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

UNITED STATES COI
SOUTHERN DISTRICT C
FILED
FEB 13 2002
MICHAEL N. MILBY, CLERK C

| | | |
|---|---|---|
| MARK NEWBY, *et al.*, | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| v. | § | Civil Action No. H-01-3624 |
| | § | Consolidated Lead Case |
| ENRON CORP., *et al.*, | § | |
| | § | |
| Defendants. | § | CLASS ACTION |

**JEFFREY K. SKILLING'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR EMERGENCY INJUNCTIVE RELIEF UNDER THE ALL WRITS ACT AND IMPOSITION OF SANCTIONS ON FLEMING & ASSOCIATES**

Jeffrey W. Kilduff
**O'MELVENY & MYERS LLP**
1650 Tysons Boulevard
McLean, Virginia 22102

Bruce A. Hiler
Robert M. Stern
**O'MELVENY & MYERS LLP**
555 Thirteenth Street, NW
Suite 500 West
Washington, DC 20004-1109

*Attorneys in Charge for*
*Jeffrey K. Skilling*

Of Counsel:

Ronald G. Woods
**RONALD G. WOODS, ATTORNEY AT LAW**
6300 Memorial, Suite 1000
Houston, Texas 77007

280

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

Jeffrey K. Skilling, one of the defendants in the above-captioned action, respectfully submits this memorandum of law in support of emergency injunctive relief under the All Writs Act.

## I.

## INTRODUCTION

As the Court is aware, on January 30, your Honor held a hearing on Defendant Kenneth Lay's motion for injunctive relief under the All Writs Act. The hearing was necessitated by the actions of attorneys from the firm of Fleming & Associates ("Fleming"), who sought and obtained a temporary restraining order ("TRO") against Kenneth Lay and Arthur Andersen in *Bullock v. Arthur Andersen, L.L.P.*, No. 32716 (Dist Ct. Wash. Cty., Jan. 24, 2002), filed in Texas state court in Washington County. The *Bullock* TRO was virtually identical to applications for relief that: (1) had already been granted by this Court; or (2) were pending before this Court.

On the same day as the hearing, counsel for Arthur Andersen removed the case that was the subject of Mr. Lay's motion to federal court, obviating—at least for the time being—the need for injunctive relief. Nevertheless, your Honor heard oral argument on Mr. Lay's motion.

During oral argument—as well as in the papers they previously submitted—counsel for Mr. Lay and Arthur Andersen made clear that this Court had the authority to enjoin state court proceedings like *Bullock*.[1] In response, the Court questioned Fleming's motivations for filing the *Bullock* action. Specifically, the Court raised three questions of Mr. Jez, including: (1) If counsel

[1] At that same hearing, Elizabeth Cabraser, counsel for the New York City Fund and Florida State Fund, also acknowledged that "[t]his Court does have a newly created federal right and interest [in] jurisdiction by virtue of the PSLRA and the Uniform Standards Act to secure exclusive jurisdiction over cases involving covered claims and covered securities." (1/30/02 Tr. at 45:1-45:5.)

really wanted the injunctive relief sought in the *Bullock* action why didn't he just ask the Court to grant it to him; (1/30/02 Tr. at 13:12-13:20); (2) Was Mr. Jez not aware that requests for identical relief were pending before this Court; (*Id.* at 13:21-17:22); and (3) Whether he plans to file additional actions. (*Id.* at 20:22-20:24.) While Mr. Jez never provided a straight answer to these questions, we believe that everyone present understood that Fleming would not seek another duplicative temporary restraining order in state court. However, that is precisely what Fleming did last week. On February 7, without notice to counsel for any of the defendants, Fleming sought and obtained a TRO in Bexar County in its newly-filed *Jose v. Arthur Andersen, L.L.P. et al.*, 2002 CI 01906 (Bexar County, 57th Dist).

This Court should not permit such blatant disregard for its jurisdiction. Fleming's actions are forcing this Court and defense counsel to waste substantial resources addressing their duplicative and frivolous TROs. It is now abundantly clear—contrary to the representations made by Mr. Jez to this Court—that in the absence of an injunction prohibiting Fleming from filing new actions and seeking emergency relief, Fleming will proceed county-by-county through the State of Texas filing actions and seeking the same emergency injunctive relief under consideration here.

To prevent this scenario, Jeffrey K. Skilling respectfully requests that this Court issue an Order: (1) mandating that Fleming dissolve the TRO obtained in the *Jose* action; (2) enjoining Fleming from filing any new Enron-related actions without leave of this Court; and (3) granting defense counsel fees and costs reasonably incurred in the pursuit of this motion and hearing.

## II.

## FACTS

On February 7, 2002, Fleming filed a new action, *Jose v. Arthur Andersen, L.L.P. et al.*, based upon the same facts that have been alleged in the consolidated actions pending before this

Court and seeking the same injunctive relief that has been sought in these proceedings. (*See* Stern Decl., Exhs. 2-3.) As with the *Bullock* action that Fleming filed on January 24, 2002, ***no advance notice was given to any of the attorneys representing the defendants*** against whom the TRO was sought, despite the fact that Mr. Jez knew who they were.[2]

Moreover, the *Jose* papers claim that:

> [I]t has been revealed ... ***that papers relating to AALLP's audit of Enron [have been] destroyed.*** Documents relevant to the Enron audits have admittedly been destroyed by Defendant, David Duncan. ***This has created an emergency requiring Plaintiffs to seek temporary restraining order without notice.*** (Stern Decl., Exhs. 3 at ¶ 133.)
>
> Plaintiffs would currently show further that Defendants David Duncan, Lay, Skilling and Fastow ... should be enjoined from transferring any assets out of the country pending the conclusion of this case or from secreting any assets or transferring such assets to third parties. (*Id.* at ¶ 134.)
>
> It was acknowledged by spokesmen for Defendants Lay, Fastow and Skilling that documents were being shredded at the former place of their employment at Enron Corporation. (*Id.* at ¶ 135.)[3]

These events, according the *Jose* complaint, created an immediate threat of irreparable harm that justified entry of a TRO. (*Id.* at ¶ 133-137.) The TRO that was entered enjoins Defendants David Duncan, Jeffrey Skilling, Andrew Fastow and Kenneth Lay from:

---

[2] Mr. Jez's failure to provide counsel for Messrs. Skilling, Lay, Fastow, and Duncan with advance notice of his intention to seek emergency injunctive relief is particularly hypocritical in light of his statement at the January 30 hearing, "I just received notice of the removal or actually was served with a copy of the removal at this hearing. I certainly wish that defense counsel would have shown me the courtesy that I showed them when I noticed them I was going to file these lawsuits and filed the TROs." (1/30/02 Tr. at 11:19-11:23.) Further, counsel for Mr. Skilling expressly requested that Mr. Jez serve him in any future actions that Fleming & Associates might file. (Stern Decl., Exh. 6.) Despite this request, Mr. Jez did not see fit to provide counsel with advance notice of his intention to seek a TRO. This is obviously because had counsel for the defendants been present when the application for emergency injunctive relief was made, they would have informed the Bexar County court of all the facts omitted from the *Jose* application, and the relief would have been denied.

[3] It is impossible to see how the allegation that documents have been destroyed at Enron is relevant to Mr. Skilling. There is no dispute that the destruction of documents alleged to have occurred at Enron took place more than four months after Mr. Skilling resigned his position at Enron. By Plaintiffs' own admission, Mr. Skilling left Enron in August of 2001. (Stern Decl., Exh. 3 at ¶ 32.) As such, there is absolutely no support for the notion that Mr. Skilling would have known or been involved with any of the alleged destruction of documents at Enron, which purportedly occurred no earlier than December 2001.

(a) Destroying, altering, or deleting any documents related to their work done in connection with any audits of Enron Corporation, its subsidiaries, or related partnerships;

(b) Destroying, altering, or deleting any of their personal records or minutes of their attendance at Enron board meetings;

(c) Transferring any property, funds or assets to third parties not in the ordinary course of their business; and

(d) Transferring any property, funds or assets outside of the United States without permission of this Court and notice to Plaintiffs in this case.

(Stern Decl., Exh. 2 at 2.)

In procuring the relief, Fleming never informed the Bexar County court that: (1) virtually identical injunctive relief was before this Court; (2) this Court had issued an Order on January 22 prohibiting Arthur Andersen from destroying any evidence related to its Enron audit; (Stern Decl., Exh. 4); and (3) this Court had already found that there was ***no evidence of any immediate irreparable harm*** that would justify freezing Mr. Skilling's assets. (1/8/02 Op. at 40-42.)[4] In fact, to the contrary, the papers expressly stated that the circumstances ***created an emergency requiring Plaintiffs to seek temporary restraining order without notice.*** (Stern Decl., Exh. B at ¶ 133.) To represent to the Bexar County court that Plaintiffs were in jeopardy of suffering immediate irreparable harm without disclosing these other facts is disingenuous at best, and warrants the imposition of sanctions.

## III.

## ARGUMENT

### A. This Court Should Enjoin Fleming From Commencing Any New Enron-Related Actions In State Court Without Prior Notice

Federal courts have broad authority to issue an injunction when "necessary to prevent a

[4] (Stern Decl. ¶ 13.)

state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 295 (1970) ("Atlantic Coast"); *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332, 1334 (5th Cir. 1981), *cert. denied*, 456 U.S. 936 (1982) (same); *see also* All Writs Act, 28 U.S.C. § 1651 ("The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law"); Anti-Injunction Act, 28 U.S.C. § 2283 (permitting a federal court to issue an injunction to stay a state court proceeding "as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.")

