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

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

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MICHAEL N. MILBY, CLERK OF COURT

IN RE ENRON CORPORATION SECURITIES LITIGATION	
This Document Relates To:	
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORP., et al., Defendants.	Consolidated Civil Action Case No.: H-01-CV-3624

BANK DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO THE MOTION OF ENRON CORP. FOR RELIEF FROM AUGUST 2002 DISCOVERY ORDER, AND IN SUPPORT OF THE BANK DEFENDANTS' CROSS-MOTION FOR AN ADJUSTMENT TO THE SCHEDULING ORDER

Pursuant to Your Honor's November 1, 2003 Order (the "November 1 Order") granting the Agreed Motion of Enron Corp. ("Enron") and Bank Defendants for a Temporary Stay of August 2002 Discovery Order (the "Agreed Motion"), the undersigned Defendants[1] (collectively, the "Bank Defendants") respectfully submit this supplemental memorandum, along with the accompanying affidavit of Alan C. Turner, sworn to on December 4, 2003 (the "Turner Aff."), in further opposition to Enron's September 30, 2003 Motion For Relief From August

[1] This submission is made on behalf of J.P. Morgan Chase & Co., J.P. Morgan Securities Inc, JPMorgan Chase Bank, Citigroup Inc., Citibank N.A., Citigroup Global Markets Inc. (formerly known as Salomon Smith Barney Inc.), Salomon Brothers Limited, Credit Suisse First Boston LLC (formerly known as Credit Suisse First Boston Corporation), Credit Suisse First Boston (USA), Inc., Pershing LLC, Canadian Imperial Bank of Commerce, CIBC World Markets Corp. (formerly known as CIBC Oppenheimer Corp.), Bank of America Corporation, Banc of America Securities LLC, Merrill Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays PLC, Barclays Bank PLC, Barclays Capital Inc., Lehman Brothers Inc., and Lehman Brothers Holdings Inc.

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2002 Discovery Order ("Enron's Motion"), and in support of the Bank Defendants' cross-motion for an adjustment to the Court's July 11, 2003 Scheduling Order.

As set forth in the Bank Defendants' November 25 Submission Informing The Court of the Outcome of Their Meet-and-Confer Discussions With Enron (which we invite Your Honor to read in conjunction with this Memorandum), good faith efforts to resolve the issues raised by Enron's Motion have not been successful and have only served to highlight the seriousness and breadth of Enron's non-compliance with this Court's August 16, 2002 Discovery Order (the "August 2002 Order"). Enron has been unable or unwilling to adequately describe the contents of many of its government productions. More troubling, Enron has failed to explain why certain clearly relevant government productions made almost two years ago have still, to date, not been produced to the *Newby* Depository, much less why these materials should not be produced now.

Until recently, the Bank Defendants had been proceeding on the reasonable assumption that Enron's *Newby* document production represented the universe of documents covered by the August 2002 Order. It was not until Enron filed its Motion on September 30, 2003 that the Bank Defendants – and the Court – were first told that Enron had agreed several months earlier to cease compliance with the August 2002 Order, at the request of counsel for the Lead Plaintiff. As we now know, on May 27, 2003 counsel for the Lead Plaintiff instructed Enron to stop delivering to the Depository documents that Enron had produced to government entities subsequent to the August 2002 Order. It remains unclear why counsel for Enron and counsel for the Lead Plaintiff felt that they could take it upon themselves to substantially modify the dictates of this Court's August 2002 Order by excusing Enron from its obligation to produce in *Newby* government productions post-dating August 2002. Moreover, it is now apparent that

the deficiencies in Enron's document production go far beyond its failure to deliver post-August-2002 productions to the Depository. Enron has, to date, produced only a fraction of the documents covered by the August 2002 Order, and has, inexplicably, failed to deliver to the Depository some of its earliest government productions dating back to December 2001 and early 2002. In fact, Enron counsel's most recent estimate is that Enron has failed to produce to the *Newby* Depository some **80 million pages** of documents that have been produced to government entities; a volume that dwarfs the 20 million pages of documents that Enron has produced to the Depository to date.[2]

