
23 business methods and procedures, as well as all copies thereof.”

24 **CONCLUSIONS OF LAW**

25 1. There is complete diversity of citizenship between the Plaintiffs and the
26 Defendants, and the Court has jurisdiction of this dispute.

1 2. The Court has considered the factors specified in *E. & J. Gallo Winery v.*
2 *Andino Licores S.A.*, 446 F. 3d 984 (9th Cir. 2006), as well as the
3 Washington, Minnesota, and other law cited in Plaintiffs' Motion.
4 "A preliminary injunction is appropriate 'where plaintiffs demonstrate
5 either: (1) a likelihood of success on the merits and the possibility of
6 irreparable injury; or (2) that serious questions going to the merits were
7 raised and the balance of hardships tips sharply in their favor.'" *Id.* at
8 990 (citations omitted).

9 3. The Court specifically finds:

10 A. Plaintiffs have demonstrated that they are likely to succeed
11 on the merits and face the possibility of irreparable injury.

12 B. Plaintiffs have also raised serious questions and the balance
13 of hardships tips sharply in their favor. *find*
between this date and the 5th in

14 C. Plaintiffs will suffer irreparable harm if Defendant Fleenor or *and the 5th in*
15 his agents are permitted to (i) solicit business from Piper Jaffray customers and *conference call*
16 accounts and/or (ii) use or disclose for his own benefit or for the benefit of his *JEFS*
17 new employer, D.A. Davidson, the records of Piper Jaffray or information
18 taken from Piper Jaffray; *also*

19 D. Plaintiffs will suffer irreparable harm if Defendant
20 D.A. Davidson or its agents are permitted to (i) solicit business from Piper
21 Jaffray customers and accounts using information provided by Defendant
22 Fleenor or any of his agents (ii) use or disclose for its benefit the records of
23 Piper Jaffray or information taken from Piper Jaffray by Defendant Fleenor or
24 any of his agents. *JEFS*

25 E. Plaintiffs do not have an adequate remedy at law; and

1 F. In view of the considerations described above, the balance of
2 equities in this matter favors Plaintiffs.

3 2. The dispute represented in the above-entitled action should proceed
4 in arbitration in accordance with the rules of NASD Dispute Resolution, Inc.
5 ("NASD-DR").
6

7 **ORDER**

8 1. A Temporary Restraining Order shall issue immediately pursuant to
9 Fed. R. Civ. P. 65(c), with security in the amount of \$ 10,000 ^{to} to be posted by
10 Plaintiffs no later than ^{NOON} ~~4:30~~ p.m. on July 5 TH, 2006;

JEF

11 2. ^{An additional} ~~The show cause~~ hearing on the ^{request for a TRO} ~~preliminary injunction~~ is set for
12 July 5 TH, 2006 at 1:30 o'clock ~~and~~ p.m. in Room _____ of the courthouse

13 of the Eastern District of Washington at _____, located at
14 by conference call to 1-509-376-8880 in Richland, Washington. - not in person

15 3. The Defendants are ordered to appear and ~~show cause why a~~
16 ~~preliminary injunction should not be issued.~~ ^{to respond to this TRO, why it should}

not continue beyond 7/5/06 and why a preliminary injunction should not issue.

17 4. The parties are hereby directed to use reasonable efforts to proceed
18 with, and cooperate regarding, arbitration of this matter before NASD-DR.
19 Any party may apply to this Court for relief in the event that conduct by
20 another party results in any unwarranted delay of such arbitration proceedings.

JEF

21 5. Subject to the terms, conditions and exceptions of this Order,
22 Defendants, whether alone or in concert with or through others, including but
23 not limited to, any officer, agent, representative, and/or employee of
24 D.A. Davidson, shall be and hereby are enjoined from soliciting or initiating
25 contact with, directly or indirectly, any customer whom Defendant Fleenor
26

1 served and/or first became aware of while employed at Piper Jaffray, and from
2 soliciting, directly or indirectly, the securities business of any such customer
3 (other than his immediate family members *and those who have as of 4:30 pm.*

4 6. Defendants shall not utilize, directly or indirectly, any information *July 3, 2006 transferred*
5 or documents of Piper Jaffray which Defendant Fleenor obtained while he was *their accounts*
6 employed with Piper Jaffray. *to D.A. Davidson)*

