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

United States Courts
Southern District of Texas
FILED
OCT 2 0 2003
Michael N. Milby, Clerk

MARK NEWBY, *ET AL.*,	§	
	§	
Plaintiffs,	§	
	§	CIVIL ACTION NO: H-01-3624
v.	§	CONSOLIDATED LEAD CASE
	§	
ENRON CORPORATION, *ET AL.*,	§	
	§	
Defendants.	§	

FLEMING & ASSOCIATES, L.L.P.'S MOTION FOR LEAVE TO FILE ENRON-RELATED ACTIONS IN STATE COURT AND MOTION TO MODIFY ORDER

TO THE HONORABLE MELINDA HARMON:

COMES NOW Fleming & Associates, L.L.P. (F&A) and files this its Motion for Leave to File Enron-Related Actions in State Court and in support thereof would show the following:

1. On February 15, 2002 this Court entered an order requiring Fleming & Associates, L.L.P. to seek leave with this court before filing "any new Enron-related actions."

2. Fleming & Associates, L.L.P. now seeks this Court's leave to file the state court actions attached as Exhibits 1 and 2 to this motion as those individuals represented by F&A desired and still desire to seek relief in a state court proceeding for claims arising under state law, common law and statutory law and waive any claims they may have arising under federal law.

3. On August 9, 2002, the Fifth Circuit in *Newby v. Enron Corp.*, 302 F.3d 295 (5th Cir. 2002) acknowledged that "[t]he advocate is duty-bound to protect his client's interests, and choices of venue and timing belong to him." *Id.* at 303. F&A filed suit under state law instead of the federal Securities Litigation and Uniform Standards Act in accordance with this duty. The Fifth Circuit made clear that

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> the district court cannot predicate future denials of leave solely upon Fleming's desire to avoid the reach of the Securities Litigation Uniform Standards Act. We do not question the filing of suits tailored to avoid federal jurisdiction. Nor do we countenance any preemptive federal dominion. *The parallel exercise of state and federal judicial power is inherent in our government of dual sovereignty.*

Id. at 303 (emphasis added).

4. Therefore, pursuant to this Court's February 15, 2002 Order and the opinion of the Fifth Circuit, F&A requests that it be allowed to file the attached state court petitions. The individuals in these suits desire to have their claims adjudicated in a state court proceeding for claims arising under state law, common law and statutory law and waive any claims they may have arising under federal law.

5. Moreover, the statute of limitations continues to run in these matters. It is, therefore, imperative to file these claims to avoid the statute of limitations from running on any causes of action that may be available to these individuals.

6. In addition, F&A realizes the tremendous burden this Court is laboring under to keep this litigation focused and organized. F&A does not want to further burden this Court with continual requests to file similar actions. As such, F&A further respectfully requests that this Court modify its February 15, 2002 order and allow F&A to file suits similar to the state court actions attached without leave of this Court so that F&A may file actions on behalf of all their clients. F&A only seeks to pursue the interests of its clients.

WHEREFORE, Fleming & Associates, L.L.P. prays that this Court grant its Motion for Leave to File Enron-Related Actions in State Court and Motion to Modify Order and for any and all further relief to which it may show itself justly entitled.

Respectfully submitted,

FLEMING & ASSOCIATES, L.L.P.
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George M. Fleming
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1330 Post Oak Boulevard, Suite 3030
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By: _____
G. Sean Jez

ATTORNEYS FOR PLAINTIFFS

OF COUNSEL:

MIKE O'BRIEN, P.C.
Mike O'Brien
State Bar No. 15170200
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Telephone: (713) 222-0088
Fax No.: (713) 222-0888

CERTIFICATE OF SERVICE

I certify that a true and correct copy of **Fleming & Associates, L.L.P.'s Motion for Leave to File Enron-Related Actions in State Court and Motion to Modify Order** has been served by sending a copy via electronic mail to serve@ESL3624.com on October 9, 2003.

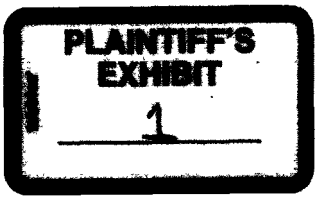
I further certify that a true and correct copy of **Fleming & Associates, L.L.P.'s Motion for Leave to File Enron-Related Actions in State Court and Motion to Modify Order** has been served by sending a copy via first class mail to the following party, who does not accept service by electronic mail on October 9, 2003.

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall Street, 21st Floor
New York, NY 10004

G. Sean Jez

CAUSE NO. _____

CYNTHIA L. ADAMS;	§	IN THE DISTRICT COURT OF
COURTNEY L. ALLEN;	§	
MARIA M. ALTINGER;	§	
JEAN M. BROTEMARKLE;	§	
SUSAN L. DAVIS; WILDA B.	§	
DAVIS; RITA J. DONALDSON;	§	
MARY ANN FISHER; RUTH E.	§	
FLOURNOY; FRANK W. GEROLD;	§	
FRANK W. GEROLD ON BEHALF	§	
OF THE ESTATE OF PATRICIA M.	§	
GEROLD; DOROTHY L. PIERCE	§	
AND DOUGLAS P. PIERCE; GERALD	§	
E. SEDLACEK AND JEANETTE A.	§	
SEDLACEK; CARL TRAGESSER;	§	
FREDERICK I. COHEN; HARRIET L.	§	
MELLOW; ROBERT F. WOHLFARTH;	§	
ROBERT F. WOHLFARTH, II;	§	
ERNEST J. SCHWARTZ AND	§	
EDITH SCHWARTZ; VERN C. SMITH;	§	
NANCY S. ROBERTSON; GEORGE	§	
FRASER AND MAURINE D. FRASER;	§	
JAMES HICKS ON BEHALF OF JIM	§	
HICKS & CO. EMPLOYEE PROFIT	§	
SHARING PLAN; JACOB J.	§	
TAMBORELLO AND PHYLLIS F.	§	
TAMBORELLO; JOHN W. PETERSON	§	
AND CAROLYN JANE PETERSON;	§	
EUGENE P. CARVER, TRUSTEE	§	
FOR THE BENEFIT OF CLARA	§	
FRANCES BRAND; WILLIAM E.	§	
TOLSON; RICHARD F. MILLER;	§	
PETER JENNINGS; STEPHEN AND	§	
LINDA JENNINGS, TRUSTEES FOR	§	
THE STEPHEN AND LINDA	§	
JENNINGS TRUST; STEPHEN O.	§	
JENNINGS, TRUSTEE FOR THE	§	
SUSAN TRUST; LEROY W.	§	
PICKENS; JOHN A. TUTHILL;	§	
THOMAS K. HUISKAMP; ROBERT W.	§	
SLOAN; GWEN L. LOVETT;	§	
DR. GEORGE C. CAUBLE, JR.;	§	
ARUN MISRA AND JAY MISRA;	§	
CLYDE CARPENTER AND CAROLYN	§	
CARPENTER; RICHARD WOLF;	§	



Plaintiffs,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
ARTHUR ANDERSEN, L.L.P.; THOMAS H. BAUER; MICHAEL L. BENNETT; JOSEPH F. BERADINO; DEBRA A. CASH; DAVID B. DUNCAN; JAMES A. FRIEDLIEB; D. STEPHEN GODDARD, JR.; GARY B. GOOLSBY; GREGORY W. HALE; MICHAEL M. LOWTHER; MICHAEL C. ODOM; ROGER WILLARD; ROBERT A. BELFER; NORMAN P. BLAKE, JR.; RICHARD B. BUY; RICHARD CAUSEY; RONNIE C. CHAN; JOHN H. DUNCAN; ANDREW S. FASTOW; JOE H. FOY; BEN GLISAN; WENDY L. GRAMM, M.D.; KEVIN HANNON; KEN L. HARRISON; JOSEPH M. HIRKO; STANLEY C. HORTON; KEVIN HOWARD; ROBERT K. JAEDICKE; MICHAEL J. KOPPER; KENNETH L. LAY; CHARLES A. LEMAISTRE; REBECCA MARK-JUSBASCHE; JEFF MCMAHON; JOHN MENDELSOHN; JEROME J. MEYER; KRISTINA MOURDAUNT; LOU PAI; PAUL V. FERRAZ PEREIRA; KENNETH D. RICE; FRANK SAVAGE; JEFFREY J. SKILLING; JOHN A. URQUHART; JOHN WAKEHAM; CHARLES E. WALKER; LAWRENCE GREG WHALLEY; HERBERT S. WINOKUR, JR.; AND F. SCOTT YEAGER;	§	
	§	
Defendants.	§	_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

COME NOW Plaintiffs Cynthia L. Adams; Courtney L. Allen; Maria M. Altinger; Jean M. Brotemarkle; Susan L. Davis; Wilda B. Davis; Rita J. Donaldson; Mary Ann Fisher; Ruth E. Flournoy; Frank W. Gerold; Frank W. Gerold on behalf of the Estate of Patricia M. Gerold;

Dorothy L. Pierce and Douglas P. Pierce; Gerald E. Sedlacek and Jeanette A. Sedlacek; Carl Tragesser; Frederick I. Cohen; Harriet L. Mellow; Robert F. Wohlfarth; Robert F. Wohlfarth, II; Ernest J. Schwartz and Edith Schwartz; Vern C. Smith; Nancy S. Robertson; George Fraser and Maurine D. Fraser; James Hicks on behalf of Jim Hicks & Co. Employee Profit Sharing Plan; Jacob J. Tamborello and Phyllis F. Tamborello; John W. Peterson and Carolyn Jane Peterson; Eugene P. Carver, Trustee for the Benefit of Clara Frances Brand; William E. Tolson; Richard F. Miller; Peter Jennings; Stephen and Linda Jennings, Trustees for the Stephen and Linda Jennings Trust; Stephen O. Jennings, Trustee for The Susan Trust; Leroy W. Pickens; John A. Tuthill; Thomas K. Huiskamp; Robert W. Sloan; Gwen L. Lovett; Dr. George C. Cauble, Jr.; Arun Misra and Jay Misra; Clyde Carpenter and Carolyn Carpenter; Richard Wolf; with this their Original Petition, complaining of Defendants Arthur Andersen, L.L.P. ("AALLP"); Thomas H. Bauer; Michael L. Bennett; Joseph F. Beradino; Debra A. Cash; David B. Duncan; James A. Friedlieb; D. Stephen Goddard, Jr.; Gary B. Goolsby; Gregory W. Hale; Michael M. Lowther; Michael C. Odom; Roger Willard; Robert A. Belfer; Norman P. Blake, Jr.; Richard B. Buy; Richard Causey; Ronnie C. Chan; John H. Duncan; Andrew S. Fastow; Joe H. Foy; Ben Glisan; Wendy L. Gramm, M.D.; Kevin Hannon; Ken L. Harrison; Joseph M. Hirko; Stanley C. Horton; Kevin Howard; Robert K. Jaedicke; Michael J. Kopper; Kenneth L. Lay; Charles A. LeMaistre; Rebecca Mark-Jusbasche; Jeff McMahon; John Mendelsohn; Jerome J. Meyer; Kristina Mourdaunt; Lou Pai; Paul V. Ferraz Pereira; Kenneth D. Rice; Frank Savage; Jeffrey J. Skilling; John A. Urquhart; John Wakeham; Charles E. Walker; Lawrence Greg Whalley; Herbert S. Winokur, Jr.; and F. Scott Yeager. In support thereof, they would show the following:

I. Discovery

1. Discovery is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

II. Parties

2. Plaintiffs Cynthia L. Adams; Courtney L. Allen; Maria M. Altinger; Jean M. Brotemarkle; Susan L. Davis; Wilda B. Davis; Rita J. Donaldson; Mary Ann Fisher; Ruth E. Flournoy; Frank W. Gerold; and Frank W. Gerold on behalf of the Estate of Patricia M. Gerold are citizens of the State of Texas and residents of Harris County who own or have owned Enron common stock.

3. Plaintiffs Dorothy L. Pierce and Douglas P. Pierce; Gerald E. Sedlacek and Jeanette A. Sedlacek; Carl Tragesser; Frederick I. Cohen; Harriet L. Mellow; Robert F. Wohlfarth; and Robert F. Wohlfarth, II are citizens of the State of Texas who own or have owned Enron common stock.

4. Plaintiffs Ernest J. Schwartz and Edith Schwartz; Vern C. Smith; Nancy S. Robertson; and George Fraser and Maurine D. Fraser are citizens of the State of Arizona who own or have owned Enron common stock.

5. Plaintiffs James Hicks on behalf of Jim Hicks & Co. Employee Profit Sharing Plan; Jacob J. Tamborello and Phyllis F. Tamborello; John W. Peterson and Carolyn Jane Peterson; Eugene P. Carver, Trustee for the Benefit of Clara Frances Brand; William E. Tolson; Richard F. Miller; Peter Jennings; Stephen and Linda Jennings, Trustees for the Stephen and Linda Jennings Trust; and Stephen O. Jennings, Trustee for The Susan Trust are citizens of the State of California who own or have owned Enron common stock.

6. Plaintiff Leroy W. Pickens is a citizen of the State of New Mexico who owns or has owned Enron common stock.

7. Plaintiff John A. Tuthill is a citizen of the State of Oregon who owns or has owned Enron common stock.

8. Plaintiff Thomas K. Huiskamp is a citizen of the State of Utah who owns or has owned Enron common stock.

9. Plaintiffs Robert W. Sloan; and Gwen L. Lovett are citizens of the State of Washington who own or have owned Enron common stock.

10. Plaintiffs Dr. George C. Cauble, Jr.; and Arun Misra and Jay Misra are citizens of the State of Georgia who own or have owned Enron common stock.

11. Plaintiffs Clyde Carpenter and Carolyn Carpenter are citizens of the State of Mississippi who own or have owned Enron common stock.