But the numbers tell only part of the story. Based on Enron's recently-produced index of government productions, it appears that the most relevant documents – including productions to the Federal Bureau of Investigation ("FBI"), the Securities and Exchange Commission ("SEC"), the Department of Justice ("DOJ"), and the Senate Committee on Governmental Affairs/Permanent Subcommittee on Investigations ("PSI") – have for the most part not been produced to the Depository. This is a vastly different picture than that painted by Enron's Motion, which suggested that the outstanding documents were mostly irrelevant materials that were the subject of "never-contemplated" government requests that post-dated the August 2002 Order. Enron's Motion at 5.

Nobody, least of all the Bank Defendants, wants to force Enron to inundate the Depository with vast quantities of irrelevant documents; rather, the Bank Defendants' sole interest is to get access to the most important documents as quickly as possible. To that end, the

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2 These 80 million pages are apparently separate and apart from the "8 terabytes" of database information that Enron produced to the Federal Energy Regulatory Commission ("FERC"), which Enron featured in its September 30 Motion as an example of why it should not have to comply with the August 2002 Order.

Bank Defendants have diligently and in good faith sought to resolve the issues raised in Enron's Motion, identifying certain government productions that should be produced as a matter of priority, and trying to get sufficient information to identify productions that can be deferred or exempted from the August 2002 Order entirely. To date Enron has offered nothing more than vague generalizations about the cost of producing the documents, and claims that it is unable to comprehensively account for the documents it has produced to government entities and the *Newby* Depository. When and if Enron is able to identify productions that are irrelevant or productions that would be exceedingly costly to produce and of only marginal relevance, the Bank Defendants remain willing to consider deferring or eliminating Enron's obligation to deliver them to the Depository, subject, of course, to the agreement of other parties and the approval of the Court. In the meantime, Enron must be ordered to comply with the August 2002 Order just as fast as it possibly can.

Furthermore, as a result of the enormous volume of documents subject to the August 2002 Order that Enron has yet to produce and the significant delays associated with processing such a huge amount of documents through the Depository administrator before the parties can even begin to review them, the Bank Defendants are compelled to request a relatively modest, three-month adjournment of the date for the commencement of depositions. With depositions scheduled to commence in little more than a month, on January 10, 2004, the Bank Defendants (and other parties) face a situation that is not of their own making, in which the vast majority of Enron documents – evidence that is undeniably at the center of this case – has not been made available to them. The schedule set forth in this Court's July 11, 2003 Scheduling Order was predicated on the concept that document discovery would be largely completed prior to the commencement of depositions. That clearly has not happened. Accordingly, in order to

restore to the schedule the time that has been lost as a result of Enron's non-compliance with the August 2002 Order, the Bank Defendants request that the Scheduling Order be modified to provide for the commencement of depositions on April 10, 2004.[3]

Background

As the Court will recall, its August 2002 Order directed Enron to produce to the *Newby* Depository all materials produced by Enron "in connection with any inquiry or investigation into the Company's business affairs that were provided to any legislative branch committee, [or] the executive branch, including the Department of Justice and the Securities and Exchange Commission. . . .". August 2002 Order at 1. On September 30, 2003, Enron submitted to Your Honor a motion styled as an "Unopposed Motion of Enron Corp. For Relief From August 2002 Discovery Order." Enron's Motion came as a surprise to the Bank Defendants, which were operating on the reasonable assumption that Enron was complying with the August 2002 Order. In its September 30 motion, Enron disclosed that several months earlier, on May 27, 2003, it had been "instructed" by counsel for the Lead Plaintiff to cease production to the Depository of documents "which it provided to the government after the August 16, 2002 Order." Letter from Paul Howes, Exhibit B to Enron's Motion. In Enron's Motion, Enron sought permission to halt any further production to the *Newby* Depository of documents it has produced to the various government entities referred to in the August 2002 Order, complaining that its compliance with the August 2002 Order had become unduly burdensome and costly, because, *inter alia*, of the "never-contemplated extent of the government production" caused by

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[3] As noted below, no depositions have yet been noticed, nor any deposition schedule put in place, that would be affected by such an adjournment.

continuing government requests. Enron's September 30 Motion, at 5. Enron did not, however, disclose the extent of its non-compliance with the August 2002 Order.