From the plain language of the All Writs and Anti-Injunction Acts courts have construed three exceptions under which federal courts may enjoin a state proceeding pursuant to the All Writs Act:

> 1. Where the injunction is authorized by an Act of Congress other than the Anti-Injunction Act;
>
> 2. Where the issuance of an injunction is necessary in aid of the federal court's jurisdiction; or
>
> 3. Where issuance of the injunction is necessary to protect or effectuate the federal court's judgments or orders.

*See Atlantic Coast*, 398 U.S. at 287-88; *Standard Microsystems Corp. v. Texas Instruments Inc.*, 916 F.2d 58, 60 (2d Cir. 1990). Here, all three exceptions provide a basis for this Court to enjoin Fleming from seeking expedited injunctive relief in any more Enron-related actions in state court.

1. The SLUSA Provides An Express Statutory Authority For The Injunction

In 1998, after three years of plaintiffs' attempts to evade the procedural safeguards of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u ("PSLRA"), by asserting federal securities fraud claims under the guise of state law, Congress enacted the Securities Litigation Uniform Standards Act ("SLUSA"). *See Lander v. Hartford Life & Annuity Ins. Co.*, 251 F.3d 101, 107 (2d Cir. 2001). In passing SLUSA, Congress concluded:

> [I]n order to prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of the PSLRA, it is appropriate to enact national standards for securities class action lawsuits involving nationally traded securities.

15 U.S.C. § 78 note; *see also Lander*, 251 F.3d at 108 (SLUSA "closed this loophole in PSLRA" by "making federal court the exclusive venue for class actions alleging fraud in the sale of certain covered securities and by mandating that such class actions be governed exclusively by federal law"). The primary purpose of SLUSA is to establish "uniform national rules for securities class action litigation involving our national capital markets." H.R. Conf. Rep. No. 105-803 at 13.

SLUSA preempts any claim if four conditions are met —

1. The underlying suit is a "covered class action,"
2. The claim is based on state law,
3. The claim concerns a "covered security," and
4. The plaintiff alleges untrue statement, misrepresentation or omission of a material fact, or manipulative or deceptive devices or contrivance in connection with the sale or purchase of the security.

15 U.S.C. § 77p(b); 15 U.S.C. § 78bb(f); *see Hardy v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 01 Civ. 5973 (NRB), 2001 WL 1524471 *3 (S.D.N.Y., Nov 30, 2001) (citing 15 U.S.C. § 78bb(f)(1) & (2)); *Spielman v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 01 Civ. 3013

(DLC), 2001 WL 1182927, *2 (S.D.N.Y., Oct 9, 2001) (same). In other words, "class actions . . . alleging fraud or manipulation must be maintained pursuant to the provisions of *Federal securities law*, in Federal court." H.R. Conf. Rep. No. 105-803 at 13 (emphasis added); *see also Prager v. Knight/Trimark Group, Inc.*, 124 F. Supp. 2d 229 (D.N.J. 2000) (describing Congress's intention "to completely preempt state securities cases alleging fraud or manipulation"). Thus, if a state law claim satisfies the elements set forth in SLUSA, it is preempted and subject to dismissal. *See id.* As SLUSA is a broad statute of "complete preemption," it is irrelevant what label plaintiff attaches to his claim. *See Prager v. Knight/Trimark Group, Inc.*, 124 F. Supp. 2d 229, 233 (D.N.J. 2000); *Haney v. Pacific Telesis Group*, No. CV00758AHMMANX, 2000 WL 33400194, at *20 (Sept. 19, 2000, C.D. Cal.). Accordingly, the "focus is on the substance of the claim and not the plaintiff's characterization of it." *Denton v. H&R Block Fin. Advs. Inc.*, No. 01 C 4185, 2001 WL 1183292, at *3 (N.D. Ill., Oct. 4, 2001) (citation omitted).

Here, the *Jose* complaint clearly alleges an action based on the purchase and sale of a covered security. (Stern Decl., Exh. 2 at ¶ 2-5.) Moreover, as Mr. Jez of Fleming has already conceded to this Court, he represents more than 750 different plaintiffs. (1/30/02 Tr. at 17:24-18:1 ("As far as representations that counsel made that we represent 750 individuals, that is correct, Your Honor; we represent ***over*** 750 individuals.")[5] As a result, no matter what label Mr. Jez and Fleming put on their complaints, this Court should recognize that the 750 individuals represented by Fleming constitute a covered class under SLUSA. *Cf. Denton*, No. 01 C 4185, 2001 WL 1183292, at *3. Consequently, the only appropriate forum for this action to be litigated is federal court.

[5] Moreover, as was pointed out by counsel for Mr. Lay at the January 30 hearing, Fleming & Associates have only filed actions on behalf of about 70 plaintiffs to date. (1/30/02 Tr. at 23:23-24:5.) So if they are going to actually be representing more than 750 individuals it is safe to assume that literally dozens more state court actions will be filed over the next few weeks absent injunctive relief.

As was discussed at some length during the Court's January 30 hearing, the Eighth Circuit's opinion in *BankAmerica Corporation Securities Litigation*, 263 F.3d 795 (8th Cir. 2001) provides strong support for granting the relief requested here. There, the Court of Appeals found that the "federal right of control by the greatest stakeholder [under the Private Securities Litigation Reform Act ("PSLRA")] could not 'be given its intended scope if competing state court plaintiffs, representing a significantly smaller number of shares [could]...threaten the orderly conduct of the federal case...'" *Id* at 799-800 (*quoting In re BankAmerica Corp. Sec. Litig.*, 95 F. Supp. 2d 1044, 1049 (E.D. Mo. 2000)). Similarly, this Court should exercise the federal right and interest in jurisdiction conferred upon it by SLUSA and enjoin Fleming from filing any new Enron-related state court proceedings in the future.

2. Injunction Of Fleming Is Necessary In Aid Of This Court's Jurisdiction

Federal courts also have the authority to grant injunctive relief under the All Writs Act where such relief is necessary in aid of the court's jurisdiction. *See, e.g., United States v. International Brotherhood of Teamsters*, 907 F.2d 277 (2d Cir. 1990); *Yonkers Racing Corp. v. City of Yonkers*, 858 F.2d 855 (2d Cir. 1988); *In re Baldwin-United Corp.*, 770 F.2d 328 (2d Cir. 1985); *White v. Eagle-Picher Indus. Inc. (In re Joint E & S Dist. Asbestos Litig.)*, 134 F.R.D. 32 (E. & S.D.N.Y. 1990). This exception to the All Writs Act has been repeatedly invoked where, as here, the federal action involves complex multi-district litigation and the parallel state action would derogate the federal court's jurisdiction. *See In re Corrugated Container Antitrust Litigation*, 659 F.2d at 1334-35; *see also, Carlough v. American Products, Inc.*, 10 F.3d 189, 197 (3d Cir. 1993); *In re Baldwin-United Corp.*, 770 F.2d at 336. This is precisely the situation with which this Court is confronted.

Under the PSLRA, the federal securities class action will be subject to various procedural

safeguards that Congress enacted to protect against frivolous filings, including: (1) selection of lead plaintiff and lead counsel; and (2) the automatic discovery stay. *Cf.* 15 U.S.C. §§ 77z-1, 78u. The safeguards will necessarily result in the federal action proceeding more slowly than any parallel state proceeding would.

By comparison, Fleming have requested a preferential trial date in *Jose* under Texas Government Code § 23.101(a)(1). (Stern Decl., Exh. 3 at ¶ 136). If the *Jose* case, or any future case filed by Fleming is permitted to go forward, such action would undoubtedly reach resolution before the putative class action currently pending before this Court. Thus, the state court opinion would undermine this Court's exercise of its jurisdiction.

Moreover, Fleming filed *Odam v. Enron Corp., et al.*, H-01-3914, in this Court long before they filed either the *Bullock*, *Rosen*, or *Jose* actions in state court. It was only after Fleming recognized that none of their *Odam* plaintiffs had a sizable enough holding to obtain lead plaintiff status and name Fleming lead counsel under the PSLRA that they began filing these state court actions. *Cf.* 15 U.S.C. §78u-4(a)(3)(B)(iii)(I). Such conduct could ultimately jeopardize Fleming's clients ability to have their claims adjudicated contemporaneously with the remainder of the class. If, as is not uncommon, the end result is that these state actions are stayed until the conclusion of these consolidated proceedings, Fleming's clients' interests would be placed in real jeopardy. Fleming's conduct is simply evidence that its placing its own interest in getting paid above those of its clients. Such conduct undermines the express purpose behind the PSLRA, as well as this Court's ability to manage the litigation effectively going forward. As a result, an injunction prohibiting Fleming from initiating any other state court proceedings is necessary to protect this Court's jurisdiction.

3. Injunction Of Fleming Is Necessary To Protect The Judgments And Orders Of This Court

Finally, the All Writs Act permits injunction of a state court proceeding where it is necessary to protect the judgments and orders of the federal court. *See* 28 U.S.C. § 2283. This exception to the All Writs Act applies with equal force to both final and interlocutory orders and judgments. *See, e.g., Sperry Rand Corp. v. Rothlein*, 288 F.2d 245, 248 (2d Cir. 1961); *Amalgamated Sugar Co. v. NL Industries*, 825 F.2d 634, 639 (2d Cir. 1987).

