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

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

MARK NEWBY, et al.,	§	
	§	
Plaintiffs,	§	
	§	**CIVIL ACTION NO: H-01-3624**
v.	§	**AND CONSOLIDATED CASES**
	§	
ENRON CORPORATION, et al.,	§	
	§	
Defendants.	§	

CERTAIN DEFENDANTS' SUR-REPLY IN OPPOSITION TO PLAINTIFFS' MOTION TO PRECLUDE THE FILING OR PRODUCTION OF DOCUMENTS SUBJECT TO A PROTECTIVE ORDER

TO THE HONORABLE COURT:

The undersigned Defendants[1] (hereinafter referred to as "Defendants") respectfully file and serve their Sur-Reply in Opposition to Plaintiffs' Motion to Preclude the Filing or Production of Documents Subject to a Protective Order simply to point out to the Court that Plaintiffs' primary attack on the sample Confidentiality and Protective Order submitted by these Defendants is based on a fairly obvious typographical error in the submitted Order.[2]

The bulk of Plaintiffs' Reply Brief is devoted to re-hashing arguments made in its Motion, which Defendants have already addressed; attempting to rebut the arguments made by the corporate defendants such as Enron, Andersen, and the Bank Defendants; and making other arguments that do

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[1] This Sur-Reply is joined by Kenneth L. Lay, Jeffrey K. Skilling, Richard B. Buy, Richard A. Causey, Mark A. Frevert, Kevin P. Hannon, Joseph M. Hirko, Stanley C. Horton, Steven J. Kean, Mark E. Koenig, Jeffrey McMahon, Cindy K. Olson, Kenneth D. Rice, Lawrence Greg Whalley, John A. Urquhart, Rebecca Mark-Jusbasche, Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Joe H. Foy, Wendy L. Gramm, Robert K. Jaedicke, Charles A. LeMaistre, John Mendelsohn, Jerome J. Meyer, Paul V. Ferraz Pereira, Frank Savage, John Wakeham, Charls E. Walker, Bruce Willison, and Herbert S. Winokur, Jr.

[2] The Defendants could, and certainly would like to, respond to the other arguments made by Plaintiffs in their Reply, but because of the volume of briefing and arguments the Court already has received on this issue, Defendants will refrain from doing so. Defendants nevertheless feel it is necessary to respond to this one point that warrants correction and/or clarification.

1138

not apply to the undersigned Defendants or the sample Protective Order they submitted.[3] Plaintiffs' only specific attack on the Protective Order submitted by the undersigned Defendants is based on a disingenuous reliance on a typographical error in the Protective Order.

Twice, Plaintiffs emphasize the fact that, under Defendants' proposed Protective Order, discovery documents may not be disclosed "***to anyone*** other than those persons and parties described in paragraph 10 hereof and to the court." (Plaintiffs' Reply, pp. 15, 18, emphasis in original.) Plaintiffs then point out that paragraph 10 (which relates to documents designated as "Highly Confidential") does not even allow access to documents by the named parties. (*Id.*) It is clear from the context of the Protective Order as a whole, however, that the quoted language in paragraph 7 should have referred to "paragraphs 9 and 10 hereof" rather than just to "paragraph 10."

Paragraph 9 of the Protective Order provides that documents designated as "Confidential" may be disclosed to -- among others -- the parties' counsel, expert witnesses and consultants, deponents and witnesses, and *the parties*. (*See*, Ex. B to Certain Defendants' Response Brief, ¶9(b).) Obviously, then, the undersigned Defendants did not intend to restrict the named parties' access to any documents not designated as Highly Confidential, and they will submit an amended Confidentiality and Protective Order reflecting the correct paragraph reference if the Court so desires.

Accordingly, because the undersigned Defendants have now corrected the defect in their proposed Protective Order pointed out by Plaintiffs, Plaintiffs' arguments in opposition to that Protective Order are moot.

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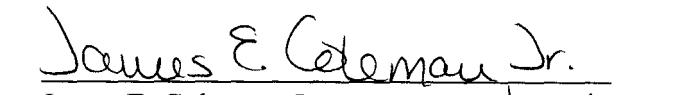
[3] For example, Plaintiffs argue a protective order would be inappropriate, in part, because it would result in the duplication of discovery efforts in related litigation. (Reply Brief, pp. 8-9) The sample Protective Order submitted by the undersigned Defendants, however, specifically provides a mechanism whereby discovery documents can be used in other proceedings. (*See*, Ex. B to Certain Defendants' Response Brief, ¶ 7.)

