

APR 25 2003



Michael N. Milby, Clerk of Court

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)

§ CLASS ACTION

This Document Relates To:

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 RESPONSE TO DEFENDANT
ANDREW FASTOW'S MOTION TO POSTPONE ANSWER**

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In light of the Court's recent ruling on defendant Andrew Fastow's motion to stay discovery, Lead Plaintiff notes simply that Mr. Fastow's own authority acknowledges that "a proper invocation of the privilege [against self incrimination does not] mean that a defendant is excused from the requirement to file a responsive pleading; he is obliged to answer those allegations that he can and to make a specific claim of the privilege as to the rest." *North River Ins. Co. v. Stefanou*, 831 F.2d 484, 486 (4th Cir. 1987).

Mr. Fastow is not free to defend the civil allegations against him as he would prefer. See *National Acceptance Co. v. Bathalter*, 705 F.2d 924, 932 (7th Cir. 1983). "Forcing an individual to risk non-criminal disadvantage by remaining silent for fear of self-incrimination in a parallel criminal proceeding does not rise to the level of an unconstitutional infringement." *Hilliard v. Black*, No. 1:00CV80 MMP, 2000 U.S. Dist. LEXIS 20329, at *10 (N.D. Fla. Nov. 9, 2000) (denying motion to stay civil proceedings until related criminal matter is resolved, filed early in the case); see *United States v. White*, 589 F.2d 1283, 1287 (5th Cir. 1979).¹

DATED: April 25, 2003

Respectfully submitted,

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¹*Wehling v. Columbia Broadcasting Sys.*, 608 F.2d 1084, 1086 n.3 (5th Cir. 1979) and *Kmart Corp. v. Aronds*, No. H-96-1212, slip op. at 1 (S.D. Tex. Dec. 12, 1996), involve stays of discovery not postponing a defendant's deadline to answer. Moreover in *Kmart*, the motion to stay was filed more than four months after plaintiff filed its original complaint, which suggests an answer had already been filed. *Kmart*, slip op. at 2-4. These cases are therefore distinguishable on the facts from the pending motion.

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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 25, 2003, declarant served the following documents:

**LEAD PLAINTIFF'S RESPONSE TO DEFENDANT
ANDREW FASTOW'S MOTION TO POSTPONE ANSWER**

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 25th day of April, 2003, at San Diego, California.

Deborah S Granger

DEBBIE GRANGER