12. Plaintiff Richard Wolf is a citizen of the State of Nevada who owns or has owned Enron common stock.

13. Defendant **Arthur Andersen, L.L.P.** ("AALLP") is a limited liability partnership. Defendant, Andersen audited and certified Enron's financial statements from 1997 through 2001. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

14. Defendant **Thomas H. Bauer** ("Bauer") was a partner of the Houston, Texas office of Arthur Andersen, L.L.P. who was in charge of the Enron account in which he and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Bauer oversaw commodity trading at Enron and worked exclusively on Enron matters. Bauer is an individual residing in Houston, Harris

County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

15. Defendant **Michael L. Bennett** ("Bennett") was a partner of the Houston, Texas office of Arthur Andersen, L.L.P. and a central participant in the Enron audit in which he and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Upon information and belief, Bennett is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

16. Defendant **Joseph F. Beradino** ("Beradino") was a partner of the Houston, Texas office of Arthur Andersen, L.L.P. who was in charge of the Enron account in which he and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Upon information and belief, Beradino is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

17. Defendant **Debra A. Cash** ("Cash") was a partner and head of the energy unit in the Houston, Texas office of Arthur Andersen, L.L.P. Cash and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Cash is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

18. Defendant **David B. Duncan** ("Duncan") was the head Andersen partner on the Enron engagement and was a partner in both Andersen Worldwide and Arthur Andersen, L.L.P. and served on the Chairman's Advisory Counsel, an elite group of twenty-one worldwide

partners. Duncan and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Defendant was discharged by AALLP for destroying documents relevant to the Enron audits. Duncan has pleaded guilty to the destruction of documents connected with the audit of Enron's books and has admitted in open court that he knew that the documents he had destroyed were relevant to legitimate government inquiries about the audits of Enron Corp. and its subsidiaries. Duncan is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

19. Defendant **James A. Friedlieb** ("Friedlieb") was a partner in Andersen Worldwide's Chicago headquarters, a partner in Andersen Worldwide and Arthur Andersen, L.L.P. Friedlieb and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Upon information and belief, Friedlieb is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

20. Defendant **D. Stephen Goddard, Jr.** ("Goddard") was office managing partner of the Houston, Texas office of Arthur Andersen, L.L.P. from 1997 until 2001. Goddard was also head of Arthur Andersen's Audit & Business Advisory and Energy practice for the Houston office, a significant participant in the Enron audit and consulting engagements, the managing partner for the Gulf Coast Market Circle and a partner in both Andersen Worldwide and Arthur Andersen, L.L.P. Goddard conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Goddard is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

21. Defendant **Gary B. Goolsby** ("Goolsby") was in charge of Global Risk Management and was Consulting Practice Director of Arthur Andersen, L.L.P's Houston office. Goolsby was an essential member of the Enron audit and consulting engagements and was responsible for the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Defendant is a resident of Katy, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

22. Defendant **Gregory W. Hale** ("Hale") was a partner of Arthur Andersen, L.L.P. based in their Houston office and a significant member of the Enron audit. He and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Upon information and belief, Hale is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

23. Defendant **Michael M. Lowther** ("Lowther") was Arthur Andersen's concurring partner on the Enron audit since 1997 and a partner in both Andersen Worldwide and Arthur Andersen, L.L.P. He and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Lowther is a resident of Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

24. Defendant **Michael C. Odom** ("Odom") was a partner of Arthur Andersen, L.L.P. based in their Houston office and a significant member of the Enron audit. He and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Upon information and belief, Odom is an

individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

25. Defendant **Roger Willard** ("Willard") is a partner of the Houston, Texas office of Arthur Andersen, L.L.P., a member of the Audit and Business Advisory practice and in charge of the Enron account in which he and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Willard is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

26. Defendant **Robert A. Belfer** ("Belfer") served as a Director of Enron from 1983 until 2002 and served on its Executive Committee and Finance and Compensation Committees. Belfer executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Belfer is an individual residing in New York, New York. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

27. Defendant **Norman P. Blake, Jr.** ("Blake") served as a Director of Enron from 1993 until 2002 and served on the Finance and Compensation Committees. Blake executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Blake is an individual residing in Colorado Springs, Colorado. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

28. Defendant **Richard B. Buy** ("Buy") was the Executive Vice President and Chief Risk Officer of Enron after serving as Senior Vice President and Chief Risk Officer from March 1999 through July 1999. He also served as the Management Director and Chief Risk Officer of Enron Capital & Trade (ECT) from January 1998 until March 1999. Buy is an individual residing in

Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

29. Defendant **Richard Causey** ("Causey") served as Executive Vice President and Chief Accounting Officer of Enron from January 1997 to February 2002. Causey also served as an officer and/or director of New Power Corporation. Causey is an individual residing in Spring, Montgomery County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

30. Defendant **Ronnie C. Chan** ("Chan") served as an Enron director from 1996 until 2002 and was a member of the audit and compliance committee. Chan has been Chairman of Hang Lung Group, comprising three publicly traded Hong Kong-based companies involved in property development, property investment and hotels. Mr. Chan also co-founded and is a director of various companies within Morningside/Springfield Group, which invests in and manages private companies in the manufacturing and service businesses, and engages in financial investments. Mr. Chan is also a director of Standard Chartered PLC and Motorola, Inc. Upon information and belief, Defendant Chan is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

31. Defendant **John H. Duncan** ("Duncan") is a former Enron director beginning in 1985. From 1990 until 2002, Duncan's principal occupation was investments. Mr. Duncan is also a director of EOTT Energy Corp. (the general partner of EOTT Energy Partners, L.P.) and Group I Automotive Inc. Defendant Duncan is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

32. Defendant **Andrew S. Fastow** ("Fastow") was Enron's former Executive Vice President and Chief Financial Officer having been originally hired at Enron on or about February 12, 1997. Defendant Fastow is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

33. Defendant **Joe H. Foy** ("Foy") served as a member of the Audit Committee for Enron from 1997 until 1999. Defendant Foy is an individual residing in Kerrville, Kerr County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

34. Defendant **Ben Glisan** ("Glisan") was a managing director and treasurer of Enron until November of 2001. Defendant was discharged for self-dealing the week of November 5, 2001. Defendant Glisan is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

35. Defendant **Dr. Wendy L. Gramm** ("Gramm") was an Enron director from 1993 until 2002 and was a member of the audit and compliance committee. Dr. Gramm is an economist and Director of the Regulatory Studies Program of the Mercatus Center of George Mason University. From February 1988 until January 1993, Dr. Gramm served as Chairman of the Commodity Futures Trading Commission in Washington, D.C. and is also a director of IBP, Inc., State Farm Insurance Co. and Invesco Funds. Dr. Gramm was also a director of the Chicago Mercantile Exchange until December 31, 1999. Defendant is an individual residing in College Station, Brazos County, Texas and will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

36. Defendant **Kevin Hannon** ("Hannon") is a former President of Enron Broadband Services, Inc. (EBS). Hannon, upon information and belief, is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

37. Defendant **Ken L. Harrison** ("Harrison") served as Chief Executive Officer of Portland General Electric (an Enron subsidiary) and as a Director for Enron from 1997 until 2001. Harrison executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Harrison is an individual residing in Portland, Oregon and will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

38. Defendant **Joseph M. Hirko** ("Hirko") was Chief Executive Officer of EBS from 1997 until June 2000. Upon information and belief, Hirko is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

39. Defendant **Stanley C. Horton** ("Horton") served as Chairman and CEO of Enron Transportation in 2000 and as Chairman & CEO of Enron Gas Pipeline Group from 1997 until 1999. Upon information and belief, Horton is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

40. Defendant **Kevin Howard** ("Howard") served as Chief Financial Officer of EBS. Upon information and belief, Howard is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

41. Defendant **Robert K. Jaedicke** ("Jaedicke") was an Enron director from 1985 until 2002 and once served as the chairman of the audit and compliance committee. Jaedicke is Professor (Emeritus) of Accounting at the Stanford University Graduate School of Business in Stanford, California. Upon information and belief, Jaedicke is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

42. Defendant **Michael J. Kopper** ("Kopper") served as managing director of Enron's Global Equity Markets Group. Kopper is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

43. Defendant **Kenneth L. Lay** ("Lay") has been an Enron director since 1985, until his resignation in 2002. Lay was Chairman of the Board of Enron from 1986 to 2002. From 1986 until February 2001, Lay was also the Chief Executive Officer of Enron. On August 14, 2001, Lay became President and CEO of Enron upon the surprise resignation of defendant Skilling, as further described below. Defendant Lay is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

44. Defendant **Charles A. LeMaistre** ("LeMaistre") was an Enron director from 1985 until 2002. LeMaistre served as President of the University of Texas M.D. Anderson Cancer Center in Houston, Texas and now holds the position of President Emeritus. LeMaistre is an individual residing in San Antonio, Bexar County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

45. Defendant **Rebecca Mark-Jusbasche** ("Mark-Jusbasche") was an Enron director from 1999 until 2000. Mark-Jusbasche executed the 1999 financial statements of Enron. Mark-Jusbasche is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

46. Defendant **Jeff McMahon** ("McMahon"), after being Senior Vice President, Finance and Treasurer from July 1998 through July 1999, served as Executive Vice President, Finance and Treasurer. McMahon also served as CFO of Enron Europe from 1994 through July 1998. Upon information and belief, McMahon is a resident of Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

47. Defendant **John Mendelsohn** ("Mendelsohn") was an Enron director from 1999 until 2002 and was a member of the audit and compliance committee. Mendelsohn has served as President of the University of Texas M.D. Anderson Cancer Center. Prior to 1996, Dr. Mendelsohn was Chairman of the Department of Medicine at Memorial Sloan-Kettering Cancer in New York. Mendelsohn is also a director of ImClone Systems, Inc. Mendelsohn is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

48. Defendant **Jerome J. Meyer** ("Meyer") served as an Enron director from 1997 through 2002, serving on the Finance Committee and Nominating Committee. Meyer executed the 1997, 1998, 1999 and 2000 financial statement of Enron. Meyer is an individual residing in Wisonville, Oregon. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

49. Defendant **Kristina Mourdaunt** ("Mourdaunt") was a managing director and general counsel of EBS until November of 2001. Defendant was discharged for self-dealing the week of November 5, 2001. Defendant Mourdaunt is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

50. Defendant **Lou Pai** ("Pai") served as an Enron director at all times relevant to this lawsuit. Pai was also the Chairman and CEO of Enron Xcelerator until the end of 2000 after serving as Chairman of Enron Energy Services (Enron's retail energy services business). Pai is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

51. Defendant **Paul V. Ferraz Pereira** ("Pereira") served as Enron director from 1999 though 2002 and was a member of the audit and compliance committee. Upon information and belief, Defendant is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

52. Defendant **Kenneth D. Rice** ("Rice") began serving as Chairman and Chief Executive Officer of EBS in June 2000 and served as Chairman and Chief Executive Officer of ECT-North America from March 1997 until June 1999. Upon information and belief, Rice is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

53. Defendant **Frank Savage** ("Savage") served as an Enron director from 1999 until 2002. Upon information and belief, Defendant Savage is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

54. Defendant **Jeffrey K. Skilling** ("Skilling") was an Enron director at all times relevant to this lawsuit. Skilling served as President and Chief Executive Officer of Enron from February 2001 through August 14, 2001, when he announced his unexpected resignation from the offices of both President and CEO at the time of his resignation, he gave up millions in stock options and bonuses that he would have received if he had continued his employment. It was also announced on that date that Skilling would remain on the Board of Directors, and that he would serve as a consultant to the Company through the year 2005. Skilling, however, resigned from the board in 2002. Skilling served as President and Chief Operating Officer of Enron from January 1997 through February 2001. From August 1990 until December 1996, he served as Chairman and Chief Executive Officer of Enron North America Corp. and its predecessor companies. Skilling was also a director of the Houston Branch of the Federal Reserve Bank of Dallas during the periods relevant to this case. Upon information and belief, Defendant Skilling is an individual residing in Houston, Harris County, Texas.

55. Defendant **John A. Urquhart** ("Urquhart") served as Director of Enron from 1990 through 2001, serving on the Finance Committee. Urquhart executed the 1997, 1998, 1999 and 2000 financial statement of Enron. Urquhart is an individual residing in Fairfield, Connecticut. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

56. Defendant **John Wakeham** ("Wakeham") served as an Enron director from 1994 until 2002. Wakeham served as a member of the audit and compliance committee. Wakeham is a retired former U.K. Secretary of State for Energy and Leader of the Houses of Commons and Lords. He served as a Member of Parliament from 1974 until his retirement from the House of Commons in April 1992. Prior to his government service, Lord Wakeham managed a large

private practice as a chartered accountant. He is currently Chairman of the Press Complaints Commission in the U.K. and chairman of director of a number of publicly traded U.K. companies. Upon information and belief, Lord Wakeham is an individual residing in Houston, Harris County Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

57. Defendant **Charles E. Walker** ("Walker") served as a Director of Enron from 1995 until 1998, serving on the Finance Committee and Nominating Committee, including as Chairman. Walker executed the 1997 and 1998 financial statements of Enron. Walker is an individual residing in Potomac, Maryland. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

58. Defendant **Lawrence Greg Whalley** ("Whalley") served as President and Chief Operating Officer of Enron Corporate in 2001 and prior to that served as Chairman and Chief Executive Officer of Enron Europe from March 1997 through June 2000. Upon information and belief, Whalley is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

59. Defendant **Herbert S. Winokur** ("Winokur") was an Enron director from 1985 until 2002. Winokur is Chairman and Chief Executive Officer of Capricorn Holdings, Inc. (a private investment company) and Managing General Partner of Capricorn Investors, L.P., Capricorn Investors II, L.P. and Capricorn Investors III, L.P., partnerships concentrating on investments in restructure situations, organized by Mr. Winokur in 1987, 1994 and 1999, respectively. From August 2000 until March 2001, Mr. Winokur served as Non-executive Chairman of Azurix Corp. Prior to his current appointment, Mr. Winokur was Senior Executive Vice President and a director of Penn Central Corporation. He is also a director of NATCO Group, Inc., Mrs. Fields'

Holding Company, Inc., CCC Information Services Group, Inc. and DynCorp. Winokur is an individual residing in Greenwich, Connecticut. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

60. Defendant **F. Scott Yeager** ("Yeager") served as Senior Vice President of Business Development at EBS. Upon information and belief, Yeager is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

III. Introduction

61. As a result of the actions of Defendants in this case, Plaintiffs available retirement funds and/or investments have been reduced, and Plaintiffs will be unable to utilize the funds they had invested for retirement or otherwise.

62. Collectively, the Defendants identified in paragraphs 16-28 are referred to as the "Andersen Defendants."

63. Collectively, the Defendants identified in paragraphs 29-63 are referred to as the "Enron Defendants." The Enron Defendants, through their positions as directors and/or senior officers of Enron, had responsibility for the management of Enron's business and operations.

64. It is appropriate to treat the Enron Defendants as a group for pleading purposes and to presume that the false, misleading, and incomplete information conveyed in Enron's public filings, press releases, and other publications as alleged herein are the collective actions of the narrowly defined group of Defendants identified above. Each of the above officers and directors of Enron, by virtue of his high-level position with Enron, directly participated in the management of Enron, was directly involved in the day-to-day operations of Enron at the highest levels, and was privy to confidential proprietary information concerning Enron and its business, operations,

products, growth, financial statements, and financial condition, as alleged herein. Said Defendants were involved in drafting, producing, reviewing, and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding Enron, and approved or ratified these statements. They each profited greatly from their inside knowledge of what the real condition of Enron was before that condition was made known to the general public or to the Plaintiffs herein.

65. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Securities Exchange Act, was traded on the New York Stock Exchange ("NYSE"), and governed by the provisions of the state securities laws of the state of Texas, the Enron Defendants each had a duty to disseminate promptly, accurate and truthful information with respect to Enron's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of Enron's publicly-traded securities would be based upon truthful and accurate information. The Enron Defendants' misrepresentations and omissions violated these specific requirements and obligations and caused the Plaintiffs herein to hold their stock in Enron when they would have disposed of their stock had they known the facts known to these Defendants, but was concealed by these same Defendants. These representations were relied on by the Plaintiffs to their detriment.

