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

IN THE UNITED STATES DISTRICT COURT
FOR THE 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.	
WASHINGTON STATE INVESTMENT BOARD and EMPLOYER-TEAMSTERS LOCAL NOS. 175 and 505 PENSION TRUST FUND, On Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. KENNETH L. LAY, et al., Defendants.	Civil Action No. 02-3401 CLASS ACTION

LEAD PLAINTIFF'S MOTION FOR LEAVE TO FILE A SUR-REPLY IN SUPPORT OF OPPOSITION TO CERTAIN DEFENDANTS' MOTION TO STRIKE THE WASHINGTON STATE INVESTMENT CLASS ACTION COMPLAINT

1336

TO THE HONORABLE JUDGE OF THIS COURT:

Lead Plaintiff hereby respectfully requests leave to file a sur-reply to the Certain Defendants' Reply to Plaintiffs' Opposition to the Motion to Strike the Washington State Investment Board Class Action Complaint ("Certain Defendants' Reply").

A sur-reply is warranted because defendants now raise new (albeit meritless) legal theories. "A sur-reply is appropriate by the non-movant ... when the movant raises new legal theories or attempts to present new evidence at the reply stage." *Racetrac Petroleum, Inc. v. J.J.'s Fast Stop, Inc.*, No. 3:01-CV-1397-P, 2003 U.S. Dist. LEXIS 1569, at *59-*60 (N.D. Tex. Feb. 3, 2003). In their reply, defendants raised several new legal arguments ***for the first time***. For example, defendants argued that "the Sarbanes-Oxley Act does not expand the statute of limitations for claims under §§11 and 15 of the 1933 Act; it is limited to claims asserted in fraud." *See* Certain Defendants' Reply at 1-9. In addition, defendants argued that "[t]he Sarbanes-Oxley Act is not retroactive." *Id.* at 10-11. Neither legal theory was previously raised. Accordingly, Lead Plaintiff respectfully requests the Court grant leave to file the sur-reply herewith.

DATED: April 16, 2003

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 April 16, 2003, declarant served the Lead Plaintiff's Motion for Leave to File a Sur-reply in Support of Opposition to Certain Defendants' Motion to Strike the Washington State Investment Class Action Complaint 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 16th day of April, 2003, at San Diego, California.

Mo Maloney

Mo Maloney

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