The Bank Defendants responded to Enron's Motion on October 10, 2003, indicating that they were amenable to reasonable modifications to Enron's obligations under the August 2002 Order for categories of documents that Enron was able to demonstrate were clearly immaterial to the issues in this litigation. The Bank Defendants indicated that in order to make an informed judgment in this regard they would need Enron to provide "additional information sufficient to enable [the Bank Defendants] to determine the source and subject matter of the documents subject to the August 2002 Order and to identify which of those documents have not yet been produced to the Depository." Bank Defendants' Response to Enron's Motion, October 10, 2003, at 6. In their October 10 filing, the Bank Defendants proposed that, in the absence of any negotiated resolution, Enron make a renewed motion for relief, specifying "precisely which documents it wishes to withhold from discovery and why, and the affected parties can in turn address with specificity why they need the discovery in question." *Id.*

On October 20, 2003 the Court entered an Order denying Enron's Motion and directing Enron to provide the Bank Defendants with an index detailing which portions of Enron's governmental productions have and have not been produced to the Depository. In a good faith effort to reach a solution to some of the cost and burden concerns raised by Enron, the Bank Defendants joined Enron in filing the Agreed Motion on October 21, 2003, which was granted by the Court on November 1, 2003, and which resulted in a stay of the August 2002 Order until November 25, 2003, to allow time for the parties to discuss these issues. On November 25, 2003 the parties notified the Court that they had been unable to resolve the dispute, and would be filing supplemental briefing by December 5, 2003, with replies by

December 12, 2003, in accordance with the November 1, 2003 Order. Since November 25, the parties have continued their attempts to resolve these issues through further discussions and correspondence, but have been unable to reach a resolution and now seek the Court's assistance.

Enron's Index of Government Productions

On November 19, 2003, Enron provided a 569-page index which purports to list the various document productions Enron has made to government entities that are covered by the August 2002 Order, specifying which of those productions have been delivered to the *Newby* Depository. *See* Turner Aff., Exhibit A. The Bank Defendants had initially requested such an index in their October 10, 2003 Response to Enron's Motion, and the Court directed that Enron provide it in Your Honor's October 20, 2003 Order.[4]

As previously discussed in the Bank Defendants' November 25 Memorandum, the index reflects the disorganization that apparently plagued Enron's document productions. Of the 16,507 entries in Enron's index, fully 7,544 of those entries – or 45.7% – state that the production has not been delivered to the *Newby* Depository. Enron has provided no explanation, in the index or in discussions between counsel, as to why certain productions were delivered to the *Newby* Depository and others were not. Neither is there any apparent rhyme nor reason on the face of the index that would explain why whole productions, or, more puzzlingly, certain sections of productions, were not sent to the Depository. Contrary to the suggestion in Enron's Motion, this is clearly not a case of Enron endeavoring in good faith to comply with the August 2002 Order, only to fall behind as government productions mounted. Rather, the missing

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[4] Curiously, on November 10, 2003 Enron provided a 944-page version of the index, but a few days later Enron advised the Bank Defendants that the index contained "many inaccuracies" and subsequently, on November 19, 2003, Enron delivered a "corrected" version that had shrunk to 569 pages.

productions include some that were sent to government entities as long ago as December 2001 and early 2002. For example, the index shows that Enron has not yet produced to the *Newby* Depository a complete set of a series of productions Enron made to the PSI throughout February and March 2002, in response to a request for documents relating to, *inter alia*, special purpose entities, related party transactions and Enron's accounting practices; materials that are of obvious relevance to this litigation. We have repeatedly asked Enron to explain how or why its productions have been made in this scattershot fashion. To date, Enron has failed to provide an explanation.