Here, as discussed in detail above, this Court has already issued several Orders and Opinions that warrant protection from the newly filed *Jose* action. Most notably, this Court issued a January 8 Memorandum Opinion and Order ***denying*** the very same asset freeze sought by Fleming on the grounds that there was no evidence to support such an extraordinary remedy. (1/8/02 Op. at 40-42.) This Court should not permit Fleming to undermine its Opinion by such blatant forum shopping.

This Court has also issued an Order prohibiting Arthur Andersen from destroying any additional documentary evidence. (Stern Decl., Exh. 4.) To the extent that the TRO obtained by Fleming in the *Jose* action is inconsistent with this Court's Order, an injunction protecting that earlier Order is justified under the All Writs Act.

**B. This Court Should Award Defendants Fees And Costs Reasonably Incurred In Connection With This Motion As A Sanction For Fleming Egregious Conduct**

The inherent power of federal district courts carries with it the authority to impose sanctions. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 46-51, 111 S. Ct. 2123, 2134-36 (1991); *DSC Communications Corp. v. Next Level Communications*, 107 F.3d 322, 330-31 (5th Cir. 1996) (ability to award attorneys' fees as costs as a sanction is within the broad inherent authority of federal courts and will only be reviewed for abuse of discretion). This authority is

not limited by those rules or statutes that expressly permit the imposition of sanctions. *See Chambers*, 501 U.S. at 46-51. Rather, federal courts have broad discretion in formulating appropriate redress for sanctionable conduct by attorneys or litigants before the court. *Id.*

Here, the conduct of Fleming warrants the imposition of sanctions. As set forth in detail above, the TRO submitted to the Texas state court in *Jose* contained several misstatements and countless material omissions. *See supra*. The papers that Fleming submitted in *Jose* represented:

> [I]t has been revealed ... ***that papers relating to AALLP's audit of Enron [have been] destroyed***. Documents relevant to the Enron audits have admittedly been destroyed by Defendant, David Duncan. ***This has created an emergency requiring Plaintiffs to seek temporary restraining order without notice.***

(Stern Decl., Exh. 3 at ¶ 133.) It is inconceivable how counsel could make such an assertion when this Court has already issued an Order prohibiting any destruction of documents by Arthur Andersen. (Stern Decl., Exh. 4.)

Further, the *Jose* complaint also alleges that an injunction prohibiting Mr. Skilling from transferring assets to a third party is necessary to prevent the "suit from becoming 'an exercise in futility.'" (Stern Decl., Exh. 3 at ¶ 134.) Notably, the papers failed to inform the Bexar County court that this Court has already issued one Opinion concluding that there is insufficient evidence to support such injunctive relief. (1/8/02 Op. at 40-42.)

The Texas Disciplinary Rules of Professional Conduct, Rule 3.03(a) (3) condemns this very sort of conduct. Specifically, Rule 3.03(a) (3) provides for a heightened duty of candor to the tribunal when seeking *ex parte* relief. It provides that attorneys shall not knowingly "in an *ex parte* proceeding , fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision." *Id.* Yet, that is precisely what Fleming did in obtaining the TRO in *Jose*. Such conduct is

inexcusable and justifies imposition of sanctions.

## IV.

## CONCLUSION

For all of the foregoing reasons, Jeffrey K. Skilling's Motion For Emergency Injunctive Relief Under The All Writs Act And Imposition Of Sanctions On Fleming & Associates should be granted.

Date: February 12, 2002

Respectfully Submitted,

By: _____

Jeffrey W. Kilduff
**O'MELVENY & MYERS LLP**
1650 Tysons Boulevard
McLean, Virginia 22102
(703) 287-2400

Bruce A. Hiler
Robert M. Stern
**O'MELVENY & MYERS LLP**
555 Thirteenth Street, NW
Suite 500 West
Washington, DC 20004-1109
Tel: 202/383-5300

*Attorneys in Charge for*
*Jeffrey K. Skilling*

Of Counsel:

Ronald G. Woods
**RONALD G. WOODS, ATTORNEY AT LAW**
6300 Memorial, Suite 1000
Houston, Texas 77007
Tel: 713/862-9600

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

| | | |
|---|---|---|
| MARK NEWBY, *et al.*, | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| v. | § | Civil Action No. H-01-3624 |
| | § | Consolidated Lead Case |
| ENRON CORP., *et al.*, | § | |
| | § | |
| Defendants. | § | CLASS ACTION |

**DECLARATION OF ROBERT M. STERN IN SUPPORT OF JEFFERY K. SKILLING'S MOTION FOR EMERGENCY INJUNCTIVE RELIEF UNDER THE ALL WRITS ACT AND IMPOSITION OF SANCTIONS ON FLEMING & ASSOCIATES**

I, **ROBERT M. STERN**, declare as follows:

1. I am an attorney with the law firm of O'Melveny & Myers, LLP with offices at 555 13th Street, N.W., Washington, D.C. 20004. I am a member in good standing and admitted to practice law in the State of New York, as well as various federal courts. I represent Jeffrey K. Skilling, and have been admitted *pro hac vice* in this action.

2. I submit this declaration in support of Jeffrey K. Skilling's Motion For Emergency Injunctive Relief Under The All Writs Act And Imposition Of Sanctions On Fleming & Associates ("Fleming").

3. I attended the hearing before this Court on January 30, 2002 concerning Fleming's filing of *Bullock v. Arthur Andersen, L.L.P.*, No. 32716 (Dist Ct. Wash. Cty., Jan. 24, 2002), and the TRO that it obtained in that action. From his comments in Court it was my understanding that Fleming would not seek duplicative emergency injunctive relief in other state court actions in the future.

4. However, that is precisely what Fleming continues to do. Fleming is engaging in frivolous and harassing litigation tactics that consume substantial resources, distract our firm from the real issues at hand, and threaten this Court's jurisdiction over the securities cases consolidated before it.

5. For example, on February 1, just two days after the hearing, my client notified me that he had been served on January 29, 2002 by a state constable with another complaint filed by Fleming. *See Rosen v. Andrew S. Fastow, et al.*, Cause No. 2001-57517 (Harris Cty. Dist Ct., Jan. 16, 2002). However, I was aware that counsel for Arthur Andersen LLP had removed the *Rosen* action to federal court on January 18, 20002, ***eleven days earlier***. (A true and correct copy of the *Rosen* Summons and Complaint is attached hereto as Exhibit 1.)

6. In response to learning that Fleming had served my client at home in an action that had been removed to federal court nearly two weeks earlier, I telephoned Mr. Jez that same day to express my displeasure. Mr. Jez claimed that it was a mistake and that Fleming must have forgotten to tell the constable that service was no longer necessary. I informed Mr. Jez that I found such tactics to be harassing. I also indicated that if Fleming was going to continue filing cases throughout the State of Texas, I requested that he serve me, as counsel for Mr. Skilling, rather than continue to harass Mr. Skilling at home. Mr. Jez indicated that he understood and would serve me in the future.

7. Despite our February 1 conversation, on February 7, 2002, to my knowledge ***without providing notice to counsel for any of the defendants***, Fleming sought and obtained a TRO in Bexar County in its newly-filed securities case captioned *Jose v. Arthur Andersen, L.L.P. et al.*, 2002 CI 01906 (Bexar County, 57th Dist). A true and correct copy of the TRO issued in *Jose* is attached hereto as Exhibit 2.

8. The *Jose* Complaint claims that:

> [I]t has been revealed ... ***that papers relating to AALLP's audit of Enron [have been] destroyed***. Documents relevant to the Enron audits have admittedly been destroyed by Defendant, David Duncan. ***This has created an emergency requiring Plaintiffs to seek temporary restraining order without notice***. (*Id.* at ¶ 133.)
>
> Plaintiffs would currently show further that Defendants David Duncan, Lay, Skilling and Fastow ... should be enjoined from transferring any assets out of the country pending the conclusion of this case or from secreting any assets or transferring such assets to third parties. (*Id.* at ¶ 134.)

> It was acknowledged by spokesmen for Defendants Lay, Fastow and Skilling that documents were being shredded at the former place of their employment at Enron Corporation. (*Id.* at ¶ 135.)[1]

A true and correct copy of the *Jose* Complaint is attached hereto as Exhibit 3.

9. According the *Jose* complaint, these events created an immediate threat of irreparable harm that justified entry of a temporary restraining order. (*Id.* at ¶ 133-137.)

10. The TRO that was entered enjoins Defendants David Duncan, Jeffrey Skilling, Andrew Fastow and Kenneth Lay from:

> (a) Destroying, altering, or deleting any documents related to their work done in connection with any audits of Enron Corporation, its subsidiaries, or related partnerships;
>
> (b) Destroying, altering, or deleting any of their personal records or minutes of their attendance at Enron board meetings;
>
> (c) Transferring any property, funds or assets to third parties not in the ordinary course of their business; and
>
> (d) Transferring any property, funds or assets outside of the United States without permission of this Court and notice to Plaintiffs in this case.

(Exh. 2 at 2.)

11. I first learned from other defense counsel of the *Jose* action and the fact that Fleming had obtained a TRO in the *Jose* action on the morning of February 8. Immediately thereafter, I called Mr. Jez at his office and on his cell phone. I was unable to reach him at either number, but left voice messages on both. Much later that evening, Mr. Jez returned my call and left me a voice message confirming that Fleming had, in fact, obtained a TRO in the *Jose* action.