66. The Enron Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and

omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with Enron, each of the Enron Defendants had access to the adverse undisclosed information about Enron's business prospects and financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about Enron and its business issued or adopted by Enron materially false and misleading.

67. The Enron Defendants, because of their positions of control and authority as officers and/or directors of Enron, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to Enron. Each Enron Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Enron Defendants is responsible for the accuracy of the public reports and releases detailed herein, and is therefore primarily liable for the representations contained therein.

68. Defendant AALLP was hired by Enron with the approval of its directors to provide the accounting data necessary for compliance with Texas state securities statutes and requirements of the NYSE. Defendant AALLP's relationship with Enron included being paid to provide both outside audits of Enron's financial statements as well as internal audits, a clear conflict of interest. As a result AALLP owed a duty of full and complete disclosure to shareholders in Enron and its employees, as well as regulatory authorities, the stock exchange and state law. AALLP breached that duty by failing to fully and adequately disclose Enron's debt positions by overstating Enron's net income for each year beginning in 1997 and by failing

to fully and adequately disclose Enron's involvement with private investment limited partnerships formed by Enron executives.

69. Defendant AALLP was also hired by Enron with the approval of its directors to provide its opinion that Enron's system of internal controls was adequate. This opinion was false and misleading in view of the many material errors and omissions in the financial statements.

70. Each of the Defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on Plaintiffs by disseminating materially false and misleading statements as well as internal and external audits and significant consulting services a clear conflict of interest and/or concealing material adverse facts. The scheme (i) deceived the Plaintiffs and the investing public regarding Enron's business, its finances and the intrinsic value of Enron's common stock; and (ii) caused Plaintiffs to fail to act to protect their investments in Enron stock in their private investing devices and/or their 40lk plans.

IV. Jurisdiction and Venue

71. This Court has jurisdiction over each Defendant because Defendants have committed a tort in whole or in part in Harris County, Texas, by mailing reports, audits and/or representations to Plaintiffs herein at their homes in Harris County and/or continuing the schemes to manipulate the value of Enron stock in Harris County. This Court also has jurisdiction over the controversy because the damages are above the minimum jurisdictional limits.

72. Specifically, venue is proper in Harris County, Texas because it is the county in which all or a substantial part of representations were received and acted upon by the Plaintiffs to their detriment. These representations included annual reports, auditing documents, 10-Ks, 10-Qs, and other reports prepared by AALLP and its partners and auditors such as David Duncan,

Debra A. Cash, Roger Willard, and Thomas H. Bauer, as well as others yet unknown to Plaintiffs.

V. Just the Facts

73. In 1997, Enron began using off balance sheet transactions through the aid of Special Purpose Entities (SPEs) to generate "income" and manipulate its financial statements. These manipulations gave the appearance that Enron had a strong financial foundation and, therefore, gave it a higher credit rating. However, the use of these devices was nothing more than a sham. As we now know, these sham transactions led to the largest bankruptcy at its time and is the process destroyed hundreds of lives.

74. For example in 1999, Defendant Fastow formed two investment partnerships, LJM Cayman L.P. ("LJM") and LJM2 Co-Investment L.P. ("LJM2"). LJM and LJM2 are private investment companies that, according to Enron's public filings, engage in acquiring and/or investing in primarily energy-related investments. Fastow was the managing member of the general partner of each of the two partnerships. He profited handsomely from these entities set up to deceive investors such as these Plaintiffs.

75. Fastow's role as chief financial officer made him privy to internal asset analyses at Enron. An offering memorandum for the LJM2 partnership said that this dual role "should result in a steady flow of opportunities . . . to make investments at attractive prices."

76. Defendants clearly breached their duties by expressly approving the agreement with Fastow which created a situation of irreconcilable conflict and placed Enron's CFO in the middle of that conflict by putting Fastow, who is responsible for overseeing the financial interests of the company, in charge of partnerships that routinely purchased assets from Enron and was involved

in self-dealing. Fastow arranged to enrich his family and others through these entities at the expense of the shareholders.

77. Enron has publicly stated that the partnership deals were aimed to help it hedge against fluctuating values for its growing portfolio of assets. In the past decade, Enron has seen its asset base rocket to more than $100 billion, it then dropped dramatically as the actions of the Defendants herein became known. As a result of this rapid growth, Enron has at times been strapped for capital and has sought ways to bring in outside investors to help bolster its balance sheet. Those efforts however were orchestrated by the Enron Defendants in an effort to hide debt of Enron and overstate earnings. Had these earnings not been overstated Plaintiffs would either not have invested or would have taken other action concerning their Enron shares before suffering significant losses.

78. On the basis of the foregoing, the Enron Defendants breached the duties that each of them owed to its stockholders, such as Plaintiffs, by expressly approving of a number of agreements that placed Enron's Chief Financial Officer Fastow in a position where he was permitted to capitalize on his knowledge of Enron's proprietary financial information for the benefit of numerous partnerships of which he served as a general partner.

79. Significantly, officers and directors of Enron had financial interests in all or some of these partnerships. As such, by approving the agreements that enabled Fastow to act in dual capacities, Defendants effectively engaged in self-dealing and placed Fastow in a position where he was capable of misappropriating Enron's confidential financial information for the purpose of enriching the partnerships he served as a general partner of, as well as furthering the financial interests of other investors in the partnerships — all to the detriment of the shareholders. In so

doing, the Defendants breached the duties that each of them owed to Enron's stockholders and caused the value of their stock holdings to drop drastically when this information became public.

80. On October 16, 2001 Enron issued a press release announcing that the company was taking non-recurring charges of $1.01 billion after-tax, or $1.11 loss per diluted share, in the third quarter of 2001, the period ending September 30, 2001. Defendant Lay commented on the substantial charge, stating: "After a thorough review of our businesses, we have decided to take these charges to clear away issues that have clouded our performance and earnings potential of our core energy businesses." This press release was relied upon by the Plaintiffs herein, yet was false, misleading and deceptive.

81. Shortly thereafter, the *Wall Street Journal* reported on the nature of Defendant Fastow's financial arrangements with the Company. The article reported that "Enron had shrunk its shareholder equity by $1.2 billion as the Company had decided to repurchase 55 million of its shares that it had issued as part of a series of complex transactions with an investment vehicle" connected to Defendant Fastow.

82. The price of Enron common stock fell sharply on these disclosures. On October 17, 2001, the price declined approximately 5% to a closing price of $32.20 per share on volume of more than 5 million shares. On October 18, 2001, the price dropped approximately 10% to close at $29 per share with over 9 million shares trading. According to Reuters news service, "Enron Corp. stock fell sharply on [October 18] as investors digested news of a $1.2 billion reduction in the energy giant's shareholder equity that attracted little attention when it was first disclosed earlier this week."

83. Enron's October 16, 2001 announcement and the continual "un-weaving" of Enron's business dealings prompted further concerns for investors regarding Enron's financial status. On

November 6, 2001, Fitch Inc. downgraded Enron's senior unsecured debt to BBB- from BBB+, just a notch above junk bond or high-yield status. The prior week, Standard & Poor's Corp. lowered its credit rating on Enron to BBB while Moody's Investors Service lowered its rating to Baa2.

84. On November 8, 2001, Enron announced it was restating its finances as far back as 1997 to account for losses related to a number of complex partnerships resulting in a $586 million reduction in net income, an additional $2.5 billion in debt and 77-cent reduction in earning per share. In trading, Enron's stock closed at $8.63 on November 9, 2001. The finances that were restated had been prepared by or approved by the Defendants herein.

85. On Friday evening, November 9, 2001, Enron's rival in the energy trading business, Dynegy announced it would acquire Enron. Dynegy agreed to purchase Enron stock for an estimated $8.9 billion and assume $12.8 billion in Enron debt. Shareholders would have received 0.2685 share of Dynegy stock per Enron stock, an estimated $10.41 per Enron share.

86. As alleged herein, Defendants acted recklessly in that Defendants knew that the public documents and statements issued or disseminated in the name of the company were materially false and misleading; the Defendants knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents which they knew were false and misleading. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding Enron, their control over, and/or receipt and/or modification of Enron's allegedly materially misleading misstatements and/or their associations with the company which made them privy to confidential proprietary information concerning Enron, participated in the fraudulent scheme alleged herein.

87. Defendants wholly failed to issue true and complete financial statements regarding Enron, and the Andersen Defendants, as Enron's independent auditor, miserably failed investors in performing its obligations. AALLP provided accounting services to Enron for a number of years and has performed independent audits of Enron's financial statements for at least the period of 1997 through 2000. In so doing, AALLP falsely certified that the year-end financial statements contained in their reports fairly presented Enron's financial position, results of operations and changes of financial position. AALLP falsely certified that these financial statements had been examined in accordance with GAAP and Generally Accepted Auditing Standards ("GAAS").

88. As part of the services rendered to Enron, AALLP's personnel were present at Enron's corporate headquarters, financial offices and other operations throughout the period in question and had continual access to, and knowledge of, Enron's private and confidential corporate financial and business information, including internal monthly financial statements, board minutes and internal memoranda. Further, the Andersen Defendants received substantial compensation for these services, and in addition, AALLP-related companies received equivalent, if not greater, compensation for related services. The Andersen Defendants, thus, knew or recklessly disregarded Enron's actual financial condition and business problems, which were concealed from the investing public. AALLP, however, issued unqualified, misleading and false reports regarding Enron's finances for the periods of 1997, 1998, 1999, and 2000. At all times material hereto AALLP had a conflict of interest because of the work done by its consulting entity, Andersen Consulting.

89. The officers and directors of Enron, including Defendants Skilling, Fastow, and Lay, engaged in transactions with other entities that were designed to improve the balance sheet of

Enron. In particular, the Defendants herein approved a myriad of transactions that were structured to achieve off-balance-sheet treatment. Many of the transactions were structured using special purpose entities (SPEs). Under applicable accounting rules, an SPE could receive off-balance treatment only if independent third party investors made a substantive capitol investment, generally at least three percent (3%) of the SPEs assets, and the third party investment was genuinely at risk, among other things. If the third party was not truly independent of Enron, or its investment was not truly at risk, these transactions using the SPEs were improper. The various Defendants in this case knew that these transactions were improper, that the third parties were not truly independent, and that the investment of the third parties were not truly at risk, yet they approved the SPE transactions. Each of these transactions were done so as to inflate the price of the stock when the Plaintiffs purchased the stock and to allow the Defendants to unload their stock at the inflated prices. The Andersen Defendants knew or should have known that the treatment of these SPEs and off-balance-sheet entities were improper and not in accordance with GAAP or GAAS.

90. Some of these SPEs were not eligible for off-balance-sheet treatment because the SPE that was required to be controlled by independent third party investors were in fact controlled by Defendant Fastow or his subordinate, Kopper, and the outside entity requirement had not been met. The third party investment requirement was also not met as there was no third party investment at risk. These SPEs should have been consolidated onto Enron's balance sheet by the Andersen Defendants. The Defendants in this case used their simultaneous influence over Enron's business operations in the SPEs as a means to secretly and unlawfully generate millions of dollars for themselves and others and to deceive Plaintiffs and others similarly situated.

91. The LJM entities were used fraudulently from approximately July 1999 through October 2001 to defraud Enron shareholders such as Plaintiffs herein. The LJM transactions enabled Fastow and the other Defendants to (i) manipulate Enron's financial results by fraudulently moving poorly performed assets off-balance-sheet, (ii) manufacture earnings for Enron through sham transaction with the LJM entity when Enron was otherwise having trouble meeting its goals for a quarter, and (iii) improperly inflate the value of Enron's investments by back-dating transaction documents to dates advantageous to Enron. Each of these manipulations referred to herein was approved by the Defendants herein to the detriment of the Plaintiffs.

92. The Defendants herein engaged in these transactions because: (i) Defendants could rid Enron of poorly performing assets and thereby improve Enron's reported financial results which would in turn enable the Defendants to earn continued prestige, salary, bonuses and other benefits from Enron to the detriment of the shareholders including the Plaintiffs herein; (ii) the LJM entities would make money on the dealings with Enron since Enron illegally and secretly guaranteed that the LJM entities would not lose money and if they did, would be made whole in future transactions; and (iii) Fastow, Skilling, and Lay, as well as others at the LJM entities, personally reaped huge sums of money from these transactions both in the form of management fees and skimmed deal profits, as well as inflated prices for the shares they owned in Enron which were sold to the general public, such as the Plaintiffs herein.

93. There were many other transactions done by the Defendants that were "off-balance sheet" transactions such as Raptor I/AVICI, South Hampton, and Cuiaba. Transactions with these entities were done to enrich the Enron Defendants herein either through sales of their stock or personally and resulted in false balance sheets and financial statements prepared by the

Andersen Defendants which were prepared by or approved by the Defendants and relied upon by the Plaintiffs to their detriment.

VI. Causes of Action

COUNT I – Fraud

94. Plaintiffs incorporate by reference and re-allege each of the foregoing allegations.

95. The Defendants, individually and in concert, engaged in a plan, scheme, and course of conduct, pursuant to which they knowingly and/or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud upon Plaintiffs and made various untrue and deceptive statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiffs as set forth above. The purpose and effect of this scheme was to induce Plaintiffs to purchase Enron common stock at artificially inflated prices or take other action contrary to their financial well being.

96. Defendants, pursuant to their plan, scheme and unlawful course of conduct, knowingly and/or recklessly issued, or caused to be issued statements to the investing public as described above.

97. Defendants knew and/or recklessly disregarded the falsity of the foregoing statements. As senior officers and/or directors of the Company and internal and outside auditors, the Defendants had access to the non-public information detailed above.

98. Defendants knew the Plaintiffs and investing public were ignorant of the undisclosed facts and knew of their inability to discover the truth. Plaintiffs relied on Defendants' false and misleading representations to their detriment and purchased their Enron stock.

99. Had Plaintiffs known of the true operating and financial results of Enron, which, due to the actions or inactions of Defendants were not disclosed, Plaintiffs would not have purchased or otherwise acquired their Enron common stock or, if they had acquired Enron common stock in the past, they would have divested their holdings of Enron stock before its tumultuous decline.

100. Plaintiffs were injured because the risks that materialized were risks of which they were unaware as a result of Defendants' misrepresentations, omissions and other fraudulent conduct alleged herein. The decline in the price of Enron's sock was caused by the public dissemination of the true facts, which were previously concealed or hidden. Absent said Defendants' wrongful conduct, Plaintiffs would not have been injured.

101. The price of Enron common stock declined materially upon public disclosure of the true facts which had been misrepresented or concealed, as alleged in this petition. Plaintiffs have suffered substantial damages as a result of the wrongs alleged herein, yet many defendants knowing the true value of the shares disposed of them before the directors and auditors made the true facts known about the stock value.