While the lack of any reasoned explanation for the non-production of documents remains outstanding, the Bank Defendants have focused their attention toward understanding the contents of the missing productions and attempting to identify those that should be produced as a matter of the utmost priority. Significantly, however, many of the 7,544 index entries for the missing governmental productions provide no information whatsoever concerning the source or subject matter of the documents included in the production. In the absence of key information about source and subject matter, there is no way the Bank Defendants can determine whether a given production is relevant or irrelevant to *Newby* and the related cases. To the extent that some entries in the index do provide sufficient information to make a preliminary determination of relevance, the information in these index entries suggest that most of these documents are relevant and should be produced.

The importance of certain documents is apparent based on the government entity to which the documents were produced and the subpoenas or document requests to which Enron was responding. Enron's productions to the FBI, SEC, DOJ, and the PSI are presumably among the more relevant to the issues arising in *Newby* and the related cases. The Bank Defendants

have recently asked Enron to deliver these particular productions to the *Newby* Depository as soon as possible.

Following are just some examples of the document requests issued by the FBI, SEC, DOJ and PSI, for which Enron produced responsive documents to the government but has yet to deliver those productions to the *Newby* Depository:

- Documents responsive to a February 21, 2002 DOJ request for, *inter alia*:
    - "A list of all special purpose entities with which Enron transacted business, including a description of the SPE, and the names and contact information of every general and limited partner";
    - "All deal approval sheets (DASH) for the period 1997 through the present";
    - "All fairness opinions issued to Enron by Arthur Andersen, PriceWaterhouseCoopers or any other entity concerning the fairness of the transactions between Enron and SPEs between 1997 and 2002";
    - "All documents concerning loans and/or lines of credit from Enron to Kenneth Lay, Jeffrey Skilling, Andrew Fastow and any other individual officers or directors";
    - "A list of individuals who had access to the Enron press releases issued on [certain relevant] dates, and/or access to the contents thereof, prior to public dissemination of the same"; and
    - "The daily tracking reports prepared by Enron's accounting department on the performance of the Raptors."
- Documents responsive to SEC subpoenas dated November 8, 2001 and December 26, 2001 requesting, *inter alia*:
    - "All emails sent or received by the following individuals concerning LJM1, LJM2, Chewco or JEDI: Kenneth Lay, Jeffrey Skilling, Andrew Fastow, Michael Kopper, Jeffrey McMahon, Richard Causey, Ben Glisan, Kristina Mordaunt, Kathy Lynn, Anne Yeager";
    - "All documents concerning any annual or periodic reviews conducted by the Audit and Compliance Committees concerning any transactions between Enron, LJM1, LJM2, Chewco and JEDI";
    - "All documents concerning LJM1, LJM2, Chewco and JEDI, including, but not limited to, any offering materials, private placement

memoranda, quarterly and/or periodic investment portfolio reports, formation and management, and transactions with Enron";

- "All documents concerning the restatement announced on November 8, 2001";
- "All documents that concern or reflect Enron's financial policies and procedures, including but not limited to, a chart of accounts and accounting policy/procedures manuals";
- "All communications to or from Arthur Andersen regarding transactions between Enron and Related Parties";
- "All documents concerning the formation of LJM Cayman, L.P., LJM Swap Sub L.P. and the Rhythms Netconnection 'put', including, but not limited to, all documents executed at closing as well as all documents concerning the unwinding of the Rhythms Netconnection 'put'";
- "All documents concerning trading by Enron in Enron securities (and options or derivatives related thereto), including but not limited to Enron's trading book or other ledger maintained for the purpose of engaging in transactions involving Enron securities (also known as the 'Enron Corp. stock trading book')";
- "All documents concerning pre-payment transactions ('pre-pays') or other transactions that resulted in the company marking to market a liability as a price risk management liability";
- "All documents concerning the following transactions: Project Nahanni, Project Moose, Project Mariner, Project Fishtail, Project Blackhawk, transactions between Enron and LJM Cayman L.P. involving the Brazilian power facility referred to as Quaba and/or Cuiba, transactions between Enron and LJM2 Co-Investments L.P. involving the Brazilian power facility known as Quaba and/or Cuiba, the Dark Fiber Deal (as described in Enron's Form 8-K filed by Enron on November 8, 2001), and transactions involving barges referred to as the Nigerian Barge Deal."