---

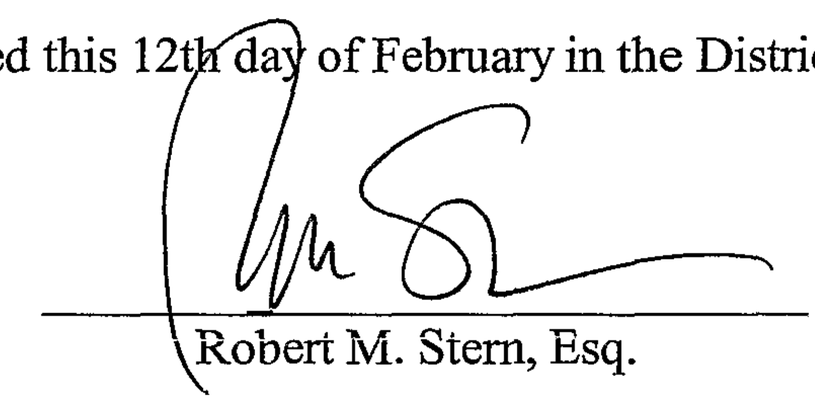
[1] It is impossible to see how the allegation that documents have been destroyed at Enron is relevant to Mr. Skilling. There is no dispute that the destruction of documents alleged to have occurred at Enron took place more than four months after Mr. Skilling resigned his position at Enron. By Plaintiffs' own admission, Mr. Skilling left Enron in August of 2001. (Exh. 3 at ¶ 32.) As such, there is absolutely no support for the notion that Mr. Skilling would have known or been involved with any of the alleged destruction of documents at Enron, which purportedly occurred no earlier than December 2001.

12. The next morning, Saturday February 9, I finally spoke with Mr. Jez. I started the conversation by requesting that Fleming voluntarily dissolve the TRO that was issued in the *Jose* action because: (1) it is duplicative of relief currently pending before this Court; and (2) it was misleading for Fleming to represent that such relief was necessary to prevent immediate irreparable harm. Mr. Jez informed me that he would not do so.

13. I then asked him whether Fleming informed the Bexar county court of the fact that: (1) virtually identical injunctive relief was before this Court; (2) this Court had issued an Order on January 22 prohibiting Arthur Andersen from destroying any evidence related to its Enron audit (a true and correct copy of which is attached hereto as Exh. 4); and (3) this Court had already found that there was ***no evidence of any immediate irreparable harm*** that would justify freezing Mr. Skilling's assets. (1/8/02 Op. at 40-42.) Mr. Jez responded that he had never spoken with the Bexar county judge; rather, he had merely filed the papers and there was no argument on the motion.

14. Finally, I asked Mr. Jez why he did not give me prior notice that he was going to seek a TRO in Bexar county, and he informed me that he was under no obligation to do so under the Texas Rules of Civil Procedure. I then informed Mr. Jez that we would seek redress before this Court at the earliest possible opportunity.

I declare until penalty of perjury under the laws of the District of Columbia that the foregoing statements are true and correct. Executed this 12th day of February in the District of Columbia.



Robert M. Stern, Esq.

# EXHIBIT 1

COPY

Cause No. 2001-57517

| | | |
|---|---|---|
| FRED A. ROSEN and MARIAN ROSEN; HOUSTON FEDERATION OF TEACHERS, on behalf of its members; ANNIE M. BANKS; LARRY D. BARNETT; ROBERT CHAZEN; CLIFFORD D. GOOKIN, Trustee for the Clifford D. Gookin Revocable Living Trust; CARL HERRIN; TODD L. JOHNSON, Administrator for RJS & Affiliated Companies Pension Plan; DAVID H. LOWE; ROBIN SAEX; JOHN SIEMER and ELIZABETH SIEMER, Trustees FBO The Siemer Family Trust; ANTHONY G. TOBIN; and JOHN E. WILLIAMS, | § | IN THE DISTRICT COURT OF |
| Plaintiffs, | § | |
| v. | § | |
| ANDREW S. FASTOW; KENNETH L. LAY; JEFFREY J. SKILLING; ROBERT A. BELFER; NORMAN P. BLAKE, JR.; RICHARD B. BUY; RICHARD CAUSEY; RONNIE C. CHAN; JOHN H. DUNCAN; JOE H. FOY; WENDY L. GRAMM; KEN L. HARRISON; ROBERT K. JAEDICKE; MICHAEL J. KOPPER; CHARLES A. LEMAISTRE; REBECCA MARK-JUSBASCHE; JOHN MENDELSOHN; JEROME J. MEYER; LOU PAI; PAUL V. FERRAZ PEREIRA; FRANK SAVAGE; JOHN A. URQUHART; JOHN WAKEHAM; CHARLES E. WALKER; BRUCE WILLISON; HERBERT S. WINOKUR, JR.; BEN GLISAN; KRISTINA MORDAUNT; D. STEPHEN GODDARD, JR.; DAVID B. DUNCAN; DEBRA A. CASH; ROGER WILLARD; THOMAS H. BAUER; and ARTHUR ANDERSEN, L.L.P., | § | HARRIS COUNTY, TEXAS |
| Defendants. | § | 333rd JUDICIAL DISTRICT |

FILED
CHARLES BACARISSE
District Clerk
JAN 16 2002
Harris County, Texas
By _____ Deputy

**PLAINTIFFS' FIRST AMENDED PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION**

COMES NOW Plaintiffs Fred and Marian Rosen; Houston Federation of Teachers, on behalf of its members; Larry D. Barnett; Robert Chazen; Clifford D. Gookin, Trustee for the Clifford D. Gookin Revocable Living Trust; Carl Herrin; Todd L. Johnson, Administrator of RJS & Affiliated Companies Pension Plan; David H. Lowe; Robin Saex; John Siemer and Elizabeth Siemer, Trustees FBO The Siemer Family Trust; Anthony G. Tobin; John E. Williams; and Annie M. Banks; and file this their First Amended Petition, Application for Temporary Restraining Order and Temporary Injunction, complaining of Defendants Andrew S. Fastow; Kenneth L. Lay; Jeffrey J. Skilling; Robert A. Belfer; Norman P. Blake, Jr.; Richard B. Buy; Richard Causey; Ronnie C. Chan; John H. Duncan; Joe H. Foy; Wendy L. Gramm; Ken L. Harrison; Robert K. Jaedicke; Michael J. Kopper; Charles A. LeMaistre; Rebecca Mark-Jusbasche; John Mendelsohn; Jerome J. Meyer; Lou Pai; Paul V. Ferraz Pereira; Frank Savage; John A. Urquhart; John Wakeham; Charles E. Walker; Bruce Willison; Herbert S. Winokur, Jr.; Ben Glisan; Kristina Mordaunt; D. Stephen Goddard, Jr.; David B. Duncan; Debra A. Cash; Roger Willard; Thomas H. Bauer; and Arthur Andersen, L.L.P. 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 **Fred A. Rosen and Marian Rosen** are citizens of the State of Texas who own Enron common stock.

3. Plaintiff **Houston Federation of Teachers** ("HFT"), is organized as a non-profit corporation and files on behalf of its members who are teachers in the State of Texas. The organization also includes retired teachers. HFT's members have contributed to the Teacher Retirement System of Texas ("TRS") from their salaries.

4. Plaintiff **Annie M. Banks** is a citizen of the State of Texas who is an individual member of the Teacher Retirement System of Texas.

5. Plaintiff **Larry D. Barnett** is a citizen of the State of Texas who owns Enron common stock.

6. Plaintiff **Robert Chazen** is a citizen of the State of Tennessee who owns Enron common stock.

7. Plaintiff **Clifford D. Gookin, Trustee for the Clifford D. Gookin Revocable Living Trust**, is a citizen of the State of Kentucky who owns Enron common stock.

8. Plaintiff **Carl Herrin** is a citizen of the State of Mississippi who owns Enron common stock.

9. Plaintiff **Todd L. Johnson, Administrator of RJS & Affiliated Companies Pension Plan,** is a citizen of the State of Wisconsin who owns Enron common stock.

10. Plaintiff **David H. Lowe** is a citizen of the State of Florida who owns Enron common stock.

11. Plaintiff **Robin Saex** is a citizen of the State of Florida who owns Enron common stock.

12. Plaintiffs **John Siemer and Elizabeth Siemer, Trustees FBO The Siemer Family Trust** are citizens of the State of Arizona who own Enron common stock.

13. Plaintiff **Anthony G. Tobin** is a citizen of the State of Florida who owns Enron common stock.

14. Plaintiff **John E. Williams** is a citizen of the State of West Virginia who owns Enron common stock.

15. Defendant **Robert A. Belfer** ("Belfer") has served as a Director of Enron since 1983, serving on its Executive Committee and Finance and Compensation Committees. Blake executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Belfer is an individual residing in New York, New York who may be served with citation by serving him at 927 5th Avenue, New York, New York 10021-2650.

16. Defendant **Norman P. Blake, Jr.** ("Blake") has served as a Director of Enron since 1993, serving 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, who may be served with citation by serving him by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to his principal place of business, 1400 Smith Street, Houston, Texas 77002.

17. Defendant **Richard B. Buy** ("Buy") is the Executive Vice President and Chief Risk Officer of Enron and has been Senior Vice President and Chief Risk Officer. Buy is an individual residing in Houston, Harris County, Texas who may be served with citation by serving him at 246 S. Post Oak Lane, Houston, Texas 77056-1056.

