UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
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MICHAEL N. MILBY, CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| 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. | |

**LEAD PLAINTIFF'S MOTION TO COMPEL COMPLIANCE WITH ORDERS ENTERED AUGUST 16, 2002 AND OCTOBER 24, 2002**

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## I. INTRODUCTION

In mid-August, the Court granted Lead Plaintiff's motion for limited production from Enron and ordered the production "of all documents and materials produced by [Enron] related to any inquiry or investigation by any legislative branch committee, the executive branch, including the Department of Justice and the Securities and Exchange Commission, and all transcripts of witness interviews or depositions related to those inquiries." Order entered August 16, 2002. Nearly three months later, ***plaintiffs have not received a single document***. Further, Enron has no intent of making said documents available without intervention by the Court.

On October 24, 2002, the Court expanded the scope of Enron's obligations, ordering all documents produced by Enron in *J.P. Morgan Chase Bank v. Liberty Mutual Ins. Co.* (the "Surety Litigation") to be made available to Lead Plaintiff. Order entered October 24, 2002 (collectively with the Court's August 16, 2002 Order referred to herein as "Orders"). Again, notwithstanding the Court's Order, Lead Plaintiff has not received a single document and Enron has not demonstrated intent to comply with the Court's Order Therefore, Lead Plaintiff respectfully requests that the Court compel Enron to comply with the Orders and make the subject documents available to Lead Plaintiff.

## II. ARGUMENT

Unambiguously, the Orders granting Lead Plaintiff limited production of documents make available to Lead Plaintiff the documents Enron produced to the government and documents Enron produced in the Surety Litigation.[1] The mechanics of and means by which the parties will produce documents is also set, as the parties stipulated to the establishment of a document depository in September (subsequently approved by the Court's Order Establishing Document Depository, entered October 31, 2002). Despite having been ordered to produce and there being an agreed method for production, Enron continues to deny Lead Plaintiff access to these documents.

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[1]With respect to the October 24, 2002 Order, the Court did exclude documents protected by privilege and allowed for parties with standing to raise applicable objections before it. No such objections have yet been raised.

Lead Plaintiff contacted Enron's counsel with respect to this matter and in an attempt to address any legitimate issues that have prevented production. Following up on prior correspondence on the issue (*see* Exs. 1-7 attached hereto), on November 6, 2002 Helen Hodges, for Lead Plaintiff, spoke with Ken Marks, for Enron, about the subject of this motion. Mr. Marks stated that Enron will not give plaintiffs access to the documents until the Court rules on plaintiffs' ability to disclose the documents, that is, whether Enron can designate the documents confidential.

As of November 1, 2002, Enron had provided approximately 13 million pages of documents and data for processing by Lex Solutio, in accordance with the Court's Document Depository Order, ***but Enron refuses to authorize Lex Solutio to release those documents to Lead Plaintiff***. *See* Letter From Kenneth S. Marks to Helen Hodges, dated November 1, 2002 (attached hereto as Ex. 8). The justification for its refusal is, however, without adequate factual or legal basis. Notably, Enron's briefing with respect to the August 23, 2002 Order raised no "confidentiality" concern. Nor did Enron bring this issue to the Court's attention after the Order issued. Only now, months later and after Lead Plaintiff moved to preclude the filing of these documents under such a protective order, does Enron raise this issue.

Enron asserts that it need not comply with the Orders "because of plaintiffs' insistence that Enron's documents be placed on the worldwide web." *Id.* Lead Plaintiff has taken no such position, and expressed as much to Enron. *See* Letter From Helen Hodges to Kenneth S. Marks, dated Nov. 5, 2002 (attached hereto as Ex. 9). Enron maintains its position on the basis of a slight ambiguity in Lead Plaintiff's Memorandum of Law in Support of Plaintiffs' Motion to Preclude the Filing or Production of Documents Subject to a Protective Order, which states: "Plaintiffs' counsel believes that it may wish to make certain underlying documents (such as documents produced in discovery) available on this website at the appropriate time." *Id.* at 14 n.20. While Enron steadfastly insists that this statement evidences Lead Plaintiff's intent to publish defendants' production to the public, this has never been Lead Plaintiff's position. Rather, Lead Plaintiff anticipates that ***some*** of the documents produced in the discovery process will be used as exhibits to certain filings. It is these documents that will likely be made available on the Web site, which the Court authorized for service of pleadings. To be clear, Lead Plaintiff has no current plans to make the contents of the document

depository available online. Therefore, Enron's position is without any factual basis and should be rejected.

Regardless of whether Lead Plaintiff intends to publish on the Internet the fruits of discovery, the Court should not enable Enron to continue its steadfast refusal to comply with its Orders. The Orders clearly mandate production. If Enron believes the Orders to be unclear or deficient in some manner, proper procedural processes were available for Enron to address these concerns. Enron has not availed itself of these processes. Rather, the parties are still addressing the issue, nearly three months after Enron's initial production was ordered, forcing Lead Plaintiff to bring this matter to the Court's attention.

Lead Plaintiff stands ready to review Enron's production and prepare this case for trial. Enron's actions have hampered these efforts to mount a timely and thorough prosecution. Respectfully, Lead Plaintiff requests that the Court compel Enron to comply immediately with its Orders and enable Lead Plaintiff to access the documents subject to those Orders.

DATED: November 8, 2002

Respectfully submitted,

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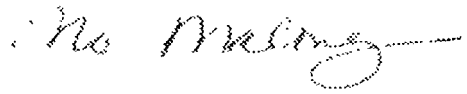
DECLARATION OF SERVICE BY WEBSITE AND UPS

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 November 8, 2002, declarant served the LEAD PLAINTIFF'S MOTION TO COMPEL COMPLIANCE WITH ORDERS ENTERED AUGUST 16, 2002 AND OCTOBER 24, 2002 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 8th day of November, 2002, at San Diego, California.



Mo Maloney

The Service List

May be Viewed in

the Office of the Clerk

The Exhibit(s) May

Be Viewed in the

Office of the Clerk