- Approximately 60 CDs "corresponding to certain documents seized by the FBI on January 31, 2002" which the FBI subsequently returned to Enron as images on CDs. In fact, almost none of Enron's productions to the FBI have been turned over to the *Newby* Depository.

- Documents produced in February and March 2002 responding to a January 9, 2002 PSI subpoena requesting, *inter alia*, all documents relating to:

  - "Any internal or outside audit of Enron";

- "The establishment or use of any special purpose entity";
- "Any related party transaction";
- "Enron accounting policies and practices";
- "Documents promoting the value or purchase of Enron Corporation stock to the public or to Enron employees"; and
- "Any communication with other officers or members of the Board of Directors of the Enron Corporation or with officials from Andersen that relate to matters under consideration, or actions taken by the Board of Enron Corporation or its committees, including but not limited to the Special Committee."

Again, Enron has provided no explanation as to why these critical materials have been withheld from the Depository.[5] It is inconceivable that someone made a good faith determination that all of the foregoing were irrelevant to the issues in *Newby* and it is incomprehensible how Enron, having already made these productions to the government, can articulate a colorable burden or expense argument as to why these core documents should not be made available to the Bank Defendants in a case of this magnitude.

Beyond these plainly relevant productions, many of the remaining entries in Enron's index provide no meaningful information on which to base a determination of relevance. Some of the "Description" entries simply state, for example:

- "Pursuant to letter/email/oral request dated [...]";
- "Documents responsive to Committee's general request";
- "CDs of emails regarding various individuals"; or

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[5] In addition to the SEC, DOJ, FBI and PSI productions, a number of Enron's productions to other government entities, not yet delivered to the *Newby* Depository, appear to be relevant on the face of the index. For example, the index refers to a February 5, 2003 production to the Commodity Futures Trading Commission of "Emails from June 2001 Lotus Notes Back up [for] Jeff Skilling", and an October 2, 2002 production to the FERC of emails for, among others, Kenneth Lay and Jeffrey Skilling, which clearly should be produced.

- "Potentially relevant".

Clearly, if Enron seeks to be relieved of its obligations under the August 2002 Order, the burden is on Enron to demonstrate why certain productions are irrelevant and need not be produced in *Newby*. To date, Enron has failed to meet that burden.

Enron Has Not Demonstrated that Producing the Documents Will Be Excessively Costly

In a further effort to try and narrow the number of productions at issue, the Bank Defendants have asked Enron's counsel to specify which of the government productions would be the most costly or burdensome to produce to the *Newby* depository. The Bank Defendants reasoned with Enron's counsel in a telephone meeting on December 2, 2003 that if certain productions are of limited or no relevance and yet will be very costly to produce, they could be deferred for the time being, or potentially exempted from the August 2002 Order entirely, provided that Enron clearly explain the lack of relevance of these documents and the cost of producing them. For example, Enron's Motion had cited the excessive cost of having to produce to the *Newby* Depository a copy of an "8 terabyte" Enron trading database, representing some 800 million images, that it had produced to the Federal Energy Regulatory Commission ("FERC"). As the Bank Defendants have previously indicated, without waiver of any rights, the database produced to FERC is a category of materials for which production can likely be deferred or even excused, and we have told Enron it is certainly not a production priority. Accordingly, the Bank Defendants were hopeful that identification of similarly large government productions of limited relevance would address Enron's cost concerns.

However, Enron responded that even if the trading database and certain other databases produced by Enron were exempted from delivery to the *Newby* Depository, production of the remaining documents on the index would still be unduly burdensome. Enron's counsel claimed that, ***leaving aside the databases***, the government productions that have not been

delivered to the *Newby* Depository represent approximately eighty (80) million pages. Faced with this additional new information, which was not disclosed in Enron's Motion or its index, or in any prior discussions with counsel, the Bank Defendants requested a breakdown of the eighty million page estimate across the various productions. Again, the purpose of such a breakdown would be to determine which of the productions would be most costly to produce in *Newby*, with a view to narrowing the universe of documents. Instead, Enron provided a list which only shows how many CDs or hard drives were used as delivery media for certain of the government productions, but Enron has not yet responded to our request for a detailed breakdown of the volume of pages or the cost associated with turning over each of the outstanding government productions.[6] Accordingly, while Enron claims that the cost of producing these documents will be "excessive", "overwhelming" and "shockingly high", Enron has so far failed to particularize the costs or explain why they are excessive in a case of this magnitude.[7]