18. Defendant **Richard Causey** ("Causey") served as Executive Vice President and Chief Accounting Officer of Enron. Causey is an individual residing in Spring, Montgomery County, Texas who may be served with citation by serving him at 39 N. Regent Oak, Spring, Texas 77381-6442.

19. Defendant **Ronnie C. Chan** ("Chan") has been an Enron director since 1996. Chan is 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. Defendant Chan may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

20. Defendant **John H. Duncan** ("Duncan") has been an Enron director since 1985. Duncan's principal occupation has been investments since 1990. 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 may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

21. Defendant **Andrew S. Fastow** ("Fastow") was Enron's former Executive Vice President and Chief Financial Officer. Defendant Fastow may be served with citation at 1831 Wroxton Houston, Texas 77005.

22. Defendant **Joe H. Foy** ("Foy") served as a member of the Audit Committee for Enron from 1997-1999. Foy is an individual residing in Kerrville, Kerr County, Texas who may be served with citation by serving him at 404 Highridge Drive, Kerrville, Texas 78028-6048.

23. Defendant **Wendy L. Gramm** ("Gramm") has been an Enron director since 1993. Gramm is a member of the audit and compliance committee. 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., Dr. Gramm 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 Gramm may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

24. Defendant **Ken L. Harrison** ("Harrison") served as a Director for Enron from 1997-2001. Harrison executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Harrison is an individual residing in Portland, Oregon, who may be served with citation by serving him at Portland General Corporation, 121 Southwest Salmon Street, Portland, Maine 97204.

25. Defendant **Robert K. Jaedicke** ("Jaedicke") has been an Enron director since 1985. Jaedicke has been 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. He has been on the Stanford University faculty since 1961 and served as Dean from 1983 until 1990. Dr. Jaedicke is a director of California Water Service Company and Boise Cascade Corporation and he plans to retire from the Boise Cascade Corporation board in April 2001. Dr. Jaedicke was also a director of GenCorp, Inc. until July 2000. Defendant Jaedicke may be served with process by mailing, by certified mail, return receipt requested, a

copy of the citation and a copy of the petition attached thereto, to Defendant Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701.

26. Defendant **Michael J. Kopper** ("Kopper") served as managing director of Enron's Global Equity Markets Group. Kopper is an individual residing in Spring, Montgomery County, Texas who may be served with citation by serving him at 2138 Bolsover Street, Houston, Texas 77005-1618.

27. Defendant **Kenneth L. Lay** ("Lay") has been an Enron director since 1985. Lay has been Chairman of the Board of Enron since 1986. From 1986 until February 2001, Mr. 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. Mr. Lay is also a director of Eli Lilly and Company, Compaq Computer Corporation, EOTT Energy Corp. (the general partner of EOTT Energy Partners, L.L.P.), i2 Technologies, Inc. and NewPower Holdings, Inc. Defendant Lay may be served with citation at his principal place of business, 1400 Smith Street, Houston, Texas 77002.

28. Defendant **Charles A. LeMaistre** ("LeMaistre") has been an Enron director since 1985. 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 who may be served with citation by serving him at 7 Bristol Grn., San Antonio, Texas 78209-1846.

29. Defendant **Rebecca Mark-Jusbasche** ("Mark-Jusbasche") was an Enron director from 1999-2000. Mark-Jusbasche executed the 1999 financial statements of Enron. Mark-Jusbasche is an individual residing in Houston, Harris County, Texas, who may be served with

citation by serving her attorney of record, John J. McKetta, Graves, Dougherty, Hearon & Moody, 515 Congress, Suite 2300, Austin, Texas 78767

30. Defendant **John Mendelsohn** ("Mendelsohn") has been an Enron director since 1999. 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, Dr. Mendelsohn is also a director of ImClone Systems, Inc. Mendelsohn is an individual residing in Houston, Harris County, Texas, who may be served with citation by serving him at 1417 South Blvd., Houston, Texas 77006-6333. Mendelsohn is a member of the audit and compliance committee.

31. Defendant **Jerome J. Meyer** ("Meyer") served as an Enron director from 1997-2001, 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, who may be served with citation by serving him at Tektronix, Inc., 14200 S.W. Karl Braun Drive, Beaverton, Oregon 97077.

32. Defendant **Lou Pai** ("Pai") has been an Enron director at all times relevant to this lawsuit. Pai is also the Chairman and CEO of Enron Xcelerator and Chairman of Enron Energy Services. Pai may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to his principal place of business, 1400 Smith Street, Houston, Texas 77002.

33. Defendant **Paul V. Ferraz Pereira** ("Pereira") has been an Enron director since 1999. Pereira is Executive Vice President of Group Bozano. Mr. Pereira served for over five years as President and Chief Operating Officer of Meridional Financial Group and Managing Director of Group Bozano. Mr. Pereira is also the former President and Chief Executive Officer

of the State Bank of Rio de Janeiro. Defendant Pereira may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701. Pereira is a member of the audit and compliance committee.

34. Defendant **Frank Savage** ("Savage") has been an Enron director since 1999. Savage has served as Chairman of Alliance Capital Management International (a division of Alliance Capital Management, L.P.). Mr. Savage is also a director of Lockheed Martin Corporation, Alliance Capital Management L.P. and Qualcomm Corp. Savage is an individual residing in Stamford, Connecticut who may be served with citation by serving him at 87 Ridgecrest Road, Stamford, Connecticut 06903-3120.

35. Defendant **Jeffrey K. Skilling** ("Skilling") has been an Enron director at all times relevant to this lawsuit. Mr. 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. 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. Mr. 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 Mr. Skilling is also a director of the Houston Branch of the Federal Reserve Bank of Dallas. Defendant Skilling may be served with citation at 10 Briarwood Court, Houston, Texas 77019-5802.

36. Defendant **John A. Urquhart** ("Urquhart") served as Director of Enron from 1990-2001, 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 who may be served with citation by serving him at 7 Sasco Point, Fairfield, Connecticut 06430.

37. Defendant **Charles E. Walker** ("Walker") served as a Director of Enron from 1995-1998, 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 who may be served with citation by serving him at 10120 Chapel Road, Potomac, Maryland 20854-4143.

38. Defendant **John Wakeham** ("Wakeham") has been an Enron director since 1994. 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. Defendant Wakeham may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to Enron's registered agent in the State of Texas, National Registered Agents, 905 Congress Avenue, Austin, Texas 78701. Wakeham is a member of the audit and compliance committee.

39. Defendant **Bruce G. Willison** ("Willison") served as a member of the Audit Committee in 1997. Willison is individual residing in Los Angeles, California who may be

served with citation by serving him at 162 S. Burlingame Avenue, Los Angeles, California 90049-2642.

40. Defendant **Herbert S. Winokur** ("Winokur") has been an Enron director since 1985. 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 who may be served with citation by serving him at 341 North Street, Greenwich, Connecticut 06830-3901.

41. Defendant **Ben Glisan** ("Glisan") was a managing director and treasurer of Enron until November of 2001. Defendant Glisan may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to 15322 Baybrook Drive, Houston, Texas 77062. This Defendant was discharged for self-dealing the week of November 5, 2001.

42. Defendant **Kristina Mordaunt** ("Mordaunt") was a managing director and general counsel of Enron Broadband Services until November of 2001. Defendant Mordaunt may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to her home address of 4531 West Alabama,

Houston, Texas 77027-4803. This Defendant was discharged for self-dealing the week of November 5, 2001 and was discharged for such activities.

43. Defendant **D. Stephen Goddard, Jr.** ("Goddard") is the office managing partner of the Houston, Texas office of Arthur Andersen, L.L.P. that 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 who may be served with process at his home office and regular place of business, 711 Louisiana Street, Houston, Texas 77002.

44. Defendant **David B. Duncan** ("Duncan") is 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. Duncan is an individual residing in Houston, Harris County, Texas who may be served with process at his home office and regular place of business, 711 Louisiana Street, Houston, Texas 77002.

45. Defendant **Debra A. Cash** ("Cash") is 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. Duncan is an individual residing in Houston, Hardin County, Texas who may be served with process at Hwy. 326 N, Sour Lake, Texas 77659.

46. Defendant **Roger Willard** ("Willard") is 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. Duncan is an individual residing in Houston,

Harris County, Texas who may be served with process at 3723 Maroneal St., Houston, Texas 77025-1219.

47. Defendant **Thomas H. Bauer** ("Bauer") is 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. Duncan is an individual residing in Houston, Harris County, Texas who may be served with process at 1515 Pebble Chase Dr., Katy, TX 77450-4358.

48. Defendant **Arthur Andersen, L.L.P.** ("AALLP") is a limited liability partnership, whose business address is 901 Main Street, Suite 5600, Dallas, Texas 75202. Defendant Arthur Andersen may be served with process by mailing its registered agent, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to P. Scott Ozanus, 901 Main Street, Suite 5600, Dallas, Texas 75202. Arthur Anderson was the independent and an internal auditor for Enron during the relevant portions complained of herein.

## III. Introduction

49. TRS is organized under the provisions of Sections 821.001, *et seq.*, of the Government Code and under the provisions of Article 16, Section 67 of the Texas Constitution. It is available to persons employed by the public schools of the State of Texas and persons employed by an institution of higher education in the State of Texas.