102. Plaintiffs further allege that because Defendants knew that the representations described above were false at the time they were made, the representations were fraudulent and malicious and constitute conduct for which the law allows the imposition of exemplary damages. In the connection, Plaintiffs will show they incurred significant expenses, including attorneys' fees, in the investigation and prosecution of this action. Accordingly, Plaintiffs request that exemplary damages be awarded against the Defendants in a sum within the jurisdictional limits of this Court.

COUNT II – Negligence of Andersen Defendants

103. Plaintiffs incorporate by reference and re-allege each of the foregoing allegations.

104. The accounting firm of Arthur Andersen, L.L.P. ("AALLP") was hired by Enron with the approval of its directors to provide the audit data necessary for compliance with state statutes and requirements of the N.Y.S.E. As a result AALLP owed a duty of full and complete disclosure to shareholders in Enron, as well as regulatory authorities. AALLP breached that duty by failing to fully and adequately disclosed Enron's debt positions by overstating Enron's net income for each year beginning in 1997 and by failing to fully and adequately disclose Enron's involvement with private investment limited partnerships formed by Enron executives. All of these actions or inactions violated general principles of accounting.

105. For instance, based on information and belief, the Defendant Fastow formed LJM and LJM2, private investment limited partnerships which affected the equity of shareholders such as Plaintiffs through its transactions with Enron. These transactions were not adequately reflected in the filings done or overseen by AALLP and were not reported by AALLP in accordance with standard accounting practices.

106. The financial activities of Chewco Investments, L.P. ("Chewco"), an investor in Joint Energy Development Investments Limited Partnership ("JEDI") should have been consolidated with Enron beginning in 1997. The failure to consolidate Chewco caused a false financial picture to be given to shareholders such as Plaintiffs.

107. The financial activities of JEDI should have been consolidated into Enron's financial statements prepared by AALLP and the Andersen Defendants beginning in 1997 causing a false financial picture to be given about Enron to its investors such as Plaintiffs. Such failure amounted to a violation of standard accounting practices by AALLP its employees and agents such as the Andersen Defendants, and resulted in damages to Plaintiffs.

108. The financial activities of LJM which engaged in derivative transactions with Enron to permit Enron to hedge market risks also should have been consolidated into Enron's financial statements beginning in 1999. The failure to do so amounted to negligence on the part of AALLP and the Andersen Defendants and resulted in losses to Plaintiffs. Such failure by AALLP and the Andersen Defendants was also a violation of standard accounting practices.

109. Four SPEs known as Raptor I-IV (collectively "Raptor") were created in 2000 permitting Enron to hedge market risk in certain of its investments. Under generally accepted accounting principles, the note receivable from Raptor should have been included as a reduction to shareholders equity. The net effect of this accounting entry done by AALLP and the Andersen Defendants was to overstate both notes receivable and shareholders' equity by approximately $172 million.

110. In connection with the work it performed for Enron, the Andersen Defendants also:

(a) Obtained, or recklessly disregarded, certain evidentiary matters which provided it with information revealing adverse facts about Enron's business and finances, and improperly failed to require, or to make, disclosure of such facts. As a result of its investigations and audit work, the Andersen Defendants knew, or recklessly disregarded, that Enron's publicly-disseminated reports and financial statements were materially false and misleading and/or failed to disclose material facts.

(b) Knew or recklessly disregarded facts which indicated that it should have qualified its opinion on Enron's financial statements for Fiscal Years 1997 through 2000, the failure to make such a qualification was a violation of GAAS, including the Fourth Standard of Reporting, the first, second, and third standards of fieldwork.

(c) Failed to cause Enron to disclose material facts and allowed Enron to make material misrepresentations regarding Enron to Enron's security holders and the investing public generally during the period in question, and also took steps in furtherance of the conspiracy which aided and abetted the wrongdoing complained of herein.

(d) Knew or recklessly disregarded that Enron's publicly-reported revenues and earnings throughout the period in question were materially overstated because Enron employed improper asset and loss recognition techniques.

(e) Knew or recklessly disregarded that employees and officers of Enron had interests in and control over Special Purpose Entities ("SPEs") which

would have caused such SPEs to be reported in consolidated financial reports of Enron.

(f) Knew or recklessly disregarded that employees and officers of Enron had close ties to the SPEs, which themselves had huge liabilities that AALLP knew did not show up on consolidated financial reports of Enron.

(g) Knew or recklessly disregarded that Enron had a note receivable received in exchange for stock issued in 2000.

111. AALLP did not qualify its opinion on Enron's financial statements and system of internal control for fiscal years 1997 through 2001 and the failure to make such a qualification was a violation of GAAS, including the fourth standard of reporting and attestation standards established by the AICPA.

112. These failures on the part of AALLP each constituted negligence and were a proximate cause of the precipitous drop in the value of Plaintiffs' shares in Enron. All of the above transactions and the failure of AALLP to properly record and document them constituted a violation of standard accounting practices.

Count III- TEX. BUS. & COM. CODE ANN. § 27.01:
Fraudulent Misrepresentation

113. Plaintiffs allege and incorporate by reference and re-allege each of the foregoing allegations.

114. The Defendants, individually and in concert, engaged in a plan, scheme, and course of conduct, pursuant to which they knowingly and/or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud upon Plaintiffs and made various false and deceptive statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiffs as set forth above. The purpose and effect of this scheme was to induce Plaintiffs to purchase Enron common stock at artificially inflated prices or take other action contrary to their financial well being.

115. Defendants, pursuant to their plan, scheme and unlawful course of conduct, knowingly and/or recklessly issued, or caused to be issued statements to the investing public as described above.

116. Defendants knew and/or recklessly disregarded the falsity of the foregoing statements. As senior officers and/or directors of the Company and internal and outside auditors, the Defendants had access to the non-public information detailed above.

117. In ignorance of the false and misleading nature of the representations described above, Plaintiffs relied, to their detriment and purchased their Enron stock.

118. Had Plaintiffs known of the true operating and financial results of Enron, which, due to the actions or inactions of Defendants were not disclosed, Plaintiffs would not have purchased or otherwise acquired their Enron common stock or, if they had acquired Enron common stock in the past, they would have divested their holdings of Enron stock before its tumultuous decline.

119. Plaintiffs were injured because the risks that materialized were risks of which they were unaware as a result of Defendants' misrepresentations, omissions and other fraudulent conduct alleged herein. The price of Enron common stock declined materially upon public dissemination of the true facts which had been previously misrepresented or concealed, as alleged in this petition. Plaintiffs have suffered substantial damages as a result of the wrongdoings alleged in this petition. Absent said Defendants' wrongful conduct, Plaintiffs would not have been injured.

120. As a result of the fraudulent acts alleged herein, Defendants benefited significantly and were personally enriched by either receiving enormous fees, gaining insider trading profits, increasing business, as well as investment opportunities or other unseemly personal gains. In fact, many defendants, knowing the true value of the shares, disposed of them before the

directors and auditors made the true facts known about the stock value. Defendants' failure to disclose the falsity of the information disseminated to the investing public and their indifference to the harm the nondisclosure would cause Plaintiffs constitutes the type of fraud which requires the imposition of exemplary damages.

121. Plaintiffs further allege that Defendants had actual awareness of the false and misleading nature of the statements described herein, of which can be inferred by Defendants participation in the drafting, preparation, and/or approval of the various misstatements. Their actual awareness of the misrepresentations is fraudulent and malicious and also constitutes conduct for which the law allows the imposition of exemplary damages. In the connection, Plaintiffs will show they incurred significant expenses, including attorneys' fees, in the investigation and prosecution of this action. Accordingly, Plaintiffs request that exemplary damages be awarded against the Defendants in a sum within the jurisdictional limits of this court.

Count IV – TEX. REV. CIV. STATS. ANN art. 581-33:
Control Person/Aider & Abetter Liability

122. Plaintiffs allege and incorporate by reference and re-allege each of the foregoing allegations.

123. In addition to the preceding allegations, Defendants are also liable under TEX. REV. CIV. STATS. ANN. art. 581, § 33 (Vernon Supp. 1997).

124. The Officer and Director Defendants, because of their positions of control and authority as officers and/or directors of the issuer corporation, Enron, were able to and did control and had the capability of influencing the direction of the corporation and content of the various SEC filings, press releases and other public statements pertaining to Enron which were false and misleading. Each Enron Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or

opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Enron Defendants is responsible for the accuracy of the public reports and releases detailed herein, and are therefore liable for the injuries that Plaintiffs suffered.

125. Defendant AALLP, in their capacity as auditors hired by Enron, directly and/or indirectly materially aided Enron in defrauding Plaintiffs. In connection with the work it performed for Enron, AALLP:

(a) Obtained, or recklessly disregarded, certain evidentiary matters which provided it with information revealing adverse facts about Enron's business and finances, and improperly failed to require, or to make, disclosure of such facts. As a result of its investigations and audit work, the Andersen Defendants knew, or recklessly disregarded, that Enron's publicly-disseminated reports and financial statements were materially false and misleading and/or failed to disclose material facts.

(b) Knew or recklessly disregarded facts which indicated that it should have qualified its opinion on Enron's financial statements for Fiscal Years 1997 through 2000, the failure to make such a qualification was a violation of GAAS, including the Fourth Standard of Reporting, the first, second, and third standards of fieldwork.

(c) Failed to cause Enron to disclose material facts and allowed Enron to make material misrepresentations regarding Enron to Enron's security holders and the investing public generally during the period in question.

(d) Knew or recklessly disregarded that Enron's publicly-reported revenues and earnings throughout the period in question were materially overstated because Enron employed improper asset and loss recognition techniques.

(e) Knew or recklessly disregarded that employees and officers of Enron had interests in and control over Special Purpose Entities ("SPEs") which would have caused such SPEs to be reported in consolidated financial reports of Enron.

(f) Knew or recklessly disregarded that employees and officers of Enron had close ties to the SPEs, which themselves had huge liabilities that AALLP knew did not show up on consolidated financial reports of Enron.

(g) Knew or recklessly disregarded that Enron had a note receivable received in exchange for stock issued in 2000.

126. These acts and others aided and abetted Enron and the Enron Defendants and were committed with intent to deceive, intent to defraud and/or with reckless disregard for the truth.

Plaintiffs relied on the fraudulent and deceptive statements and/or omissions disseminated by Andersen and were substantially injured as a result.

COUNT V – Civil Conspiracy

127. Plaintiffs incorporate by reference and re-allege each of the foregoing allegations.

128. The Defendants conspired together to commit fraud. In particular, the Defendants made certain representations to Plaintiffs regarding financial condition of Enron that they knew were not true. The Defendants filed annual and quarterly reports with the SEC which they knew had false and misleading information concerning the finances of Enron and which were done illegally or through illegal means. Defendants reviewed, certified and/or audited the financial statements of Enron indicating Enron was reaping profits greater than the actual profits that would have been shown had the reports been done in a legally required manner following generally accepted accounting practices. These reports were either prepared by the Andersen Defendants or prepared under their direction.

129. Plaintiffs relied on the Defendants' statements, whether written or oral, and their positions at Enron and purchased Enron stock, unaware that the finances of the Enron were being inflated. Each has suffered damages as a result. Defendants continued to make representations which were false, and which they knew were false and not in the best interest of the Plaintiffs in order to deceive the Plaintiffs and maximize their own profits. The Defendants directly benefited by way of reaping large profits by selling of their own Enron stock at artificially inflated prices and/or collecting millions of dollars in auditing fees that would not have been realized absent the misrepresentations.

130. In addition, the Audit and Compliance Committee ("Committee") of the Enron Board of Directors serves as the overseer of Enron's financial reporting, internal controls and

compliance processes. Every year during the relevant time period, the Committee met with the Andersen Defendants, as well as Enron officers and employees responsible for legal, financial and accounting matters. These Enron officers and employees necessarily included Lay, Skilling, and Fastow. In addition to recommending the appointment of independent auditors, like the Andersen Defendants, to the Board of Directors, the Committee reviewed the scope of and fees related to the audit, the accounting policies and reporting practices, contract and internal auditing and internal controls. In relevant years, the Committee was comprised of Directors Jaedicke, Chan, Foy, Wakeham, Gramm, Willison, Mendelsohn, and Farraz Pereira. The reports approved or prepared by the Defendants herein were false, misleading and deceptive and were relied on by Plaintiffs herein.

131. In the course of rendering services to Enron, the Andersen Defendants either obtained knowledge of or recklessly regarded the true financial picture of Enron. The Andersen Defendants pursued a conspiracy and common course of conduct with the Enron Defendants and aided and abetted in the making of the false and misleading statements complained of herein. The Andersen Defendants were direct, necessary and substantial participants in the conspiracy and common course of conduct complained of herein. The Andersen Defendants and the Enron Defendants were the agents of each other and were, at all times relevant herein, acting within the course and scope of said agency. AALLP has admitted to being both an internal auditor of Enron and its independent auditor and that it received compensation for non-audit services. AALLP has admitted to Congress that it knew of the course of conduct that resulted in the inaccurate financial condition of Enron and failed to disclose such conduct to anyone. AALLP's Chief Executive Officer Joe Berardino testified before the U.S. House of Representatives Committee on Financial Services on December 12, 2001 that, with respect to 20% of the

underreported special purpose entity consolidated losses, "our team made an error in judgment." Against this background, AALLP has recently announced global net revenues of $9.3 billion for the fiscal year end for August 31, 2001, $47.5 million of which came from services related to Enron, $3.2 million of which was related to services for review of financial controls. Despite this amount of billings to Enron and clear "error in judgment", the Andersen Defendants maintain their independence and continued to request the public's confidence up until their criminal conviction in U.S. District Court.

VII. Spoliation of Evidence

132. Plaintiffs would show that Defendant AALLP and the Andersen Defendants undertook a concerted effort to destroy documents concerning its audit of Enron beginning in September 2001, when it began to appear that the prior Enron audits, reports and filings done by AALLP would be determined to be false, misleading and illegal. These documents were destroyed at the behest of counsel for AALLP and the Andersen Defendants according to information and belief and reports of the news media. The Court should rule that based on the deliberate destruction of evidence by these Defendants that the jury should be instructed that those documents must be presumed to be harmful to the position of AALLP, its agents, employees and partners including the Andersen Defendants. Documents have also been destroyed by employees of Enron acting under the direction of their CEO, Defendant Lay.

133. On April 8, 2002, Defendant Duncan pleaded guilty to ordering the destruction of documents relevant to the Enron audit and admitted that he was aware that the documents he had shredded were material. It has also been revealed by AALLP, the news media and various committees of the U.S. House and Senate that an attorney for AALLP, believed to be Nancy Temple, directed that papers relating to AALLP's audit of Enron be destroyed.

VIII. Joint and Several Liability

134. The Defendants acted together in their fraud, negligence, and in a civil conspiracy and should be held jointly and severally liable for the damages suffered by Plaintiffs herein.

