

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

United States Courts
Southern District of Texas
FILED

DEC 04 2002

Michael N. Milby, Clerk

MARK NEWBY, ET AL.,

Plaintiffs,

vs.

ENRON CORP., ET AL.,

Defendants.

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CIVIL ACTION NO. H-01-3624
(CONSOLIDATED)

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

By motion dated November 8, 2002, Lead Plaintiff moved for an order requiring Enron Corp. to make available to Lead Plaintiff those documents encompassed by this Court's orders entered on August 16, 2002 and October 24, 2002.

Contrary to Lead Plaintiff's motion, Enron is not in defiance of this Court's orders. Well before the Document Depository Order was entered in this case, Enron began transmitting its documents – both in hard copy and electronic form – to the designated vendor Lex Solutio for processing in compliance with the anticipated (now entered) document protocol. Lex Solutio estimates that Enron has delivered approximately 13 million pages of documents thus far. During the extensive negotiations over the Document Depository Order, all parties, including Lead Plaintiff, knew that defendants wanted a protective order entered in this case. The decision was made not to address that issue in the Document Depository Order and to deal with it separately. As the Court knows, the issue of the appropriate protective order for this case is pending. Lead Plaintiff has taken the untenable position that there should be no protective order in this case and that it should decide

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which documents will be made available to the public. Enron and other defendants have moved for entry of a protective order.

Rather than allow the Court to decide the pending motions for protective order, Lead Plaintiff seeks to moot those motions, as least as they apply to Enron. If granted, Lead Plaintiff's motion to compel will require Enron to deliver its documents to Lead Plaintiff with no obligation on Lead Plaintiff to maintain their confidentiality. This is entirely inappropriate.

To address this situation, Enron is and has been ready to allow Lead Plaintiff to receive its documents, so long as producing them does not render moot the pending dispute between the parties over which documents will be kept confidential and how those confidentiality designations will be made. To this end, Enron offered to make its documents available to Lead Plaintiff if it would agree to keep them confidential until such time as the Court decides the pending motions for entry of a protective order in this case. Thus far, Lead Plaintiff has refused to enter into such an agreement, even though it would provide Lead Plaintiff all of the relief it seeks in its motion to compel. If the Court grants Lead Plaintiff's motion without first addressing the issue of the appropriate protective order for this case, Lead Plaintiff will be under no obligation to maintain confidentiality for any of Enron's documents. Given the extensive briefing that has occurred on the motions for protective order, that result would defy logic. It also would be extremely unfair to Enron, which has moved for entry of a protective order to maintain the confidentiality of its documents.

For this reason, Enron Corp. requests that Lead Plaintiff's motion to compel be denied. Enron renews its offer to Lead Plaintiff to provide copies of its documents if Lead Plaintiff will agree to keep them confidential until the Court rules on the motions for entry of a protective order. Once the Court decides those motions, Enron will produce its documents accordingly.

Respectfully submitted,

SUSMAN GODFREY L.L.P.

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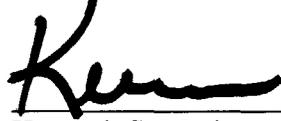
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CERTIFICATE OF SERVICE

I, Kenneth S. Marks, hereby certify that on the 4th day of December, 2002, the foregoing was served by e-mail or facsimile on the attached service list.


Kenneth S. Marks

The Service List

May be Viewed in

the Office of the Clerk