

United States Courts  
Southern District of Texas  
FILED  
NOV 03 2003  
Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES,  
DERIVATIVE & "ERISA" LITIGATION  

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This Document Relates To:  
  
MARK NEWBY, et al., Individually and on  
Behalf of All Others Similarly Situated,  
  
Plaintiffs,  
  
vs.  
  
ENRON CORP., et al.,  
  
Defendants.

MDL 1446  
and Consolidated, Related  
and Coordinated Cases  
  
Civil Action No. H-01-3624  
and Consolidated, Related  
and Coordinated Cases

**UNOPPOSED MOTION OF BANK OF AMERICA CORPORATION  
AND BANC OF AMERICA SECURITIES LLC  
FOR CONFIDENTIALITY ORDER**

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Corporation and Banc of America  
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November 3, 2003

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**UNOPPOSED MOTION OF BANK OF AMERICA CORPORATION AND  
BANC OF AMERICA SECURITIES LLC FOR CONFIDENTIALITY ORDER**

Defendants Bank of America Corporation and Banc of America Securities LLC (collectively, "BofA") respectfully submit this Unopposed Motion for Confidentiality Order with respect to the documents listed on BofA's "Confidential Documents Log" (attached as Exhibit 1 to the accompanying Affidavit of Charles G. King, dated November 3, 2003 ("King Aff.")). BofA has conferred with counsel for the Lead Plaintiff in *Newby*, and they have represented to BofA that they do not oppose this Motion. In further support of this Motion, movants respectfully show the Court the following:

1. On September 18, 2003, the Court entered an Order on an agreed motion of the Lead Plaintiff and the Bank Defendants providing that any Bank Defendant wishing to file a confidentiality motion with respect to any documents or written discovery produced on or before October 1, 2003 must file such motion on or before October 15, 2003. (*See* 9/18/03 Order).

2. On October 17, 2003, the Court entered an Order on an agreed motion of the Lead Plaintiff and the Bank Defendants extending until November 3, 2003 the deadline for filing any motion seeking confidential treatment for documents or written discovery produced on or before October 1, 2003. (*See* 10/17/03 Order.)

3. On October 1, 2003, in response to Lead Plaintiff's First Request for the Production of Documents, BofA produced over 33,000 pages of documents to the document depository in accordance with the Court's July 11, 2003 Scheduling Order. (*See* 7/11/03 Order.)

4. In accordance with the Court's December 19, 2002, March 27, 2003 and September 18, 2003 Orders, BofA has identified a limited number of documents (approximately

34 pages, or approximately 0.1% of BofA's entire production) that contain confidential personal information — personal telephone numbers and home addresses — regarding current or former BofA's employees and current or former employees of other institutions. Those documents are listed on BofA's Confidential Documents Log.

5. Federal Rule of Civil Procedure 26(c) provides that a court may, for “good cause shown . . . make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense.” FED. R. CIV. P. 26(c). Further, “Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

6. The Court's March 27, 2003 Order concerning Enron's Motion for a Confidentiality Order (Instrument #1201 in *Newby*) provides that personal information would be granted confidential status pursuant to General Order No. 2002-9, which was amended by General Order 2003-4, entered on August 27, 2003. Further, the Court has recognized that protection of personal information should be in the “spirit” of General Order No. 2002-9 (now General Order 2003-4), and not limited to its enumerated categories. (*See* 3/27/03 Order at 3).

7. BofA's former and current employees and the current or former employees of the other institutions on the documents at issue have a valid interest in protecting against dissemination of their personal telephone numbers and addresses. If this information were publicly disclosed and disseminated, it could be misused by others in any number of ways (including to harass BofA's current and former employees). The harm that could befall these nonparties by disclosure of their personal telephone numbers and addresses plainly outweighs

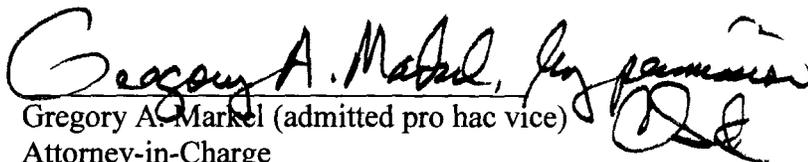
any public interest (if any) in that information. As such, the Court should protect this information pursuant to Rule 26(c).

8. For the foregoing reasons, BofA respectfully requests that the Court enter the proposed Confidentiality Order (attached hereto), which provides that the few pages of documents listed on BofA's Confidential Documents Log, and the information reflected therein, (a) shall be used by all parties in the *In re Enron Corporation Securities, Derivative and "ERISA" Litigation* (including all consolidated, related and coordinated cases) (collectively, the "Consolidated Actions"), solely in and for the purposes of the Consolidated Actions and shall not be disclosed to anyone other than counsel of record in those cases, employees of counsel of record, employees of parties in the Consolidated Actions for the purposes of assisting or consulting with counsel in those Actions or in preparation for or during their depositions or trial testimony, nonparty witnesses during their depositions or trial testimony, experts retained by parties in the Consolidated Actions and the court-ordered mediator in these actions, each of whom shall restrict use and disclosure of such documents, written discovery and information as provided in this paragraph, and (b) shall not be filed with any court without first obtaining the consent of BofA.

9. Nothing in the proposed Confidentiality Order shall prevent any party to the Consolidated Actions (including but not limited to the Lead Plaintiff in *Newby*) from subsequently challenging BofA's designation of the documents listed on its Confidential Documents Log as confidential (including but not limited to seeking appropriate relief from the Court).

Dated: November 3, 2003

Respectfully submitted,

  
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**CERTIFICATE OF CONFERENCE**

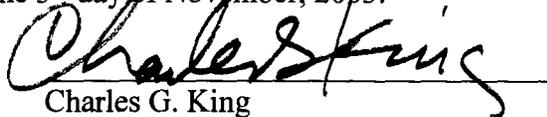
BofA has conferred with counsel for Lead Plaintiff in *Newby*, and they have represented to BofA that they do not oppose this Motion.



Charles G. King

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served upon all known counsel of record by website, <http://www.esl3624.com>, pursuant to Court's order dated August 7, 2002 (Docket No. 984), on this the 3<sup>rd</sup> day of November, 2003.

  
Charles G. King