IX. Damages

135. As a result of Defendants' wrongful conduct, actions and omissions, Plaintiffs have suffered substantial actual and special damages, far in excess of the minimal jurisdictional limits of this Court, to Plaintiffs' detriment.

136. Plaintiffs has suffered actual damages and losses to their detriment, including the greater of the difference between the amount or consideration paid for the Enron securities and:

(a) the true fair market value of such securities at the time of purchase (*i.e.*, had there been no misrepresentation); or

(b) the net amount received upon their sale.

137. In addition, or in the alternative, Plaintiffs have suffered actual damages and losses, to their detriment, in the following respects:

(a) Loss or diminution of principal invested or the value of their stock in Enron Corp.;
(b) Loss of investment opportunity;
(c) Loss of earnings (including lawful interest); and
(d) Commissions or fees incurred by way of investment in Enron securities.

138. In addition to their actual damages, the common law of Texas allows recovery of punitive damages. Each of the Defendants' conduct was done fraudulently, knowingly, with actual awareness, malice and intent, and/or with such an entire want of care as to indicate that the acts and omissions in question were the result of conscious indifference to the rights, welfare or safety of the persons affected by them, including Plaintiffs, such that an award of exemplary or punitive damages to be determined by the jury commensurate with the facts of this case is warranted.

X. Waiver

139. It is Plaintiffs' intention to bring this action for claims arising under Texas State Law only. Plaintiffs have not intended to plead any cause of action arising under federal law. Additionally, Plaintiffs have not nor do they intend to bring any derivative claims on behalf of the debtor Enron.

XI. Jury Demand

140. Plaintiffs request and demand a jury trial and have previously paid the required fee therefor.

WHEREFORE, Plaintiffs pray for judgment as follows:

(a) Awarding Plaintiffs compensatory damages, together with appropriate prejudgment interest at the maximum rate allowable by law;
(b) Awarding Plaintiffs exemplary damages;
(c) That the Defendants be held jointly and severally liable to the Plaintiffs for their losses sustained herein;
(d) Awarding Plaintiffs their costs and expenses for this litigation including reasonable attorneys' fees and other disbursements; and
(e) Granting such other and further relief as this Court deems to be just and proper.

Respectfully submitted,

FLEMING & ASSOCIATES, L.L.P.
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By: _____
G. Sean Jez

ATTORNEYS FOR PLAINTIFFS

OF COUNSEL:

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Houston, Texas 77056
Telephone: (713) 222-0088
Fax No.: (713) 222-0888

CAUSE NO. _____

DON L. GUY, TRUSTEE FOR THE GUY FAMILY LIVING TRUST; STEPHEN T. JOHNSON; ELLIS LOCHER; JACK MANNING AND SUE MANNING; MARY H. PEARSON; CURTIS D. ROBERT; GREG SWINDENSKY; BARRY M. WUNTCH; DOROTHY ZEIGFINGER; HAROLD ZEIGFINGER AND DOROTHY ZEIGFINGER, CO-TRUSTEES HAROLD & DOROTHY ZEIGFINGER FAMILY TRUST; CHARLES H. ADDERHOLD; ARNOLD GREENBERG; REGAN YARDLEY; HAROLD SPEARS AND SUZANNE C. SPEARS; KAYLOR R. WILKINS; LENORA HARTMANN; JOSEPH HAMER; WILLIAM TAIT; PATRICIA A. THOMAS; ALFRED URBANEK; ADRIENNE SAMUELS; ROBERT HERZBERG; FRANCES R. MATTINGLY; FREDERICK A. HAGAR; GEORGE J. COOKE; DEBRA C. LEVENSON; VIRGINIA N. LAKE; WILLIS BARTAK; JOYCE W. RICHARDSON; RICHARD C. KENTOPP AND ANITA L. KENTOPP; JIM BEMIS; ROSANNA KAAR; AL LUDWIG AND MARYLYNN LUDWIG; WILLIAM P. TODSEN; JOSEPH TENNARO; MARVIN SIEGEL; THEODORE A. MARCINIAK; ADELE RICCIO; BENEDICT A. FIDUCIA; MARTIN KAYE AND JUDITH KAYE, TRUSTEES FOR THE KAYE FAMILY TRUST; STANLEY JACK ABRAMS; LAWRENCE P. TREADWELL; THOMAS J. REGAN;	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
v.	§	HARRIS COUNTY, TEXAS
ARTHUR ANDERSEN, L.L.P.; THOMAS H. BAUER; MICHAEL L. BENNETT; JOSEPH F. BERADINO;	§	

DEBRA A. CASH; DAVID B. DUNCAN; JAMES A. FRIEDLIEB; D. STEPHEN GODDARD, JR.; GARY B. GOOLSBY; GREGORY W. HALE; MICHAEL M. LOWTHER; MICHAEL C. ODOM; ROGER WILLARD; ROBERT A. BELFER; NORMAN P. BLAKE, JR.; RICHARD B. BUY; RICHARD CAUSEY; RONNIE C. CHAN; JOHN H. DUNCAN; ANDREW S. FASTOW; JOE H. FOY; BEN GLISAN; WENDY L. GRAMM, M.D.; KEVIN HANNON; KEN L. HARRISON; JOSEPH M. HIRKO; STANLEY C. HORTON; KEVIN HOWARD; ROBERT K. JAEDICKE; MICHAEL J. KOPPER; KENNETH L. LAY; CHARLES A. LEMAISTRE; REBECCA MARK-JUSBASCHE; JEFF MCMAHON; JOHN MENDELSOHN; JEROME J. MEYER; KRISTINA MOURDAUNT; LOU PAI; PAUL V. FERRAZ PEREIRA; KENNETH D. RICE; FRANK SAVAGE; JEFFREY J. SKILLING; JOHN A. URQUHART; JOHN WAKEHAM; CHARLES E. WALKER; LAWRENCE GREG WHALLEY; HERBERT S. WINOKUR, JR.; AND F. SCOTT YEAGER;	§	
Defendants.	§	_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

COMES NOW Plaintiffs Don L. Guy, Trustee for the Guy Family Living Trust; Stephen T. Johnson; Ellis Locher; Jack Manning and Sue Manning; Mary H. Pearson; Curtis D. Robert; Greg Swindensky; Barry M. Wuntch; Dorothy Zeigfinger; Harold Zeigfinger and Dorothy Zeigfinger, Co-Trustees Harold & Dorothy Zeigfinger Family Trust; Charles H. Adderhold; Arnold Greenberg; Regan Yardley; Harold Spears and Suzanne C. Spears; Kaylor R. Wilkins; Lenora Hartmann; Joseph Hamer; William Tait; Patricia A. Thomas; Alfred Urbanek; Adrienne

Samuels; Robert Herzberg; Frances R. Mattingly; Frederick A. Hagar; George J. Cooke; Debra C. Levenson; Virginia N. Lake; Willis Bartak; Joyce W. Richardson; Richard C. Kentopp and Anita L. Kentopp; Jim Bemis; Rosanna Kaar; Al Ludwig and Marylynn Ludwig; William P. Todsen; Joseph Tennaro; Marvin Siegel; Theodore A. Marciniak; Adele Riccio ; Benedict A. Fiducia; Martin Kaye and Judith Kaye, Trustees for the Kaye Family Trust; Stanley Jack Abrams; Lawrence P. Treadwell; Thomas J. Regan; with this their Original Petition, complaining of Defendants Arthur Andersen, L.L.P. ("AALLP"); Thomas H. Bauer; Michael L. Bennett; Joseph F. Beradino; Debra A. Cash; David B. Duncan; James A. Friedlieb; D. Stephen Goddard, Jr.; Gary B. Goolsby; Gregory W. Hale; Michael M. Lowther; Michael C. Odom; Roger Willard; Robert A. Belfer; Norman P. Blake, Jr.; Richard B. Buy; Richard Causey; Ronnie C. Chan; John H. Duncan; Andrew S. Fastow; Joe H. Foy; Ben Glisan; Wendy L. Gramm, M.D.; Kevin Hannon; Ken L. Harrison; Joseph M. Hirko; Stanley C. Horton; Kevin Howard; Robert K. Jaedicke; Michael J. Kopper; Kenneth L. Lay; Charles A. LeMaistre; Rebecca Mark-Jusbasche; Jeff McMahon; John Mendelsohn; Jerome J. Meyer; Kristina Mourdaunt; Lou Pai; Paul V. Ferraz Pereira; Kenneth D. Rice; Frank Savage; Jeffrey J. Skilling; John A. Urquhart; John Wakeham; Charles E. Walker; Lawrence Greg Whalley; Herbert S. Winokur, Jr.; and F. Scott Yeager. In support thereof, they would show the following:

I. Discovery

1. Discovery is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

II. Parties

2. Plaintiffs Don L. Guy, Trustee for the Guy Family Living Trust; Stephen T. Johnson; Ellis Locher; Jack Manning and Sue Manning; Mary H. Pearson; Curtis D. Robert; Greg

Swindensky; Barry M. Wuntch; Dorothy Zeigfinger; and Harold Zeigfinger and Dorothy Zeigfinger, Co-Trustees Harold & Dorothy Zeigfinger Family Trust are citizens of the State of Texas and residents of Harris County who own or have owned Enron common stock.

3. Plaintiff Charles H. Adderhold is a citizen of the State of Alabama who owns or has owned Enron common stock.

4. Plaintiffs Arnold Greenberg; Regan Yardley; Harold Spears and Suzanne C. Spears; Kaylor R. Wilkins; Lenora Hartmann; Joseph Hamer; and William Tait are citizens of the State of Florida who own or have owned Enron common stock.

5. Plaintiffs Patricia A. Thomas; and Alfred Urbanek are citizens of the State of Iowa who own or have owned Enron common stock.

6. Plaintiffs Adrienne Samuels; and Robert Herzberg are citizens of the State of Illinois who own or have owned Enron common stock.

7. Plaintiff Frances R. Mattingly is a citizen of the State of Kentucky who owns or has owned Enron common stock.

8. Plaintiffs Frederick A. Hagar; George J. Cooke; and Debra C. Levenson are citizens of the State of Massachusetts who own or have owned Enron common stock.

9. Plaintiff Virginia N. Lake is a citizen of the State of Minnesota who owns or has owned Enron common stock.

10. Plaintiffs Willis Bartak; Joyce W. Richardson; Richard C. Kentopp and Anita L. Kentopp; Jim Bemis; Rosanna Kaar; Al Ludwig and Marylynn Ludwig; and William P. Todsen are citizens of the State of Nebraska who own or have owned Enron common stock.

11. Plaintiff Joseph Tennaro is a citizen of the State of Minnesota who owns or has owned Enron common stock.

12. Plaintiffs Marvin Siegel; Theodore A. Marciniak; Adele Riccio; and Benedict A. Fiducia are citizens of the State of New York who own or have owned Enron common stock.

13. Plaintiffs Martin Kaye and Judith Kaye, Trustees for the Kaye Family Trust; and Stanley Jack Abrams are citizens of the State of Ohio who own or have owned Enron common stock.

14. Plaintiff Lawrence P. Treadwell is a citizen of the State of Virginia who owns or has owned Enron common stock.

15. Plaintiff Thomas J. Regan is a citizen of the State of Wisconsin who owns or has owned Enron common stock.

16. Defendant **Arthur Andersen, L.L.P.** ("AALLP") is a limited liability partnership. Defendant, Andersen audited and certified Enron's financial statements from 1997 through 2001. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

17. Defendant **Thomas H. Bauer** ("Bauer") was a partner of the Houston, Texas office of Arthur Andersen, L.L.P. who was in charge of the Enron account in which he and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Bauer oversaw commodity trading at Enron and worked exclusively on Enron matters. Bauer is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

18. Defendant **Michael L. Bennett** ("Bennett") was a partner of the Houston, Texas office of Arthur Andersen, L.L.P. and a central participant in the Enron audit in which he and others conducted the external and internal audits and accounting of Enron's records, books,

financial statements, annual and quarterly SEC filings. Upon information and belief, Bennett is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

19. Defendant **Joseph F. Beradino** ("Beradino") was a partner of the Houston, Texas office of Arthur Andersen, L.L.P. who was in charge of the Enron account in which he and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Upon information and belief, Beradino is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

20. Defendant **Debra A. Cash** ("Cash") was a partner and head of the energy unit in the Houston, Texas office of Arthur Andersen, L.L.P. Cash and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Cash is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

21. Defendant **David B. Duncan** ("Duncan") was the head Andersen partner on the Enron engagement and was a partner in both Andersen Worldwide and Arthur Andersen, L.L.P. and served on the Chairman's Advisory Counsel, an elite group of twenty-one worldwide partners. Duncan and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Defendant was discharged by AALLP for destroying documents relevant to the Enron audits. Duncan has pleaded guilty to the destruction of documents connected with the audit of Enron's books and has admitted in open court that he knew that the documents he had destroyed were relevant to

legitimate government inquiries about the audits of Enron Corp. and its subsidiaries. Duncan is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

22. Defendant **James A. Friedlieb** ("Friedlieb") was a partner in Andersen Worldwide's Chicago headquarters, a partner in Andersen Worldwide and Arthur Andersen, L.L.P. Friedlieb and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Upon information and belief, Friedlieb is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

23. Defendant **D. Stephen Goddard, Jr.** ("Goddard") was office managing partner of the Houston, Texas office of Arthur Andersen, L.L.P. from 1997 until 2001. Goddard was also head of Arthur Andersen's Audit & Business Advisory and Energy practice for the Houston office, a significant participant in the Enron audit and consulting engagements, the managing partner for the Gulf Coast Market Circle and a partner in both Andersen Worldwide and Arthur Andersen, L.L.P. Goddard conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Goddard is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

24. Defendant **Gary B. Goolsby** ("Goolsby") was in charge of Global Risk Management and was Consulting Practice Director of Arthur Andersen, L.L.P's Houston office. Goolsby was an essential member of the Enron audit and consulting engagements and was responsible for the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Defendant is a resident of Katy, Harris County, Texas.

Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

25. Defendant **Gregory W. Hale** ("Hale") was a partner of Arthur Andersen, L.L.P. based in their Houston office and a significant member of the Enron audit. He and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Upon information and belief, Hale is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

26. Defendant **Michael M. Lowther** ("Lowther") was Arthur Andersen's concurring partner on the Enron audit since 1997 and a partner in both Andersen Worldwide and Arthur Andersen, L.L.P. He and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Lowther is a resident of Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

27. Defendant **Michael C. Odom** ("Odom") was a partner of Arthur Andersen, L.L.P. based in their Houston office and a significant member of the Enron audit. He and others conducted the external and internal audits and accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Upon information and belief, Odom is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

28. Defendant **Roger Willard** ("Willard") is a partner of the Houston, Texas office of Arthur Andersen, L.L.P., a member of the Audit and Business Advisory practice and in charge of the Enron account in which he and others conducted the external and internal audits and

accounting of Enron's records, books, financial statements, annual and quarterly SEC filings. Willard is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

29. Defendant **Robert A. Belfer** ("Belfer") served as a Director of Enron from 1983 until 2002 and served on its Executive Committee and Finance and Compensation Committees. Belfer executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Belfer is an individual residing in New York, New York. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

30. Defendant **Norman P. Blake, Jr.** ("Blake") served as a Director of Enron from 1993 until 2002 and served on the Finance and Compensation Committees. Blake executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Blake is an individual residing in Colorado Springs, Colorado. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

31. Defendant **Richard B. Buy** ("Buy") was the Executive Vice President and Chief Risk Officer of Enron after serving as Senior Vice President and Chief Risk Officer from March 1999 through July 1999. He also served as the Management Director and Chief Risk Officer of Enron Capital & Trade (ECT) from January 1998 until March 1999. Buy is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

32. Defendant **Richard Causey** ("Causey") served as Executive Vice President and Chief Accounting Officer of Enron from January 1997 to February 2002. Causey also served as an officer and/or director of New Power Corporation. Causey is an individual residing in Spring,

Montgomery County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

33. Defendant **Ronnie C. Chan** ("Chan") served as an Enron director from 1996 until 2002 and was a member of the audit and compliance committee. Chan has been Chairman of Hang Lung Group, comprising three publicly traded Hong Kong-based companies involved in property development, property investment and hotels. Mr. Chan also co-founded and is a director of various companies within Morningside/Springfield Group, which invests in and manages private companies in the manufacturing and service businesses, and engages in financial investments. Mr. Chan is also a director of Standard Chartered PLC and Motorola, Inc. Upon information and belief, Defendant Chan is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

34. Defendant **John H. Duncan** ("Duncan") is a former Enron director beginning in 1985. From 1990 until 2002, Duncan's principal occupation was investments. Mr. Duncan is also a director of EOTT Energy Corp. (the general partner of EOTT Energy Partners, L.P.) and Group I Automotive Inc. Defendant Duncan is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

35. Defendant **Andrew S. Fastow** ("Fastow") was Enron's former Executive Vice President and Chief Financial Officer having been originally hired at Enron on or about February 12, 1997. Defendant Fastow is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

36. Defendant **Joe H. Foy** ("Foy") served as a member of the Audit Committee for Enron from 1997 until 1999. Defendant Foy is an individual residing in Kerrville, Kerr County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

37. Defendant **Ben Glisan** ("Glisan") was a managing director and treasurer of Enron until November of 2001. Defendant was discharged for self-dealing the week of November 5, 2001. Defendant Glisan is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

38. Defendant **Dr. Wendy L. Gramm** ("Gramm") was an Enron director from 1993 until 2002 and was a member of the audit and compliance committee. Dr. Gramm is an economist and Director of the Regulatory Studies Program of the Mercatus Center of George Mason University. From February 1988 until January 1993, Dr. Gramm served as Chairman of the Commodity Futures Trading Commission in Washington, D.C. and is also a director of IBP, Inc., State Farm Insurance Co. and Invesco Funds. Dr. Gramm was also a director of the Chicago Mercantile Exchange until December 31, 1999. Defendant is an individual residing in College Station, Brazos County, Texas and will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

39. Defendant **Kevin Hannon** ("Hannon") is a former President of Enron Broadband Services, Inc. (EBS). Hannon, upon information and belief, is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

40. Defendant **Ken L. Harrison** ("Harrison") served as Chief Executive Officer of Portland General Electric (an Enron subsidiary) and as a Director for Enron from 1997 until 2001. Harrison executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Harrison is an individual residing in Portland, Oregon and will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

41. Defendant **Joseph M. Hirko** ("Hirko") was Chief Executive Officer of EBS from 1997 until June 2000. Upon information and belief, Hirko is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

42. Defendant **Stanley C. Horton** ("Horton") served as Chairman and CEO of Enron Transportation in 2000 and as Chairman & CEO of Enron Gas Pipeline Group from 1997 until 1999. Upon information and belief, Horton is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

43. Defendant **Kevin Howard** ("Howard") served as Chief Financial Officer of EBS. Upon information and belief, Howard is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

44. Defendant **Robert K. Jaedicke** ("Jaedicke") was an Enron director from 1985 until 2002 and once served as the chairman of the audit and compliance committee. Jaedicke is Professor (Emeritus) of Accounting at the Stanford University Graduate School of Business in Stanford, California. Upon information and belief, Jaedicke is an individual residing in Houston,

Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

45. Defendant **Michael J. Kopper** ("Kopper") served as managing director of Enron's Global Equity Markets Group. Kopper is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

46. Defendant **Kenneth L. Lay** ("Lay") has been an Enron director since 1985, until his resignation in 2002. Lay was Chairman of the Board of Enron from 1986 to 2002. From 1986 until February 2001, Lay was also the Chief Executive Officer of Enron. On August 14, 2001, Lay became President and CEO of Enron upon the surprise resignation of defendant Skilling, as further described below. Defendant Lay is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

47. Defendant **Charles A. LeMaistre** ("LeMaistre") was an Enron director from 1985 until 2002. LeMaistre served as President of the University of Texas M.D. Anderson Cancer Center in Houston, Texas and now holds the position of President Emeritus. LeMaistre is an individual residing in San Antonio, Bexar County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

48. Defendant **Rebecca Mark-Jusbasche** ("Mark-Jusbasche") was an Enron director from 1999 until 2000. Mark-Jusbasche executed the 1999 financial statements of Enron. Mark-Jusbasche is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

49. Defendant **Jeff McMahon** ("McMahon"), after being Senior Vice President, Finance and Treasurer from July 1998 through July 1999, served as Executive Vice President, Finance and Treasurer. McMahon also served as CFO of Enron Europe from 1994 through July 1998. Upon information and belief, McMahon is a resident of Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

50. Defendant **John Mendelsohn** ("Mendelsohn") was an Enron director from 1999 until 2002 and was a member of the audit and compliance committee. Mendelsohn has served as President of the University of Texas M.D. Anderson Cancer Center. Prior to 1996, Dr. Mendelsohn was Chairman of the Department of Medicine at Memorial Sloan-Kettering Cancer in New York. Mendelsohn is also a director of ImClone Systems, Inc. Mendelsohn is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

51. Defendant **Jerome J. Meyer** ("Meyer") served as an Enron director from 1997 through 2002, serving on the Finance Committee and Nominating Committee. Meyer executed the 1997, 1998, 1999 and 2000 financial statement of Enron. Meyer is an individual residing in Wisonville, Oregon. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

52. Defendant **Kristina Mourdaunt** ("Mourdaunt") was a managing director and general counsel of EBS until November of 2001. Defendant was discharged for self-dealing the week of November 5, 2001. Defendant Mourdaunt is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

53. Defendant **Lou Pai** ("Pai") served as an Enron director at all times relevant to this lawsuit. Pai was also the Chairman and CEO of Enron Xcelerator until the end of 2000 after serving as Chairman of Enron Energy Services (Enron's retail energy services business). Pai is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

54. Defendant **Paul V. Ferraz Pereira** ("Pereira") served as Enron director from 1999 though 2002 and was a member of the audit and compliance committee. Upon information and belief, Defendant is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

55. Defendant **Kenneth D. Rice** ("Rice") began serving as Chairman and Chief Executive Officer of EBS in June 2000 and served as Chairman and Chief Executive Officer of ECT-North America from March 1997 until June 1999. Upon information and belief, Rice is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

56. Defendant **Frank Savage** ("Savage") served as an Enron director from 1999 until 2002. Upon information and belief, Defendant Savage is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

57. Defendant **Jeffrey K. Skilling** ("Skilling") was an Enron director at all times relevant to this lawsuit. Skilling served as President and Chief Executive Officer of Enron from February 2001 through August 14, 2001, when he announced his unexpected resignation from the offices of both President and CEO at the time of his resignation, he gave up millions in stock options and bonuses that he would have received if he had continued his employment. It was also

announced on that date that Skilling would remain on the Board of Directors, and that he would serve as a consultant to the Company through the year 2005. Skilling, however, resigned from the board in 2002. Skilling served as President and Chief Operating Officer of Enron from January 1997 through February 2001. From August 1990 until December 1996, he served as Chairman and Chief Executive Officer of Enron North America Corp. and its predecessor companies. Skilling was also a director of the Houston Branch of the Federal Reserve Bank of Dallas during the periods relevant to this case. Upon information and belief, Defendant Skilling is an individual residing in Houston, Harris County, Texas.

58. Defendant **John A. Urquhart** ("Urquhart") served as Director of Enron from 1990 through 2001, serving on the Finance Committee. Urquhart executed the 1997, 1998, 1999 and 2000 financial statement of Enron. Urquhart is an individual residing in Fairfield, Connecticut. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

59. Defendant **John Wakeham** ("Wakeham") served as an Enron director from 1994 until 2002. Wakeham served as a member of the audit and compliance committee. Wakeham is a retired former U.K. Secretary of State for Energy and Leader of the Houses of Commons and Lords. He served as a Member of Parliament from 1974 until his retirement from the House of Commons in April 1992. Prior to his government service, Lord Wakeham managed a large private practice as a chartered accountant. He is currently Chairman of the Press Complaints Commission in the U.K. and chairman of director of a number of publicly traded U.K. companies. Upon information and belief, Lord Wakeham is an individual residing in Houston, Harris County Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

60. Defendant **Charles E. Walker** ("Walker") served as a Director of Enron from 1995 until 1998, serving on the Finance Committee and Nominating Committee, including as Chairman. Walker executed the 1997 and 1998 financial statements of Enron. Walker is an individual residing in Potomac, Maryland. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

61. Defendant **Lawrence Greg Whalley** ("Whalley") served as President and Chief Operating Officer of Enron Corporate in 2001 and prior to that served as Chairman and Chief Executive Officer of Enron Europe from March 1997 through June 2000. Upon information and belief, Whalley is an individual residing in Houston, Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

62. Defendant **Herbert S. Winokur** ("Winokur") was an Enron director from 1985 until 2002. Winokur is Chairman and Chief Executive Officer of Capricorn Holdings, Inc. (a private investment company) and Managing General Partner of Capricorn Investors, L.P., Capricorn Investors II, L.P. and Capricorn Investors III, L.P., partnerships concentrating on investments in restructure situations, organized by Mr. Winokur in 1987, 1994 and 1999, respectively. From August 2000 until March 2001, Mr. Winokur served as Non-executive Chairman of Azurix Corp. Prior to his current appointment, Mr. Winokur was Senior Executive Vice President and a director of Penn Central Corporation. He is also a director of NATCO Group, Inc., Mrs. Fields' Holding Company, Inc., CCC Information Services Group, Inc. and DynCorp. Winokur is an individual residing in Greenwich, Connecticut. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

63. Defendant **F. Scott Yeager** ("Yeager") served as Senior Vice President of Business Development at EBS. Upon information and belief, Yeager is an individual residing in Houston,

Harris County, Texas. Defendant will be served in accordance with the Texas Rules of Civil Procedure or by agreement of counsel.

III. Introduction

64. As a result of the actions of Defendants in this case, Plaintiffs available retirement funds and/or investments have been reduced, and Plaintiffs will be unable to utilize the funds they had invested for retirement or otherwise.

65. Collectively, the Defendants identified in paragraphs 16-28 are referred to as the "Andersen Defendants."

66. Collectively, the Defendants identified in paragraphs 29-63 are referred to as the "Enron Defendants." The Enron Defendants, through their positions as directors and/or senior officers of Enron, had responsibility for the management of Enron's business and operations.

67. It is appropriate to treat the Enron Defendants as a group for pleading purposes and to presume that the false, misleading, and incomplete information conveyed in Enron's public filings, press releases, and other publications as alleged herein are the collective actions of the narrowly defined group of Defendants identified above. Each of the above officers and directors of Enron, by virtue of his high-level position with Enron, directly participated in the management of Enron, was directly involved in the day-to-day operations of Enron at the highest levels, and was privy to confidential proprietary information concerning Enron and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. Said Defendants were involved in drafting, producing, reviewing, and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding Enron, and approved or ratified these statements. They each profited greatly from their inside knowledge of what the real

condition of Enron was before that condition was made known to the general public or to the Plaintiffs herein.

68. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Securities Exchange Act, was traded on the New York Stock Exchange ("NYSE"), and governed by the provisions of the state securities laws of the state of Texas, the Enron Defendants each had a duty to disseminate promptly, accurate and truthful information with respect to Enron's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of Enron's publicly-traded securities would be based upon truthful and accurate information. The Enron Defendants' misrepresentations and omissions violated these specific requirements and obligations and caused the Plaintiffs herein to hold their stock in Enron when they would have disposed of their stock had they known the facts known to these Defendants, but was concealed by these same Defendants. These representations were relied on by the Plaintiffs to their detriment.

69. The Enron Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with Enron, each of the Enron Defendants had access to the adverse undisclosed information about Enron's business prospects and financial condition and performance as particularized herein and knew (or

recklessly disregarded) that these adverse facts rendered the positive representations made by or about Enron and its business issued or adopted by Enron materially false and misleading.

70. The Enron Defendants, because of their positions of control and authority as officers and/or directors of Enron, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to Enron. Each Enron Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Enron Defendants is responsible for the accuracy of the public reports and releases detailed herein, and is therefore primarily liable for the representations contained therein.

71. Defendant AALLP was hired by Enron with the approval of its directors to provide the accounting data necessary for compliance with Texas state securities statutes and requirements of the NYSE. Defendant AALLP's relationship with Enron included being paid to provide both outside audits of Enron's financial statements as well as internal audits, a clear conflict of interest. As a result AALLP owed a duty of full and complete disclosure to shareholders in Enron and its employees, as well as regulatory authorities, the stock exchange and state law. AALLP breached that duty by failing to fully and adequately disclose Enron's debt positions by overstating Enron's net income for each year beginning in 1997 and by failing to fully and adequately disclose Enron's involvement with private investment limited partnerships formed by Enron executives.

72. Defendant AALLP was also hired by Enron with the approval of its directors to provide its opinion that Enron's system of internal controls was adequate. This opinion was false and misleading in view of the many material errors and omissions in the financial statements.

73. Each of the Defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on Plaintiffs by disseminating materially false and misleading statements as well as internal and external audits and significant consulting services a clear conflict of interest and/or concealing material adverse facts. The scheme (i) deceived the Plaintiffs and the investing public regarding Enron's business, its finances and the intrinsic value of Enron's common stock; and (ii) caused Plaintiffs to fail to act to protect their investments in Enron stock in their private investing devices and/or their 401k plans.

IV. Jurisdiction and Venue

74. This Court has jurisdiction over each Defendant because Defendants have committed a tort in whole or in part in Harris County, Texas, by mailing reports, audits and/or representations to Plaintiffs herein at their homes in Harris County and/or continuing the schemes to manipulate the value of Enron stock in Harris County. This Court also has jurisdiction over the controversy because the damages are above the minimum jurisdictional limits.