50. Contributions are made by the employees and also by the State to create the retirement fund. The fund is managed by a Board of Trustees appointed by the Governor in odd-

numbered years. The terms are staggered. The Board members, whose terms expire or have expired on August 31 of the year indicated, are:

James H. (Jim) Simms, Chairman (2001)
Mary Alice Baker, Ph.D. (2005)
James P. Cummings, Sr. (2001)
Terence Ellis (2005)
H. Barham Fulmer, II (2003)
Brenda L. Jackson (2003)
Cecilia M. Moreno (2003)
Wendell Whittenburg (2001)
Linus Wright (2005)

The TRS Chief Investment Officer is John Peavy. The TRS Executive Director is Charles L. Dunlap. The Board controls the assets and investments of TRS. The State Comptroller is the custodian of the assets and cash of TRS.

51. Plaintiffs' members include both working teachers and retired teachers. These teachers and retired teachers have regularly contributed to TRS. TRS is one of the largest teacher retirement systems in the United States. It is believed to include more than 600,000 active members and more than 130,000 benefit recipients. A good retirement system is considered by teachers to be an important part of their compensation for teaching. TRS invests its funds to pay retirees their benefits now and in the future.

52. TRS held approximately 2.8 million shares of stock of Enron by the fall of 2001.

53. 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 collect retirement benefits and/or returns in the future in the amounts anticipated.

54. Collectively, the Defendants identified in paragraphs 2-14 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.

55. Collectively, the Defendants identified in paragraphs 15-48 are referred to as the "Andersen Defendants."

56. It is appropriate to treat the Individual 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 their high-level positions 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.

57. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the New York Stock Exchange ("NYSE"), and governed by the provisions of the federal securities laws, the Individual 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.

58. 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.

59. 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.

60. 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 New York Stock Exchange. 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.

61. Defendant AALLP was also hired by Enron with the approval of its directors to provide their 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.

62. 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 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 purchase Enron's common stock at artificially inflated prices and/or continue their ownership of Enron stock in their private investing devices and/or their 401k plans.

## IV. Jurisdiction and Venue

63. This Court has jurisdiction over each Defendant because each Defendant is doing business in Harris County, Texas, has committed a tort in whole or in part in Harris County, Texas and/or resides in Harris County. This Court also has jurisdiction over the controversy because the damages are above the minimum jurisdictional limits.

64. Venue is proper in Harris County, Texas. Specifically, venue is proper in Harris County, Texas because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. Venue is also proper in Harris County, Texas because it is the county of some of the Defendants' residence at the time the cause of action accrued and the county in which the majority of the work on the audits was done.

## V. Just the Facts

65. In 1999, Defendant Fastow formed two investment partnerships, LJM Cayman LP ("LJM") and LJM2 Co-Investment LP ("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.

66. Mr. Fastow's role as chief financial officer made him privy to internal asset analyses at Enron. An offering memorandum for the LJM2 Co-Investment, L.P. ("LJM2") partnership said that this dual role "should result in a steady flow of opportunities. . . to make investments at attractive prices."

67. Incredibly, the document reportedly goes so far as to expressly acknowledge the glaring conflict of interest that existed under this agreement and the multi-million dollar incentive for Fastow to engage in self-dealing to the detriment, and at the expense of, Enron and

its stockholders to whom he and the Director Defendants owned a fiduciary duty and states that this dual role "should result in a steady flow of opportunities. . . to make investments at attractive prices and that *Mr. Fastow would find his interests "aligned" with investors because the "economics of the partnership would have significant impact on the general partner's [Mr. Fastow] wealth."* (Emphasis added).

68. Defendants clearly breached their duties by expressly approving the agreement with Mr. 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.

69. Remarkably, Defendant Lay reportedly denied the existence of any conflict of interest arising out of the LJM arrangement. Such related-party transactions, involving top managers or directors, aren't unusual, he said. "Almost all big companies have related-party transactions."

70. 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. 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.

71. Despite statements designed to make the partnership deals seem innocuous, the positions Fastow held with the partnerships (and Enron) allowed Fastow to benefit from the illicit use of confidential, non-public information. An egregious example of this occurred in connection with a $30 million LJM2 investment in a project known as "Raptor III" in September

2000. This transaction involved writing put options committing LJM2 to buy Enron stock at a set price for six months. Writers of put options benefit from higher prices of the underlying stock, and are hurt by declining prices. As reported in the *Wall Street Journal* on October 19, 2001: "Only four months into this six month deal, LJM2 approached Enron to settle the investment early, causing LJM2 to receive its $30 million capital invested, plus $10.5 million in profit." The information quoted came from an internal report produced by Defendant Fastow for the partnership investors, but withheld from the public. The article further reported that: "The renegotiation was before a decline in Enron's stock price, which could have forced LJM2 to buy Enron shares at a loss of as much as $8 each." Thus, Fastow and LJM2 took advantage of inside information to recap illicit insider trading profits, in the millions of dollars in this transaction alone.

72. Finally, the fallout from the revelations about the partnership wrongdoing has had negative financial repercussions for Enron. These include a steep decline in its stock price, loss of investor and Wall Street confidence, and increased costs of attracting and retaining employees. The cover up of the Fastow agreement and other related transactions by the directors and auditors has subjected Enron to strong criticism from investors and analysts alike.

73. On October 23, 2001, the Associated Press reported that various partnership transactions purportedly resulted in a gain of $16 million (pretax) in 1999, and a loss of $36 million in 2000. The same article quoted a top analyst as sharply criticizing the directors and officers' concealment of the partnership deals. "What you are hearing from many is that the company's credibility is being questioned and there is a need for disclosure," said David Fleischer of Goldman, Sachs & Co. "That is exactly what I think needs to happen. There is an appearance that you are hiding something . . . I for one find the disclosure is not complete

enough for me to understand." To add fuel to the fire, the Company also acknowledged that the SEC had begun an investigation into AALLP's auditing practices with regard to the partnerships and whether the audits were done according to GAAP

74. On the basis of the foregoing, the Director Defendants breached their duties that each of them owed to its stockholders by expressly approving of a number of agreements that placed Enron's Chief Financial Officer 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.

75. Significantly, officers and directors of Enron had financial interests in all or some of these partnerships. As such, by approving the agreements that enabled Mr. Fastow to act in dual capacities, Defendants effectively engaged in self-dealing and placed Mr. 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 Enron. In so doing, the Defendants breached the duties that each of them owed to Enron's stockholders and caused Enron to incur losses in the amount of at least $35 million and the stock value to drop drastically.

76. According to published reports, the general partner of the two investment partnerships was paid management fees as much as 2% annually of the total amounts invested in the partnerships. Additionally, the general partner was eligible for profit participation that could produce tens of millions of dollars more if the partnership met its performance goals over its projected 10-year life. Inasmuch as the partnerships were formed with the intention of managing

over $200 million in assets, Defendant Fastow's potential profits from managing the partnership exceeded $4 million a year.

77. Since their formation, LJM and LJM2 have engaged in billions of dollars of complex hedging transactions with Enron – in which Enron's interests were adverse to these entities. By their very nature, Enron's transactions with these two investment partnerships, if successful, would result in losses to Enron and a lowering of Plaintiffs' stock value.

78. Because Defendant Fastow was on both sides of the transactions between Enron and the investment partnerships, the terms of those transactions were not at arm's-length and there was no reasonable method to ensure that the terms of those transactions were equivalent to transactions that could have been engaged in with third parties. AALLP failed to include these transactions on a consolidated balance sheet as required by GAAP.

79. For example, Enron entered into a series of complex transactions in 1999 involving LJM and a third-party, pursuant to which (i) Enron and the third-party amended certain forward contracts to purchase shares of Enron common stock, resulting in Enron having forward contracts to purchase Enron common shares at the market price on the day of the agreement, (ii) LJM received about 6.8 million shares of Enron common stock, and (iii) Enron received a note receivable and certain financial instruments from LJM hedging an investment held by Enron. These transactions should have appeared on the consolidated accounts of Enron in accordance with GAAP.

80. During the fourth quarter of 1999, LJM2 acquired approximately $360 million of merchant assets and investments from Enron. Further, in December, 1999, LJM2 entered into agreements to acquire certain of Enron's interest and assets for about $45 million. This was not on a consolidated balance sheet.

81. In 2000, Enron again entered into transactions with LJM, LJM2, and entities related to LJM and LJM2, to hedge certain merchant investments and other assets. Enron contributed about $1.2 billion of assets, including notes payable and restricted shares of outstanding Enron common stock and warrants, to LJM-related entities. Additionally, Enron entered into derivative transactions with a combined amount of about $2.1 billion with LJM-related entities to hedge certain assets. These transactions put Enron at risk in amounts exceeding $1 billion, yet were not included on Enron's consolidated balance sheet or properly reported to investors by Enron's independent auditor, AALLP.

82. In all, between June 1999 and September 2001, Enron and Enron-affiliated entities did 24 deals with LJM1 or LJM2 or both, ranging from buying and selling hard assets, purchasing debt or equity interests, and selling the rights to buy or sell shares of stock at certain preset prices. These were not included on reports prepared by AALLP and relied upon by Plaintiffs.

83. In fact, the LJM2 offering document, which was prepared under the direction of Defendant Fastow, admitted that the responsibilities of Mr. Fastow and other partnership officials to Enron could "from time to time conflict with fiduciary responsibilities owed to the Partnership and its partners."

