United States Courts
Southern District of Texas
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Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES LITIGATION	§ Civil Action No. H-01-3624 **(Consolidated)**
This Document Relates To:	§ CLASS ACTION
MARK NEWBY, et al , Individually and On Behalf of All Others Similarly Situated, Plaintiffs, vs. ENRON CORP., et al , Defendants.	§
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, vs. KENNETH L. LAY, et al , Defendants.	§
PAMELA M. TITTLE, on Behalf of Herself and a Class of Persons Similarly Situated, Plaintiffs, vs. ENRON CORP., an Oregon Corporation, et al., Defendants	§ Civil Action No. H-01-3913 **(Consolidated)**

PLAINTIFFS' JOINT MOTION TO ENTER ORDER ESTABLISHING DOCUMENT DEPOSITORY

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The Court's February 27, 2002 Scheduling Order required the parties to take the necessary steps to set up and fund a document depository in Houston for the receipt and maintenance of discovery in the *Newby* and *Tittle* actions. The following summarizes the actions taken to comply with the Order.

In March 2002, Lead Counsel in *Newby* and *Tittle*, as well as attorneys for Michael Kopper, the Outside Directors (represented by Gibbs & Bruns, L.L.P.), certain Enron Officers (represented by Nickens, Keeton, Lawless, Farrell & Flack, L.L.P.), Ken Harrison, and Arthur Andersen met to discuss the establishment of the document depository, and given the magnitude of the project, a request for bids was drafted, which was circulated to dozens of document-management vendors serving the Houston area. Unfortunately, at this early stage, there was insufficient information to gather comparative bids. Additionally, the parties soon realized that a simple physical depository would not be sufficient for litigation that could encompass more than 25 million documents, ranging from regular hard copies to odd-sized accounting work papers to electronic information found on the parties' computer hard drives, servers and backup tapes. Consequently, it was necessary to establish uniform electronic formats and procedures in connection with creating and storing collected information.

In April, several additional parties – nine banks, two law firms, and many individuals – were added when Lead Plaintiff in *Newby* filed its Consolidated Complaint. The addition of these parties changed the size and scope of the project, and the number of attorneys now required to come to an agreement on this order – a daunting task by itself – nearly doubled Moreover, further investigation into the types of documents to be produced by the additional parties revealed that the depository would also require online data-transfer capabilities and on servers on location large enough to storage huge amounts of electronic information. This additional format dictated a more sophisticated depository management than originally envisioned. Therefore, in May, plaintiffs' attorneys and those representing the Enron officers and directors drafted a comprehensive bid request, which was circulated among 34 vendors chosen for their special capabilities. Lawyer representatives also inspected several potential sites for the depository. By late-July the parties received 17 competitive bids that were circulated among the plaintiffs and those defense firms evidencing an interest in the

creation of the depository. The top four were invited to make a presentation. After careful consideration and consultation, Phoenix-based Lex Solutio Corp. was selected as the Depository Administrator. The company has leased the first and second floors of the Bayou Building on Allen Parkway, which will provide secure space to house the hard-copy documents, as well as private rooms for document review.

Initially, Lead Counsel drafted a proposed depository order and forwarded it for consideration to Nickens, Keeton, Lawless, Farrell & Flack, L.L.P., the firm that volunteered to act as a liaison between plaintiffs and defendants, who divided themselves into: (i) banks and law firms; (ii) officers and directors; (iii) Andersen; and (iv) Enron. At some point during the negotiations, the law firms ceased to be aligned with the banks. Therefore the law firms have had little involvement in the depository negotiations Plaintiffs' counsel and those representing the officers and directors exchanged more than 25 drafts of what became a very complex document. After a tentative agreement on a proposed order was reached between plaintiffs and the officers and directors, attorneys for the banks and law firms became involved in the negotiations. They disagreed with the draft order based on the cost allocation for documents produced by parties and those produced by third parties; the processing and production of electronic information; and whether the depository would store hard copies of all information. This disagreement resulted in 11 more drafts in the effort to address the concerns of the banks and law firms. Consequently, the Order attached to this motion has been revised to comply primarily with the banks' preferences on the cost-allocation and electronic-information issues and, in large part, on the hard-copy-storage issue.

As a result, the following banks have joined as proponents of the proposed Order: Bank of America, Barclays Bank PLC, Credit Suisse First Boston Corporation, Canadian Imperial Bank of Commerce, Citigroup, Inc., Deutsche Bank AG, Salomon Smith Barney, Inc., Lehman Brothers Holding, Inc., Merill Lynch & Co., Inc., J.P. Morgan Chase & Co. Law firms Vinson & Elkins, LLP and Kirkland & Ellis, LLP have also joined as proponents.

Counsel for Andersen has been working closely with counsel for plaintiff Requesting Parties (as that term is defined in the proposed Order) to come to an agreement with regard to the more difficult aspects of a mass document production. Due to the special circumstances for these

documents, plaintiffs' counsel have made various proposals that would bring the entire Andersen data set into the depository. Negotiations in that regard have slowed progress toward an agreement with Andersen. Though some special provisions regarding the Andersen documents may have to be considered by the remaining parties, the proposed Order contains provisions to deal with the Andersen documents in the same manner as all other defendants' documents. Arthur Andersen agreed to join as a proponent of the proposed order.

In sum, signatories to the attached proposed Order invested enormous resources to comply with this Court's Order dated February 27, 2002: more than 800 e-mails among the parties, more than 780 telephone conferences, at least seven separate meetings, and the final draft was posted to the http://www.esl3624.com Web site for review by those parties not closely aligned with the representative groups. As of the filing of this Motion, there were no comments posted to the Web site, either in criticism or in support of the proposed Order. The following defendant signatories have also approved the proposed Order: Enron, The Northern Trust Company, Jeffrey K. Skilling, Philip J. Bazelides, Mary K. Joyce, James S. Prentice, Rebecca Mark-Jusbache, Kenneth Lay, James V. Derrick, Jr., Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H Duncan, Joe H Foy, Charles A. LeMaistre, Wendy L. Gramm, Robert K. Jaedicke, Charls E. Walker, John Wakeham, John Mendelsohn, Paulo V. Ferraz Pereira, Frank Savage, Herbert S. Winokur, Jr., Jerome J. Meyer, John A. Urquhart, William D. Gathmann, Andrew Fastow, Lou L. Pai, Joseph Sutton, Richard B. Buy, Richard A. Causey, Mark A. Frevert, Stanley C. Horton, Kevin Hammon, Joseph Hirko, Steven Kean, Mark E. Koenig, Michael S. McConnell, Jeffrey McMahon, Cindy K Olson, Kenneth D. Rice, Paula Rieker, and Lawrence Greg Whalley.

Thus, Lead Plaintiff in *Newby*, joined by the *Tittle* plaintiffs, respectfully request that the Court enter the document depository Order as submitted.

DATED: September 26, 2002

Respectfully submitted,

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DECLARATION OF SERVICE BY WEBSITE AND UPS

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 401 B Street, Suite 1700, San Diego, California 92101.

2. That on September 26, 2002, declarant served the following PLAINTIFFS' MOTION TO ENTER ORDER ESTABLISHING DOCUMENT DEPOSITORY by posting to the website or UPS overnight to the parties as indicated on the attached Service List, pursuant to the Court's August 7, 2002 Order Regarding Service of Papers and Notice of Hearings.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 26th day of September, 2002, at San Diego, California.

Mo Maloney

Mo Maloney

The Service List

May be Viewed in

the Office of the Clerk