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6 Since the cost of converting documents to the *Newby* Depository format is calculated on a per-page basis, the lack of information provided by Enron as to the number of pages associated with each production makes it impossible to quantify the costs associated with delivering each production to the *Newby* Depository.

7 Moreover, Enron's argument about the allegedly "excessive" cost of producing these documents rings hollow now that Enron has commenced an adversary proceeding in Bankruptcy Court against certain of the Bank Defendants, presenting many of the same issues as arise in *Newby*. Accordingly, Enron will no doubt have to produce the very same documents in the adversary proceeding in any event. Furthermore, the cost of producing these documents pales into insignificance when compared to the professional fees that have been incurred to date in the Enron bankruptcy. *See* Enron's Disclosure Statement for Second Amended Joint Plan of Affiliated Debtors Pursuant to Ch. 11 of the U.S. Bankruptcy Code, November 13, 2003, Appendix G-3 at 9, indicating professional fees of approximately $502 million for the period December 2, 2001 through June 30, 2003.

A Brief Three-Month Adjournment of the Commencement of Depositions is Warranted

A fundamental assumption underlying the Bank Defendants' negotiation of and agreement to the Court's July 11, 2003 Scheduling Order was that production of the relevant Enron documents – materials that are unquestionably at the heart of this litigation – would be substantially completed by the early Fall of 2003, so that they could be largely synthesized and organized before the commencement of depositions on January 10, 2004. Through no fault of their own, the Bank Defendants are now faced with a situation in which it is clear that a substantial quantity of relevant Enron documents have not yet been produced. Even if all outstanding Enron documents were produced today, there will be a delay of weeks, if not months, before they are processed and become available. In all events, it will not be possible for the Bank Defendants or other parties to receive and digest these materials before depositions are currently scheduled to begin. To proceed with fact depositions in a case about Enron while such a large quantity of important Enron documents remain outstanding would be a recipe for chaos, inefficiency and unfairness.

The Enron documents that have yet to be produced are potentially relevant to most, if not all, deponents. In a case of this magnitude, the Bank Defendants, and other parties, should be entitled to have their counsel review documents in Enron's production pertaining to their respective clients and witnesses before they are deposed. Furthermore, completion of Enron's document production is of obvious importance to conducting depositions of Enron witnesses. Commencing depositions regardless of the unavailability of important documents would jeopardize the fair and orderly conduct of the depositions and will inevitably result in numerous requests to re-open depositions when important documents subsequently become available. Given the complexity of the issues, the enormous size of the damages alleged by

Plaintiffs and the extraordinary amount of resources being expended by the Court and the parties, it is in everyone's interests that depositions, which will number in the hundreds, not get off to a "false start" while many, if not most, of the relevant documents have yet to be made available to all parties. While the Bank Defendants seek an adjournment to the commencement date for depositions, it should be noted that no deposition notices have yet been issued, nor any deposition schedule put in place, that would be affected by such an adjournment.

An adjustment to the Scheduling Order also makes sense for a number of other reasons. In addition to the problems with Enron's deficient document productions, the Bank Defendants have learned that productions by other parties are not proceeding as had been anticipated. Despite the fact that Vinson & Elkins delivered approximately 800 boxes of hard copy documents to the Depository by October 1, 2003, and subsequently delivered a hard drive containing electronic documents, no Vinson & Elkins documents are yet available from the Depository. We have been informed that discussions are taking place between counsel for Enron and counsel for the Lead Plaintiff, concerning Enron's request to conduct a confidentiality review of the documents before they will be released to other parties, and concerning arrangements for an appropriate confidentiality order. There has been no indication as to how long this will take. In the meantime, neither the Bank Defendants nor any other party has access to the Vinson & Elkins documents.