75. Specifically, venue is proper in Harris County, Texas because it is the county in which all or a substantial part of representations were received and acted upon by the Plaintiffs to their detriment. These representations included annual reports, auditing documents, 10-Ks, 10-Qs, and other reports prepared by AALLP and its partners and auditors such as David Duncan, Debra A. Cash, Roger Willard, and Thomas H. Bauer, as well as others yet unknown to Plaintiffs.

V. Just the Facts

76. In 1997, Enron began using off balance sheet transactions through the aid of Special Purpose Entities (SPE's) to generate "income" and manipulate its financial statements. These

manipulations gave the appearance that Enron had a strong financial foundation and, therefore, gave it a higher credit rating. However, the use of these devices was nothing more than a sham. As we now know, these sham transactions led to the largest bankruptcy at its time and is the process destroyed hundreds of lives.

77. For example in 1999, Defendant Fastow formed two investment partnerships, LJM Cayman L.P. ("LJM") and LJM2 Co-Investment L.P. ("LJM2"). LJM and LJM2 are private investment companies that, according to Enron's public filings, engage in acquiring and/or investing in primarily energy-related investments. Fastow was the managing member of the general partner of each of the two partnerships. He profited handsomely from these entities set up to deceive investors such as these Plaintiffs.

78. Fastow's role as chief financial officer made him privy to internal asset analyses at Enron. An offering memorandum for the LJM2 partnership said that this dual role "should result in a steady flow of opportunities . . . to make investments at attractive prices."

79. Defendants clearly breached their duties by expressly approving the agreement with Fastow which created a situation of irreconcilable conflict and placed Enron's CFO in the middle of that conflict by putting Fastow, who is responsible for overseeing the financial interests of the company, in charge of partnerships that routinely purchased assets from Enron and was involved in self-dealing. Fastow arranged to enrich his family and others through these entities at the expense of the shareholders.

80. Enron has publicly stated that the partnership deals were aimed to help it hedge against fluctuating values for its growing portfolio of assets. In the past decade, Enron has seen its asset base rocket to more than $100 billion, it then dropped dramatically as the actions of the Defendants herein became known. As a result of this rapid growth, Enron has at times been

strapped for capital and has sought ways to bring in outside investors to help bolster its balance sheet. Those efforts however were orchestrated by the Enron Defendants in an effort to hide debt of Enron and overstate earnings. Had these earnings not been overstated Plaintiffs would either not have invested or would have taken other action concerning their Enron shares before suffering significant losses.

81. On the basis of the foregoing, the Enron Defendants breached the duties that each of them owed to its stockholders, such as Plaintiffs, by expressly approving of a number of agreements that placed Enron's Chief Financial Officer Fastow in a position where he was permitted to capitalize on his knowledge of Enron's proprietary financial information for the benefit of numerous partnerships of which he served as a general partner.

82. Significantly, officers and directors of Enron had financial interests in all or some of these partnerships. As such, by approving the agreements that enabled Fastow to act in dual capacities, Defendants effectively engaged in self-dealing and placed Fastow in a position where he was capable of misappropriating Enron's confidential financial information for the purpose of enriching the partnerships he served as a general partner of, as well as furthering the financial interests of other investors in the partnerships — all to the detriment of the shareholders. In so doing, the Defendants breached the duties that each of them owed to Enron's stockholders and caused the value of their stock holdings to drop drastically when this information became public.

83. On October 16, 2001 Enron issued a press release announcing that the company was taking non-recurring charges of $1.01 billion after-tax, or $1.11 loss per diluted share, in the third quarter of 2001, the period ending September 30, 2001. Defendant Lay commented on the substantial charge, stating: "After a thorough review of our businesses, we have decided to take these charges to clear away issues that have clouded our performance and earnings potential of

our core energy businesses." This press release was relied upon by the Plaintiffs herein, yet was false, misleading and deceptive.

84. Shortly thereafter, the *Wall Street Journal* reported on the nature of Defendant Fastow's financial arrangements with the Company. The article reported that "Enron had shrunk its shareholder equity by $1.2 billion as the Company had decided to repurchase 55 million of its shares that it had issued as part of a series of complex transactions with an investment vehicle" connected to Defendant Fastow.

85. The price of Enron common stock fell sharply on these disclosures. On October 17, 2001, the price declined approximately 5% to a closing price of $32.20 per share on volume of more than 5 million shares. On October 18, 2001, the price dropped approximately 10% to close at $29 per share with over 9 million shares trading. According to Reuters news service, "Enron Corp. stock fell sharply on [October 18] as investors digested news of a $1.2 billion reduction in the energy giant's shareholder equity that attracted little attention when it was first disclosed earlier this week."

86. Enron's October 16, 2001 announcement and the continual "un-weaving" of Enron's business dealings prompted further concerns for investors regarding Enron's financial status. On November 6, 2001, Fitch Inc. downgraded Enron's senior unsecured debt to BBB- from BBB+, just a notch above junk bond or high-yield status. The prior week, Standard & Poor's Corp. lowered its credit rating on Enron to BBB while Moody's Investors Service lowered its rating to Baa2.

87. On November 8, 2001, Enron announced it was restating its finances as far back as 1997 to account for losses related to a number of complex partnerships resulting in a $586 million reduction in net income, an additional $2.5 billion in debt and 77-cent reduction in

earning per share. In trading, Enron's stock closed at $8.63 on November 9, 2001. The finances that were restated had been prepared by or approved by the Defendants herein.

88. On Friday evening, November 9, 2001, Enron's rival in the energy trading business, Dynegy announced it would acquire Enron. Dynegy agreed to purchase Enron stock for an estimated $8.9 billion and assume $12.8 billion in Enron debt. Shareholders would have received 0.2685 share of Dynegy stock per Enron stock, an estimated $10.41 per Enron share.

89. As alleged herein, Defendants acted recklessly in that Defendants knew that the public documents and statements issued or disseminated in the name of the company were materially false and misleading; the Defendants knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents which they knew were false and misleading. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding Enron, their control over, and/or receipt and/or modification of Enron's allegedly materially misleading misstatements and/or their associations with the company which made them privy to confidential proprietary information concerning Enron, participated in the fraudulent scheme alleged herein.

90. Defendants wholly failed to issue true and complete financial statements regarding Enron, and the Andersen Defendants, as Enron's independent auditor, miserably failed investors in performing its obligations. AALLP provided accounting services to Enron for a number of years and has performed independent audits of Enron's financial statements for at least the period of 1997 through 2000. In so doing, AALLP falsely certified that the year-end financial statements contained in their reports fairly presented Enron's financial position, results of operations and changes of financial position. AALLP falsely certified that these financial

statements had been examined in accordance with GAAP and Generally Accepted Auditing Standards ("GAAS").

91. As part of the services rendered to Enron, AALLP's personnel were present at Enron's corporate headquarters, financial offices and other operations throughout the period in question and had continual access to, and knowledge of, Enron's private and confidential corporate financial and business information, including internal monthly financial statements, board minutes and internal memoranda. Further, the Andersen Defendants received substantial compensation for these services, and in addition, AALLP-related companies received equivalent, if not greater, compensation for related services. The Andersen Defendants, thus, knew or recklessly disregarded Enron's actual financial condition and business problems, which were concealed from the investing public. AALLP, however, issued unqualified, misleading and false reports regarding Enron's finances for the periods of 1997, 1998, 1999, and 2000. At all times material hereto AALLP had a conflict of interest because of the work done by its consulting entity, Andersen Consulting.

92. The officers and directors of Enron, including Defendants Skilling, Fastow, and Lay, engaged in transactions with other entities that were designed to improve the balance sheet of Enron. In particular, the Defendants herein approved a myriad of transactions that were structured to achieve off-balance-sheet treatment. Many of the transactions were structured using special purpose entities (SPEs). Under applicable accounting rules, an SPE could receive off-balance treatment only if independent third party investors made a substantive capitol investment, generally at least three percent (3%) of the SPEs assets, and the third party investment was genuinely at risk, among other things. If the third party was not truly independent of Enron, or its investment was not truly at risk, these transactions using the SPEs

were improper. The various Defendants in this case knew that these transactions were improper, that the third parties were not truly independent, and that the investment of the third parties were not truly at risk, yet they approved the SPE transactions. Each of these transactions were done so as to inflate the price of the stock when the Plaintiffs purchased the stock and to allow the Defendants to unload their stock at the inflated prices. The Andersen Defendants knew or should have known that the treatment of these SPEs and off-balance-sheet entities were improper and not in accordance with GAAP or GAAS.

93. Some of these SPEs were not eligible for off-balance-sheet treatment because the SPE that was required to be controlled by independent third party investors were in fact controlled by Defendant Fastow or his subordinate, Kopper, and the outside entity requirement had not been met. The third party investment requirement was also not met as there was no third party investment at risk. These SPEs should have been consolidated onto Enron's balance sheet by the Andersen Defendants. The Defendants in this case used their simultaneous influence over Enron's business operations in the SPEs as a means to secretly and unlawfully generate millions of dollars for themselves and others and to deceive Plaintiffs and others similarly situated.

94. The LJM entities were used fraudulently from approximately July 1999 through October 2001 to defraud Enron shareholders such as Plaintiffs herein. The LJM transactions enabled Fastow and the other Defendants to (i) manipulate Enron's financial results by fraudulently moving poorly performed assets off-balance-sheet, (ii) manufacture earnings for Enron through sham transaction with the LJM entity when Enron was otherwise having trouble meeting its goals for a quarter, and (iii) improperly inflate the value of Enron's investments by back-dating transaction documents to dates advantageous to Enron. Each of these manipulations referred to herein was approved by the Defendants herein to the detriment of the Plaintiffs.

95. The Defendants herein engaged in these transactions because: (i) Defendants could rid Enron of poorly performing assets and thereby improve Enron's reported financial results which would in turn enable the Defendants to earn continued prestige, salary, bonuses and other benefits from Enron to the detriment of the shareholders including the Plaintiffs herein; (ii) the LJM entities would make money on the dealings with Enron since Enron illegally and secretly guaranteed that the LJM entities would not lose money and if they did, would be made whole in future transactions; and (iii) Fastow, Skilling, and Lay, as well as others at the LJM entities, personally reaped huge sums of money from these transactions both in the form of management fees and skimmed deal profits, as well as inflated prices for the shares they owned in Enron which were sold to the general public, such as the Plaintiffs herein.

96. There were many other transactions done by the Defendants that were "off-balance sheet" transactions such as Raptor I/AVICI, South Hampton, and Cuiaba. Transactions with these entities were done to enrich the Enron Defendants herein either through sales of their stock or personally and resulted in false balance sheets and financial statements prepared by the Andersen Defendants which were prepared by or approved by the Defendants and relied upon by the Plaintiffs to their detriment.

VI. Causes of Action

COUNT I – Fraud

97. Plaintiffs incorporate by reference and re-allege each of the foregoing allegations.

98. The Defendants, individually and in concert, engaged in a plan, scheme, and course of conduct, pursuant to which they knowingly and/or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud upon Plaintiffs and made various untrue and deceptive statements of material fact and omitted to state material facts necessary in

order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiffs as set forth above. The purpose and effect of this scheme was to induce Plaintiffs to purchase Enron common stock at artificially inflated prices or take other action contrary to their financial well being.

99. Defendants, pursuant to their plan, scheme and unlawful course of conduct, knowingly and/or recklessly issued, or caused to be issued statements to the investing public as described above.

100. Defendants knew and/or recklessly disregarded the falsity of the foregoing statements. As senior officers and/or directors of the Company and internal and outside auditors, the Defendants had access to the non-public information detailed above.

101. Defendants knew the Plaintiffs and investing public were ignorant of the undisclosed facts and knew of their inability to discover the truth. Plaintiffs relied on Defendants' false and misleading representations to their detriment and purchased their Enron stock.

102. Had Plaintiffs known of the true operating and financial results of Enron, which, due to the actions or inactions of Defendants were not disclosed, Plaintiffs would not have purchased or otherwise acquired their Enron common stock or, if they had acquired Enron common stock in the past, they would have divested their holdings of Enron stock before its tumultuous decline.

103. Plaintiffs were injured because the risks that materialized were risks of which they were unaware as a result of Defendants' misrepresentations, omissions and other fraudulent conduct alleged herein. The decline in the price of Enron's sock was caused by the public dissemination of the true facts, which were previously concealed or hidden. Absent said Defendants' wrongful conduct, Plaintiffs would not have been injured.

104. The price of Enron common stock declined materially upon public disclosure of the true facts which had been misrepresented or concealed, as alleged in this petition. Plaintiffs have suffered substantial damages as a result of the wrongs alleged herein, yet many defendants knowing the true value of the shares disposed of them before the directors and auditors made the true facts known about the stock value.

105. Plaintiffs further allege that because Defendants knew that the representations described above were false at the time they were made, the representations were fraudulent and malicious and constitute conduct for which the law allows the imposition of exemplary damages. In the connection, Plaintiffs will show they incurred significant expenses, including attorneys' fees, in the investigation and prosecution of this action. Accordingly, Plaintiffs request that exemplary damages be awarded against the Defendants in a sum within the jurisdictional limits of this Court.

COUNT II – Negligence of Andersen Defendants

106. Plaintiffs incorporate by reference and re-allege each of the foregoing allegations.

107. The accounting firm of Arthur Andersen, L.L.P. ("AALLP") was hired by Enron with the approval of its directors to provide the audit data necessary for compliance with state statutes and requirements of the N.Y.S.E. As a result AALLP owed a duty of full and complete disclosure to shareholders in Enron, as well as regulatory authorities. AALLP breached that duty by failing to fully and adequately disclosed Enron's debt positions by overstating Enron's net income for each year beginning in 1997 and by failing to fully and adequately disclose Enron's involvement with private investment limited partnerships formed by Enron executives. All of these actions or inactions violated general principles of accounting.

108. For instance, based on information and belief, the Defendant Fastow formed LJM and LJM2, private investment limited partnerships which affected the equity of shareholders such as Plaintiffs through its transactions with Enron. These transactions were not adequately reflected in the filings done or overseen by AALLP and were not reported by AALLP in accordance with standard accounting practices.

109. The financial activities of Chewco Investments, L.P. ("Chewco"), an investor in Joint Energy Development Investments Limited Partnership ("JEDI") should have been consolidated with Enron beginning in 1997. The failure to consolidate Chewco caused a false financial picture to be given to shareholders such as Plaintiffs.

110. The financial activities of JEDI should have been consolidated into Enron's financial statements prepared by AALLP and the Andersen Defendants beginning in 1997 causing a false financial picture to be given about Enron to its investors such as Plaintiffs. Such failure amounted to a violation of standard accounting practices by AALLP its employees and agents such as the Andersen Defendants, and resulted in damages to Plaintiffs.