84. As reported in TheStreet.com on July 12, 2001, Enron was questioned in a conference call that day about the Company's transactions with LJM and LJM2. Defendant Skilling falsely represented the true state of affairs by representing that LJM and LJM2 had done "a couple of real minor things." The Defendants either knew or should have known that these representations were false, yet they did nothing to inform the Plaintiffs of the true facts and liabilities of these transactions.

85. In July 2001, Fastow terminated his interests in the partnerships, and Enron unwound its financial relationships with the partnerships, yet Plaintiffs were kept in the dark concerning the effect of these transactions on the value of Plaintiffs' shares.

**Additional Materially False and Misleading Statements**

86. On January 18, 2000, Enron issued a press release approved by its officers and directors announcing its financial results for the fourth quarter of 1999 and fiscal year 1999. The Company reported that for fiscal 1999 it earned $957 million and had revenues of $40 billion. Defendant Lay commented on the results, stating in pertinent part as follows:

> Our strong results in both the fourth quarter and full year 1999 reflect excellent performance in all of our operating businesses. . . . In addition, Enron continues to develop innovative, high-growth new businesses that capitalized on our core skills, as demonstrated by the early success of our new broadband services businesses. Overall, a great year – one in which our shareholders received a total return of 58 percent.

87. On January 20, 2000, Enron issued a press release announcing that the Company had hosted its annual analyst conference in Houston that same day. With respect to the broadband services division, the press release stated in pertinent part as follows:

> The new name of Enron's communications business, Enron Broadband Services, reflects its role in the very fast growing market for premium broadband services. Enron is deploying an open flexible global broadband network controlled by software intelligence, which precludes the need to invest in a traditional point-to-point fiber network.

The Defendants either knew or should have known that this was false and misleading.

88. On April 12, 2000, Enron issued a press release announcing its financial results for the first quarter of 2000, the period ending March 31, 2000. The Company reported net income of $338 million, or $0.40 per share, and revenues of $13.1 billion. Defendant Lay highlighted the Company's broadband business, stating in pertinent part as follows:

> In our newest business, we significantly advanced deployment of our broadband network and saw strong response to our bandwidth intermediation and content delivery products.

The press release further described the developments in the broadband business as follows:

> Enron is replicating its unique business model and skills to deploy a global network for the delivery of comprehensive bandwidth solutions and high bandwidth applications.
>
> During the first quarter, Enron significantly advanced its network development. New agreements have been signed with over 20 broadband distribution partners.

The Defendants either knew or should have known that this was false and misleading.

89. On July 24, 2000, Enron issued a press release announcing its financial results for the second quarter of 2000, the period ending June 30, 2000. The Company reported net income of $289 million, or $0.34 per share, and revenues of $16.9 billion for the second quarter. Defendant Lay described the results as "another excellent quarter" and highlighted that Enron Broadband Services had recently executed "an exclusive, 20-year, first-of-its-kind contract with Blockbuster to stream on-demand movies." The press release further reported that Enron Broadband Services had executed $19 million of new contracts. The directors, officers and auditors should have known that this was false and misleading.

90. On October 17, 2000, Enron issued a press release announcing its financial results for the third quarter of 2000, the period ending September 30, 2000. The Company reported net income of $292 million, or $0.34 per share, and revenues of $30 billion. Defendant Lay commented on the results stating in pertinent part as follows:

> Enron delivered very strong earnings growth again this quarter, further demonstrating the leading market positions in each of our major businesses . . .. We operate in some of the largest and fastest growing markets in the world and we are very optimistic about the continued strong outlook for our company.

With respect to Enron Broadband Services, the press release reported among other things, that "Enron delivered 1,399 DS-3 months equivalents of broadband capacity, which was a 42 percent increase over the previous quarter." The directors, officers and auditors should have known that this was false and misleading.

91. On January 22, 2001, Enron issued a press release announcing its financial results for the fourth quarter of 2000 and fiscal year 2000, the period ending December 31, 2000. The Company reported earnings of $0.41 per share for the fourth quarter of 2000. Defendant Lay commented on the results stating in pertinent part as follows:

> Our strong results reflect breakout performances in all of our operations, . . .. Our wholesale services, retail energy and broadband businesses further expanded their leading market positions, as reflected in record levels of physical deliveries, contract originations and profitability. Our shareholders had another excellent year in 2000, as Enron s stock returned 89 percent, significantly in excess of any major investment index.

With respect to Enron Broadband Services, the press release stated:

> In addition, Enron Broadband Services reported a $32 million IBIT loss. These results include costs associated with building this new business, partially offset by the monetization of a portion of Enron's broadband delivery platform.
>
> * Enron Broadband Services delivered 2,393 DS-3 month equivalents of capacity, representing a 71 percent increase over the third quarter of 2000. In addition, transaction levels also significantly increased to 236 transactions in the fourth quarter, compared to 59 transactions in the third quarter of 2000.

This was false and misleading and should not have been allowed by the directors, officers and auditors.

92. On January 30, 2001, Enron issued a press release announcing that it had priced an offering of 20-year zero coupon convertible senior debt securities, raising $1.25 billion.

93. On April 17, 2001, Enron issued a press release announcing its financial results for the first quarter of 2001, the period ending March 30, 2001. The Company reported earnings of $0.47 per share. Defendant Skilling commented on the results, stating in pertinent part as follows:

> Enron's wholesale business continues to generate outstanding results. Transaction and volume growth are translating into increased profitability . . . . In addition, our retail energy services and broadband intermediation activities are rapidly accelerating.

With respect to Enron Broadband Services, the press release stated, among other things, as follows:

> Enron's global broadband platform is substantially complete, and 25 pooling points are operating in North America, Europe and Japan. Enron's broadband intermediation activity increased significantly, with over 580 transactions executed during the quarter – more than in all of 2000. Enron also added 70 new broadband customers this quarter for a total of 120 customers.

The directors approved this press release, causing a false impression to Plaintiffs of the value of Enron shares.

94. On July 12, 2001, Enron issued a press release announcing its financial results for the second quarter of 2001, the period ending June 30, 2001. The Company reported diluted earnings of $0.45 per share. Defendant Skilling downplayed any concerns investors might have about Enron Broadband Services, stating in pertinent part as follows:

> In contrast to our extremely strong energy results, this was a difficult quarter in our broadband business. However, our asset-light approach will allow us to adjust quickly to weak broadband industry conditions. We are significantly reducing our broadband cost structure to match the reduced revenue opportunities currently available.

None of the directors or other officers who were aware of the falsity of this statement made any attempt to correct this misstatement of the facts.

95. On July 25, 2001, Bloomberg Business News reported that at a meeting with analysts, Defendant Skilling stated that Enron will meet or beat its profit projections. The article stated in pertinent part:

> "We will hit those numbers, and we will beat those numbers," Skilling told a meeting of analysts and investors in New York . . . .
>
> Analysts have also cited concern about unpaid power bills by Enron customers in California and India, and losses by Enron's broadband trading unit, which may hurt Enron's profits.
>
> "All of these are bunk," Skilling said. "These are not issues for this stock."

96. On August 14, 2001, Enron issued a press release announcing that Defendant Skilling had resigned his positions at the Company. This announcement surprised investors and the price of Enron common stock dropped in response. According to a report carried by Bloomberg Business News, on August 17, 2001, after the announcement of Defendant Skilling's resignation, Defendant Lay met with investors and analysts "to calm fears that the Company may be hiding dire financial news . . .." The article quoted an analyst from UBS Warburg as stating: "Ken met with us to reassure us that there is nothing wrong with the company . . .. There is no other shoe to fall, and no charges to be taken." Plaintiffs believed Lay's statement to their detriment.

97. Then, on August 29, 2001, Defendant Lay provided an interview to Bloomberg Business News which was carried on the newswires. Defendant Lay portrayed the broadband services division in highly positive terms. The following question/answer is illustrative:

> Johnson: There has been a lot of concern by investors recently over the company's broadband trading unit, which trades space on fiber optic networks. Where does Enron stand with fiber optic trading now? Have you – do you still remain hopeful in that sector? Or what's the outlook now?
>
> Lay: Why, no, that continues to grow, quarter-to-quarter, at a very good rate, so we're continuing to develop liquidity in the marketplace. I mean, the biggest single problem has been the shortage of creditworthy counter parties to do longer term transactions. But certainly, quarter-to-quarter, we continue to increase the number of trades rather significantly.

98. The Defendant Lay sent an e-mail to employees after he knew that the stock value had declined appreciably indicating that the stock was still a good value. This representation was false, misleading and fraudulent and resulted in damages to the Plaintiffs herein.

99. The statements referenced above, were each materially false and misleading when made as they misrepresented and/or omitted the following adverse facts which then existed and

disclosure of which was necessary to make the statements made not false and/or misleading, including:

(a) that Enron Broadband Services was experiencing declining demand for bandwidth and the Company's efforts to create a trading market for bandwidth were not meeting with success as many of the market participants were not creditworthy;

(b) that the Company's operating results were materially overstated as a result of the Company failing to timely write-down the value of its investments with LJM Cayman LP and LJM2 Co-Investment LP;

(c) that Enron was failing to write-down impaired assets on a timely basis in accordance with GAAP; and

(d) as a result of the foregoing, Defendants' earnings projections and statements about the Company's prospects and outlook were lacking in a reasonable basis at all times. The Plaintiffs either invested based on these statements or did not sell their shares based on these false and misleading statements.