A significant quantity of additional documents is also expected from Arthur Andersen ("Andersen"). While Andersen had earlier indicated that it would produce approximately 13 million pages in response to the Lead Plaintiff's document request, Andersen subsequently made an arrangement with the Lead Plaintiff to produce only 500,000 pages,

comprising certain work papers. Accordingly, the Bank Defendants issued their own document request to Andersen, which is currently pending, calling for additional documents.

Another important concern is that there is a significant time delay between the date that documents are produced to the Lex Solutio depository and the date they become available to the parties. For example, Enron's counsel has indicated in the course of recent discussions that certain documents they delivered to Lex Solutio in the summer of 2003 have not yet been processed and "posted" as available to all parties. Certainly it will take some time for Lex Solutio to process additional document productions made by Enron and other parties.

The problems with Enron's document productions, and the other factors discussed above, have effectively taken off the clock the time that the Scheduling Order would have made available to the parties to review and assimilate documents prior to commencement of depositions. Fairness and wise judicial administration dictate that the schedule be adjusted to try to restore some of the time that has been lost by Enron's non-compliance with the August 2002 Order. Indeed, it is extremely ambitious, bordering on unrealistic, to think that all or even most of the 80 million pages of as-yet-unproduced Enron documents can be synthesized by the parties in just three months. Nonetheless, the Bank Defendants are committed to doing whatever they reasonably can to minimize delay to the existing schedule and thus, at this juncture, seek the shortest adjournment feasible, with the understanding that they may be constrained to revisit the schedule with the Court, including possible adjustment to the cut-off date for fact depositions, depending on how quickly the Enron documents can be made available and reviewed.

Conclusion

For the reasons set forth above, the Bank Defendants respectfully submit that Enron's Motion should be denied. The Bank Defendants further request that this Court's July

11, 2003 Scheduling Order be amended to postpone the commencement of fact depositions for a period of three months.

Dated: December 5, 2003

Respectfully submitted,

/s/ Richard W. Mithoff

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing has been served upon all counsel of record via the www.esl3624.com website, on this 5th day of December 2003.

/s/ Alan C. Turner
Alan C. Turner

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

IN RE ENRON CORPORATION SECURITIES LITIGATION	
This Document Relates To:	
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORP., et al., Defendants.	Consolidated Civil Action Case No.: H-01-CV-3624

AFFIDAVIT OF ALAN C. TURNER IN SUPPORT OF THE BANK DEFENDANTS' OPPOSITION TO THE MOTION OF ENRON CORP. FOR RELIEF FROM AUGUST 2002 DISCOVERY ORDER, AND IN SUPPORT OF THE BANK DEFENDANTS' CROSS-MOTION FOR AN ADJUSTMENT TO THE SCHEDULING ORDER

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

Alan C. Turner, being duly sworn, deposes and says:

1. My name is Alan C. Turner. I am over the age of 18 years, and I am competent to make this affidavit.

2. I am an associate of the firm of Simpson Thacher & Bartlett LLP, counsel for J.P. Morgan Chase & Co., J.P. Morgan Securities Inc and JPMorgan Chase Bank in this proceeding. I submit this affidavit in support of certain Bank Defendants' December 5, 2003 Opposition To The Motion Of Enron Corp. For Relief From August 2002 Discovery Order, And In Support Of The Bank Defendants' Cross-Motion For An Adjustment To The Scheduling Order.

3. Attached hereto as Exhibit "A" is a true and correct copy of a document received from Weil, Gotshal & Manges LLP, counsel for Enron, on November 19, 2003, purporting to be an index of Enron's document productions to government entities. The page numbers appearing on the bottom of each page did not appear on the document as delivered by Weil, Gotshal & Manges LLP, but were added by me for ease of reference.

Alan C. Turner

Sworn to before me this
04 day of December, 2003

Notary Public

SHARRI A. WILNER
NOTARY PUBLIC, State of New York
No. 31-5044670
Qualified in New York County
Commission Expires Oct. 22, 2005