111. The financial activities of LJM which engaged in derivative transactions with Enron to permit Enron to hedge market risks also should have been consolidated into Enron's financial statements beginning in 1999. The failure to do so amounted to negligence on the part of AALLP and the Andersen Defendants and resulted in losses to Plaintiffs. Such failure by AALLP and the Andersen Defendants was also a violation of standard accounting practices.

112. Four SPEs known as Raptor I-IV (collectively "Raptor") were created in 2000 permitting Enron to hedge market risk in certain of its investments. Under generally accepted accounting principles, the note receivable from Raptor should have been included as a reduction to shareholders equity. The net effect of this accounting entry done by AALLP and the

Andersen Defendants was to overstate both notes receivable and shareholders' equity by approximately $172 million.

113. In connection with the work it performed for Enron, the Andersen Defendants also:

114. Obtained, or recklessly disregarded, certain evidentiary matters which provided it with information revealing adverse facts about Enron's business and finances, and improperly failed to require, or to make, disclosure of such facts. As a result of its investigations and audit work, the Andersen Defendants knew, or recklessly disregarded, that Enron's publicly-disseminated reports and financial statements were materially false and misleading and/or failed to disclose material facts.

115. Knew or recklessly disregarded facts which indicated that it should have qualified its opinion on Enron's financial statements for Fiscal Years 1997 through 2000, the failure to make such a qualification was a violation of GAAS, including the Fourth Standard of Reporting, the first, second, and third standards of fieldwork.

116. Failed to cause Enron to disclose material facts and allowed Enron to make material misrepresentations regarding Enron to Enron's security holders and the investing public generally during the period in question, and also took steps in furtherance of the conspiracy which aided and abetted the wrongdoing complained of herein.

117. Knew or recklessly disregarded that Enron's publicly-reported revenues and earnings throughout the period in question were materially overstated because Enron employed improper asset and loss recognition techniques.

118. Knew or recklessly disregarded that employees and officers of Enron had interests in and control over Special Purpose Entities ("SPEs") which would have caused such SPEs to be reported in consolidated financial reports of Enron.

119. Knew or recklessly disregarded that employees and officers of Enron had close ties to the SPEs, which themselves had huge liabilities that AALLP knew did not show up on consolidated financial reports of Enron.

120. Knew or recklessly disregarded that Enron had a note receivable received in exchange for stock issued in 2000.

121. AALLP did not qualify its opinion on Enron's financial statements and system of internal control for fiscal years 1997 through 2001 and the failure to make such a qualification was a violation of GAAS, including the fourth standard of reporting and attestation standards established by the AICPA.

122. These failures on the part of AALLP each constituted negligence and were a proximate cause of the precipitous drop in the value of Plaintiffs' shares in Enron. All of the above transactions and the failure of AALLP to properly record and document them constituted a violation of standard accounting practices.

Count III- TEX. BUS. & COM. CODE ANN. § 27.01:
Fraudulent Misrepresentation

123. Plaintiffs allege and incorporate by reference and re-allege each of the foregoing allegations.

124. The Defendants, individually and in concert, engaged in a plan, scheme, and course of conduct, pursuant to which they knowingly and/or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud upon Plaintiffs and made various false and deceptive statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiffs as set forth above. The purpose and effect of this scheme was to

induce Plaintiffs to purchase Enron common stock at artificially inflated prices or take other action contrary to their financial well being.

125. Defendants, pursuant to their plan, scheme and unlawful course of conduct, knowingly and/or recklessly issued, or caused to be issued statements to the investing public as described above.

126. Defendants knew and/or recklessly disregarded the falsity of the foregoing statements. As senior officers and/or directors of the Company and internal and outside auditors, the Defendants had access to the non-public information detailed above.

127. In ignorance of the false and misleading nature of the representations described above, Plaintiffs relied, to their detriment and purchased their Enron stock.

128. Had Plaintiffs known of the true operating and financial results of Enron, which, due to the actions or inactions of Defendants were not disclosed, Plaintiffs would not have purchased or otherwise acquired their Enron common stock or, if they had acquired Enron common stock in the past, they would have divested their holdings of Enron stock before its tumultuous decline.

129. Plaintiffs were injured because the risks that materialized were risks of which they were unaware as a result of Defendants' misrepresentations, omissions and other fraudulent conduct alleged herein. The price of Enron common stock declined materially upon public dissemination of the true facts which had been previously misrepresented or concealed, as alleged in this petition. Plaintiffs have suffered substantial damages as a result of the wrongdoings alleged in this petition. Absent said Defendants' wrongful conduct, Plaintiffs would not have been injured.

130. As a result of the fraudulent acts alleged herein, Defendants benefited significantly and were personally enriched by either receiving enormous fees, gaining insider trading profits,

increasing business, as well as investment opportunities or other unseemly personal gains. In fact, many defendants, knowing the true value of the shares, disposed of them before the directors and auditors made the true facts known about the stock value. Defendants' failure to disclose the falsity of the information disseminated to the investing public and their indifference to the harm the nondisclosure would cause Plaintiffs constitutes the type of fraud which requires the imposition of exemplary damages.

131. Plaintiffs further allege that Defendants had actual awareness of the false and misleading nature of the statements described herein, of which can be inferred by Defendants participation in the drafting, preparation, and/or approval of the various misstatements. Their actual awareness of the misrepresentations is fraudulent and malicious and also constitutes conduct for which the law allows the imposition of exemplary damages. In the connection, Plaintiffs will show they incurred significant expenses, including attorneys' fees, in the investigation and prosecution of this action. Accordingly, Plaintiffs request that exemplary damages be awarded against the Defendants in a sum within the jurisdictional limits of this court.

Count IV – TEX. REV. CIV. STATS. ANN art. 581-33:
Control Person/Aider & Abetter Liability

132. Plaintiffs allege and incorporate by reference and re-allege each of the foregoing allegations.

133. In addition to the preceding allegations, Defendants are also liable under TEX. REV. CIV. STATS. ANN. art. 581, § 33 (Vernon Supp. 1997).

134. The Officer and Director Defendants, because of their positions of control and authority as officers and/or directors of the issuer corporation, Enron, were able to and did control and had the capability of influencing the direction of the corporation and content of the various SEC filings, press releases and other public statements pertaining to Enron which were

false and misleading. Each Enron Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Enron Defendants is responsible for the accuracy of the public reports and releases detailed herein, and are therefore liable for the injuries that Plaintiffs suffered.

135. Defendant AALLP, in their capacity as auditors hired by Enron, directly and/or indirectly materially aided Enron in defrauding Plaintiffs. In connection with the work it performed for Enron, AALLP:

136. Obtained, or recklessly disregarded, certain evidentiary matters which provided it with information revealing adverse facts about Enron's business and finances, and improperly failed to require, or to make, disclosure of such facts. As a result of its investigations and audit work, the Andersen Defendants knew, or recklessly disregarded, that Enron's publicly-disseminated reports and financial statements were materially false and misleading and/or failed to disclose material facts.

137. Knew or recklessly disregarded facts which indicated that it should have qualified its opinion on Enron's financial statements for Fiscal Years 1997 through 2000, the failure to make such a qualification was a violation of GAAS, including the Fourth Standard of Reporting, the first, second, and third standards of fieldwork.

138. Failed to cause Enron to disclose material facts and allowed Enron to make material misrepresentations regarding Enron to Enron's security holders and the investing public generally during the period in question.

139. Knew or recklessly disregarded that Enron's publicly-reported revenues and earnings throughout the period in question were materially overstated because Enron employed improper asset and loss recognition techniques.

140. Knew or recklessly disregarded that employees and officers of Enron had interests in and control over Special Purpose Entities ("SPEs") which would have caused such SPEs to be reported in consolidated financial reports of Enron.

141. Knew or recklessly disregarded that employees and officers of Enron had close ties to the SPEs, which themselves had huge liabilities that AALLP knew did not show up on consolidated financial reports of Enron.

142. Knew or recklessly disregarded that Enron had a note receivable received in exchange for stock issued in 2000.

143. These acts and others aided and abetted Enron and the Enron Defendants and were committed with intent to deceive, intent to defraud and/or with reckless disregard for the truth. Plaintiffs relied on the fraudulent and deceptive statements and/or omissions disseminated by Andersen and were substantially injured as a result.

COUNT V – Civil Conspiracy

144. Plaintiffs incorporate by reference and re-allege each of the foregoing allegations.

145. The Defendants conspired together to commit fraud. In particular, the Defendants made certain representations to Plaintiffs regarding financial condition of Enron that they knew were not true. The Defendants filed annual and quarterly reports with the SEC which they knew had false and misleading information concerning the finances of Enron and which were done illegally or through illegal means. Defendants reviewed, certified and/or audited the financial statements of Enron indicating Enron was reaping profits greater than the actual profits that

would have been shown had the reports been done in a legally required manner following generally accepted accounting practices. These reports were either prepared by the Andersen Defendants or prepared under their direction.

146. Plaintiffs relied on the Defendants' statements, whether written or oral, and their positions at Enron and purchased Enron stock, unaware that the finances of the Enron were being inflated. Each has suffered damages as a result. Defendants continued to make representations which were false, and which they knew were false and not in the best interest of the Plaintiffs in order to deceive the Plaintiffs and maximize their own profits. The Defendants directly benefited by way of reaping large profits by selling of their own Enron stock at artificially inflated prices and/or collecting millions of dollars in auditing fees that would not have been realized absent the misrepresentations.

147. In addition, the Audit and Compliance Committee ("Committee") of the Enron Board of Directors serves as the overseer of Enron's financial reporting, internal controls and compliance processes. Every year during the relevant time period, the Committee met with the Andersen Defendants, as well as Enron officers and employees responsible for legal, financial and accounting matters. These Enron officers and employees necessarily included Lay, Skilling, and Fastow. In addition to recommending the appointment of independent auditors, like the Andersen Defendants, to the Board of Directors, the Committee reviewed the scope of and fees related to the audit, the accounting policies and reporting practices, contract and internal auditing and internal controls. In relevant years, the Committee was comprised of Directors Jaedicke, Chan, Foy, Wakeham, Gramm, Willison, Mendelsohn, and Farraz Pereira. The reports approved or prepared by the Defendants herein were false, misleading and deceptive and were relied on by Plaintiffs herein.

148. In the course of rendering services to Enron, the Andersen Defendants either obtained knowledge of or recklessly regarded the true financial picture of Enron. The Andersen Defendants pursued a conspiracy and common course of conduct with the Enron Defendants and aided and abetted in the making of the false and misleading statements complained of herein. The Andersen Defendants were direct, necessary and substantial participants in the conspiracy and common course of conduct complained of herein. The Andersen Defendants and the Enron Defendants were the agents of each other and were, at all times relevant herein, acting within the course and scope of said agency. AALLP has admitted to being both an internal auditor of Enron and its independent auditor and that it received compensation for non-audit services. AALLP has admitted to Congress that it knew of the course of conduct that resulted in the inaccurate financial condition of Enron and failed to disclose such conduct to anyone. AALLP's Chief Executive Officer Joe Berardino testified before the U.S. House of Representatives Committee on Financial Services on December 12, 2001 that, with respect to 20% of the underreported special purpose entity consolidated losses, "our team made an error in judgment." Against this background, AALLP has recently announced global net revenues of $9.3 billion for the fiscal year end for August 31, 2001, $47.5 million of which came from services related to Enron, $3.2 million of which was related to services for review of financial controls. Despite this amount of billings to Enron and clear "error in judgment", the Andersen Defendants maintain their independence and continued to request the public's confidence up until their criminal conviction in U.S. District Court.

VII. Spoliation of Evidence

149. Plaintiffs would show that Defendant AALLP and the Andersen Defendants undertook a concerted effort to destroy documents concerning its audit of Enron beginning in

September 2001, when it began to appear that the prior Enron audits, reports and filings done by AALLP would be determined to be false, misleading and illegal. These documents were destroyed at the behest of counsel for AALLP and the Andersen Defendants according to information and belief and reports of the news media. The Court should rule that based on the deliberate destruction of evidence by these Defendants that the jury should be instructed that those documents must be presumed to be harmful to the position of AALLP, its agents, employees and partners including the Andersen Defendants. Documents have also been destroyed by employees of Enron acting under the direction of their CEO, Defendant Lay.

150. On April 8, 2002, Defendant Duncan pleaded guilty to ordering the destruction of documents relevant to the Enron audit and admitted that he was aware that the documents he had shredded were material. It has also been revealed by AALLP, the news media and various committees of the U.S. House and Senate that an attorney for AALLP, believed to be Nancy Temple, directed that papers relating to AALLP's audit of Enron be destroyed.

VIII. Joint and Several Liability

151. The Defendants acted together in their fraud, negligence, and in a civil conspiracy and should be held jointly and severally liable for the damages suffered by Plaintiffs herein.

IX. Damages

152. As a result of Defendants' wrongful conduct, actions and omissions, Plaintiffs have suffered substantial actual and special damages, far in excess of the minimal jurisdictional limits of this Court, to Plaintiffs' detriment.

153. Plaintiffs has suffered actual damages and losses to their detriment, including the greater of the difference between the amount or consideration paid for the Enron securities and:

(a) the true fair market value of such securities at the time of purchase (*i.e.*, had there been no misrepresentation); or

(b) the net amount received upon their sale.

154. In addition, or in the alternative, Plaintiffs have suffered actual damages and losses, to their detriment, in the following respects:

(a) Loss or diminution of principal invested or the value of their stock in Enron Corp.;

(b) Loss of investment opportunity;

(c) Loss of earnings (including lawful interest); and

(d) Commissions or fees incurred by way of investment in Enron securities.

155. In addition to their actual damages, the common law of Texas allows recovery of punitive damages. Each of the Defendants' conduct was done fraudulently, knowingly, with actual awareness, malice and intent, and/or with such an entire want of care as to indicate that the acts and omissions in question were the result of conscious indifference to the rights, welfare or safety of the persons affected by them, including Plaintiffs, such that an award of exemplary or punitive damages to be determined by the jury commensurate with the facts of this case is warranted.

X. Waiver

156. It is Plaintiffs' intention to bring this action for claims arising under Texas State Law only. Plaintiffs have not intended to plead any cause of action arising under federal law. Additionally, Plaintiffs have not nor do they intend to bring any derivative claims on behalf of the debtor Enron.

XI. Jury Demand

157. Plaintiffs request and demand a jury trial and have previously paid the required fee therefor.

WHEREFORE, Plaintiffs pray for judgment as follows:

(a) Awarding Plaintiffs compensatory damages, together with appropriate prejudgment interest at the maximum rate allowable by law;

(b) Awarding Plaintiffs exemplary damages;

(c) That the Defendants be held jointly and severally liable to the Plaintiffs for their losses sustained herein;

(c) Awarding Plaintiffs their costs and expenses for this litigation including reasonable attorneys' fees and other disbursements; and

(d) Granting such other and further relief as this Court deems to be just and proper.

Respectfully submitted,

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