WHEREFORE, the undersigned Defendants respectfully request that this Court deny Plaintiffs' Motion to Preclude the Filing or Production of Documents Subject to a Protective Order; enter a Confidentiality and Protective Order similar to the one attached to Defendants' Response as Exhibit B (with the one correction discussed herein); and grant Defendants such other and further relief to which they are justly entitled.

Respectfully submitted,



James E. Coleman, Jr.
State Bar No. 0457400
Southern District ID No. 04574000
CARRINGTON, COLEMAN, SLOMAN
& BLUMENTHAL, L.L.P.
200 Crescent Court, Suite 1500
Dallas, Texas 75201
(214) 855-3000
(214) 855-1333 (fax)

ATTORNEY IN CHARGE FOR
DEFENDANT KENNETH L. LAY

OF COUNSEL:

Bruce W. Collins
State Bar No. 04604700
Southern District ID No. 20110
Diane M. Sumoski
State Bar No. 19511000
Southern District ID No. 14847
Kelli Hinson
State Bar No. 00793956
Southern District ID No. 23918
Carrington, Coleman, Sloman & Blumenthal, L.L.P.
200 Crescent Court, Suite 1500
Dallas, Texas 75201
(214) 855-3000
(214) 855-1333 (fax)

Robin C. Gibbs

Robin C. Gibbs bp Kelli Hinson
State Bar No. 07853000
Kathy D. Patrick
State Bar No. 15581400
Jeremy L. Doyle
State Bar No. 24012553
Aundrea Frieden
State Bar No. 24034468
GIBBS & BRUNS, L.L.P.
1100 Louisiana, Suite 5300
Houston, TX 77002
(713) 650-8805
(713) 750-0903 (fax)
Attorneys for Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Joe H. Foy, Wendy L. Gramm, Robert K. Jaedicke, Charles A. LeMaistre, John Mendelsohn, Jerome J. Meyer, Paul V. Ferraz Pereira, Frank Savage, John Wakeham, Charls E. Walker, Bruce Willison, and Herbert S. Winokur, Jr.

Jacks C. Nickens

Jacks C. Nickens bp Kelli Hinson
State Bar No. 15013800
NICKENS, KEETON, LAWLESS, FARRELL
& FLACK, L.L.P.
600 Travis Street, Suite 7500
Houston, TX 77002
(713) 571-9191
(713) 571-9652 (fax)
Attorneys for Richard B. Buy, Richard A. Causey, Mark A. Frevert, Kevin P. Hannon, Joseph M. Hirko, Stanley C. Horton, Steven J. Kean, Mark E. Koenig, Jeffrey McMahon, Cindy K. Olson, Kenneth D. Rice, and Lawrence Greg Whalley

Jeffrey W. Kilduff

Jeffrey W. Kilduff bp Kelli Hinson
O'MELVENY & MYERS
1650 Tysons Blvd.
McLean, VA 22102
703-287-2412
703-287-2404 (fax)

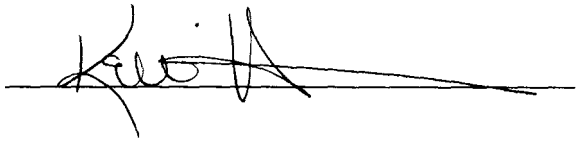
Robert M. Stern
Bruce Hiler
O'MELVENY & MYERS LLP
555 13th Street, N.W., Suite 500W
Washington, DC 20004-1109
(202) 383-5328
(202) 383-5414 (fax)
Attorneys for Jeffrey K. Skilling

H. Bruce Golden

H. Bruce Golden bp Kelli Hinson
State Bar No. 08081500
Federal ID No. 8314
GOLDEN & OWENS LLP
1221 McKinney St., Suite 3600
Houston, TX 77010
(713) 223-2600
(713) 223-5002 (fax)
Attorneys for John A. Urquhart

John J. McKetta, III

John J. McKetta, III bp Kelli Hinson
State Bar No. 1371150
Federal ID No. 29895
GRAVES, DOUGHERTY, HEARON & MOODY
515 Congress Ave., Suite 2300
Austin, TX 78701
(512) 480-5600
(512) 478-1976 (fax)
Attorneys for Rebecca Mark-Jusbasche

CERTIFICATE OF SERVICE

Pursuant to the Court's Orders of June 6, 2002 and August 7, 2002, the foregoing document was served electronically to counsel of record on November 14, 2002.