7 7. The following exceptions shall apply to paragraphs 5, 6 and 7
8 herein: Defendants may provide advice to, and effect transactions for (a) any
9 Piper Jaffray customer who initiates contact with Defendants for the purpose of
10 transferring their Piper Jaffray account to D.A. Davidson and (b) any Piper
11 Jaffray customers who transferred their account(s) to D.A. Davidson in
12 response to any mailing or solicitation made by Defendants before this Order
13 was issued, whether the transfer was made before or after the Order was issued,
14 provided that as to any such customers who have not yet signed account
15 transfer paperwork, the Defendants and anyone acting in concert or
16 participation with them may not communicate, directly or indirectly, to such
17 customers anything to the effect that Defendants would be free to talk to the
18 customers if the customers sign account transfer forms. Collectively, the
19 customers in subparagraphs (a) and (b) are referred to as "Transferred
20 Customers."

21 8. Defendant Fleenor is hereby ordered to keep a log of all
22 communications, contacts and transactions he has with all persons who were
23 customers of Piper Jaffray as of June 23, 2006. The log shall identify the
24 person who initiated the contact, the names of the recipient of the contact, the
25 date and time of the contact, and the subject matter of the communication.
26

July 3, 2006 transferred their accounts to D.A. Davidson)
JEFS

1 Should Defendants desire to confirm whether a person or entity is covered by
2 this paragraph, Defendants' counsel shall contact Plaintiffs' counsel to seek
3 confirmation as to whether the person or entity was a customer of Piper Jaffray
4 as of June 23, 2006.

5 9. Defendants are ordered to return to counsel for Defendants ~~by~~
6 ~~5:30 p.m. on July 5, 2006~~ all original records, copies, computerized information
7 and/or other reproductions thereof, in whatever form, pertaining in any way to
8 Piper Jaffray's customers (including, without limiting the generality of the
9 foregoing, any compilations containing names, addresses, telephone numbers,
10 e-mail addresses and/or account numbers of Piper Jaffray customers).
11 Defendants' counsel shall be entitled to copy such records, but shall not share
12 the documents or their contents with Defendants, who then shall return the
13 originals to counsel for Piper Jaffray ~~no later than 5:30 p.m. on July 6, 2006.~~
14 ~~Moreover, by 5:30 p.m. on July 6, 2006~~ all information contained in or derived
15 from such records shall be purged from the possession, custody, and control of
16 Defendants. Notwithstanding the foregoing, Defendants may retain copies of
17 documents relating to Transferred Customers.

18 10. ~~Specifically,~~ Defendants ~~are~~ ^{maybe} ordered to return all of the following
19 documents, whether in written or electronic format: (a) all records or other
20 documents taken from Piper Jaffray or any of its affiliates (including without
21 limitation records created by Fleenor or his agents in connection with his
22 employment by Piper Jaffray); (b) all copies or other reproductions of any of
23 the foregoing records or other documents; (c) all notes or other documents
24 reflecting information taken from Piper Jaffray and any of its affililates; and
25 (d) without limiting the generality of the foregoing, any and all other
26

* at a time and date to be decided at the conference call on July 5, 2006
JEFS

as above
JEFS

On Wednesday, July 5, 2006 at the conference call, the court will determine if and when
JEFS

1 documents reflecting, memorializing, recording or incorporating information
2 relating to Piper Jaffray customers and/or to their Piper Jaffray accounts
3 (including, without limiting the generality of the foregoing, any compilations
4 containing names, addresses, telephone numbers, e-mail addresses and/or
5 account numbers of Piper Jaffray customers). Defendants shall deliver all of
6 said materials to legal counsel for Plaintiffs: Roger D. Mellem, Ryan Swanson
7 and Cleveland, PLLC, 1201 Third Avenue, Suite 3400, Seattle, Washington
8 98101.

9 11. In aid of the ~~preliminary injunction hearing, the time~~ for discovery
10 is ~~shortened~~ to seven (7) calendar days after service.

11 12. This Order shall remain in full force and effect pursuant to
12 Fed. R. Civ. P. 65(b) ~~for ten days from the date of its entry or until~~ *until entry of an order following the July 5th hearing* or unless the *by counsel*
13 NASD-DR arbitration panel that will hear this dispute on its merits elects to *call on*
14 modify this Order. *JEFS*

15 SO ORDERED this 3rd day of July, 2006 *at 4:30 p.m.*

16 *[Handwritten Signature]*

17 UNITED STATES DISTRICT JUDGE

1
2 Presented by:

3 RYAN, SWANSON & CLEVELAND, PLLC
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5
6 By:

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Services Inc.

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[pro hac vice application to be filed]