**The Results**

100. On October 16, 2001, Enron surprised the market by 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.

The press release further detailed the charge as follows: $287 million related to asset impairments recorded by Azurix Corp.; $180 million associated with the restructuring of the

Company's Broadband Services division; $544 million related to losses with certain investments and early termination during the third quarter of certain structured finance arrangements with a previously disclosed entity.

101. An article in The Wall Street Journal, on October 17, 2001, further explained the nature of the "structured finance arrangements with a previously disclosed entity," which was mentioned in the Company's earnings release. According to the article, the structured finance arrangements involved limited partnerships that were managed by Enron's Chief Financial Officer, Defendant Fastow. The article stated in pertinent part as follows:

> The two partnerships, LJM Cayman LP and the much larger LJM2 Co-Investment LP, have engaged in billions of dollars of complex hedging transactions with Enron involving company assets and millions of shares of Enron stock. It isn't clear from Enron filings with the Securities and Exchange Commission what Enron received in return for providing these assets and shares. In a number of transactions, notes receivable were provided by partnership-related entities.

102. According to The Wall Street Journal, in a news report on October 17, 2001, the cryptic reference in the press release was to the "pair of limited partnerships that until recently were run by Enron's chief financial officer." According to The Wall Street Journal, Enron privately acknowledged (initially) that its transactions with those partnerships resulted in write-downs of $35 million.

103. The next day, on October 18, 2001, The Wall Street Journal further reported on the nature of Defendant Fastow's financial arrangements with the Company. The article reported that "Enron had shrank 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. The article stated in pertinent part as follows:

According to Rick Causey, Enron's chief accounting officer, these shares were contributed to a "structured finance vehicle" set up about two years ago in which Enron and LJM2 were the only investors. In exchange for the stock, the entity provided Enron with a note. The aim of the transaction was to provide hedges against fluctuating values in some of Enron's broadband telecommunications and other technology investments.

104. Defendants did not acknowledge, however, until October 17, 2001, that the $1.2 billion writedown was attributable to Enron's transactions with Fastow's investment partnerships. On October 18, 2001, The Wall Street Journal reported that in a conference call on October 17, 2001, Defendant Lay stated that 55 million shares had been repurchased by Enron, as the Company "unwound" its participation in the transactions with the limited partnerships.

105. Defendants failed to disclose this huge reduction in assets and shareholder's equity attributable to Enron's transactions with the investment partnerships, either in the October 16, 2001 press release or on the October 16, 2001 conference call, in an apparent admission of guilt of their wrongful conduct.

106. 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."

107. 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 triple-B-minus from triple-B-plus, just a notch above junk bond or high-yield status. The prior week,

Standard & Poor's Corp. lowered its credit rating on Enron to triple-B while Moody's Investors Service lowered its rating to Baa2.

108. 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. This news prompted John Olson, an analyst with Sanders Morris Harris to state: "At the end of the day these details give support to the fear that Enron was a financial house of cards." In trading, Enron's stock closed at $8.63 on November 9, 2001.

109. 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.

110. 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.

111. Defendants' reckless conduct is further evidenced by the insider selling of certain of the Enron Defendants and other Enron Insiders. This trading was unusual and suspicious given its timing and amount as follows:

> Defendant Lay: sold 84,714 shares from Jan. 2 to Jan 31 for $68.28 to $82 each, or more than $5.78 million; sold 80,680 shares from Dec. 1 to Dec. 29 for $67.19 to $84.06 each, or more than $5.42 million. The sales total $11.2 million. Plaintiffs seek a disgorgement of Lay's ill-gotten gains made at the expense of Plaintiffs.
>
> Defendant Skilling: sold 50,000 shares from Jan. 3 to Jan. 31 for $68.94 to $80.28 each, or more than $3.45 million; sold 20,000 shares from Dec. 20 to Dec. 27 for $79.03 to $83 each, or more than $1.58 million, and 20,000 shares from Dec. 6 to Dec. 13 for $68.91 to $77.06, or $1.38 million. The sales total $6.41 million. Plaintiffs seek a disgorgement of Skilling's ill-gotten gains.
>
> Mark Frevert, Enron Wholesale Services chairman and chief executive: sold 180,000 shares from Dec. 18 to Dec. 20 for $79 to $79.98 each, or more than $14.2 million. The sale brought his holdings to 223,771 shares.
>
> Cliff Baxter, Enron vice chairman and chief strategy officer, who sold 174,215 shares from Jan. 2 to Jan. 31 for $69.44 to $81.31 each, or more than $12.10 million. The sale brought his holdings to 7,877 shares.
>
> Ken Rice, chairman and chief executive of Enron Broadband Services, Inc.: sold 32,000 shares from Jan. 3 to Jan. 31 for $68.19 to $82 each, or more than $12.10 million; sold 100,000 shares on Dec. 13 to $76.69 each, or $7.67 million. The sales total $9.185 million and brought Rice's holdings to 113,127 shares.
>
> Steve Kean, Enron executive vice president and chief of staff: sold 77,822 shares on Jan 31 for $79.84 to $80 each, or more than $6.21 million. The sale brought his holdings to 26,363 shares.
>
> Stanley Horton, chairman and chief executive of Enron Gas Pipeline Group and EOTT Energy Partners-LP: sold 25,000 shares January 29 for $80.51 each, or $1.02 million, and 25,000 shares Dec. 27 for $80.96 each, or $2.02 million. The sales total $4.04 million and brought his holdings to 144,217 shares.
>
> Richard Buy, Enron executive vice president and chief risk officer; sold 47,724 shares from Jan. 2 to Jan. 26 for $81.90 to $82 each, or $3.91 million. The sale brought his holdings to 9,257 shares. Buy is a Defendant herein and Plaintiffs seek to disgorge his ill-gotten gains received while Plaintiffs were kept in the dark about the true nature of the company.

In total, the insider selling by Defendants Skilling and Lay and the other Enron insiders totals more than $73 million.

112. At all relevant times, the market for Enron's securities was an efficient market for the following reasons, among others:

(a) Enron's stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

(b) As a regulated issuer, Enron filed periodic public reports with the SEC and the NYSE;

(c) Enron regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Enron was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

113. As a result of the foregoing, the market for Enron's securities promptly digested current information regarding Enron from all publicly available sources and reflected such information in Enron's stock price. Under these circumstances, Plaintiffs suffered injury through their purchase of Enron's securities at artificially inflated prices and a presumption of reliance applies.

114. 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 Generally Accepted Accounting Practices ("GAAP") and Generally Accepted Auditing Standards ("GAAS").

115. 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.

## VI. Causes of Action

### COUNT I – Fraud

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

117. 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 and/or retain Enron common stock at artificially inflated prices.

118. 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.

119. 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.

120. Each of the Defendants knew or recklessly disregarded the fact that the above acts and practices, misleading statements, and omissions would adversely affect the integrity of the market in Enron stock. Had the adverse facts Defendants concealed been properly disclosed, Enron's shares would not have sold at the artificially inflated prices they did.

121. As a result of the foregoing, the market price of Enron stock was artificially inflated. In ignorance of the false and misleading nature of the representations, Plaintiffs relied, to their detriment, on the integrity of the market as to the price of Enron stock and purchased and/or retained their Enron stock.

122. Had Plaintiffs and the marketplace 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.

123. 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.

124. 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.

125. 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**

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

127. 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.

128. For instance, based on information and belief, the Defendant Fastow formed L-JM Cayman, L.P. (LJM1) and LJM2 Co. – Investment, L.P. (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.

129. 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. The Plaintiffs relied to their detriment on the financial statements prepared by AALLP in either purchasing their shares or retaining them.

130. The financial activities of JEDI should have been consolidated into Enron's financial statements prepared by AALLP beginning in 1997 causing a false financial picture to

be given of Enron to its investors such as Plaintiffs. Such failure amounted to a violation of standard accounting practices by AALLP and resulted in damages to Plaintiffs.

131. The financial activities of LJM1 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 resulted in losses to Plaintiffs. Such failure by AALLP was also a violation of standard accounting practices.

132. Four SPE's 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 was to overstate both notes receivable and shareholders' equity by approximately $172,000,000.00.

133. 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 ("SPE's") which would have caused such SPE's 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 SPE's, which themselves had huge liabilities that AALLP knew did not show up on consolidated financial reports of Enron; and (g) knew or recklessly disregarded that Enron had a note receivable received in exchange for stock issued in 2000.

(h) 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.

134. 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 – Civil Conspiracy**

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

136. 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.

137. Plaintiffs relied on the Defendants statements, whether written or oral, and their positions at Enron and purchased and/or retained Enron stock, unaware that the finances of the Enron were being inflated and no what had been represented, and 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.

138. 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, Fastow, Causey and Buy. 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 Jaedicke, Chan, Foy, Wakeham, Gramm, Willison, Mendelsohn and Pereira. These Directors wholly failed in their duties to oversee the auditing process and acted in concert with the Andersen Defendants in misrepresenting the true financial picture of Enron.

139. 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 Director 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 Director 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 continue to request the public's confidence.

**COUNT IV - Business and Commerce Code Violations**

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

141. This action is brought pursuant to TEX. BUS. & COMM. CODE ANN. §27.01, as amended ("Fraud in Real Estate and Stock Transactions"), and Texas common law regarding conspiracy, aiding and abetting, and negligence.

142. This suit arises out of Defendants' acts and omissions in their dealings with Enron, including the participation in and issuance of false and misleading financial statements by Enron for the years 1997, 1998, 1999 and 2000, which were relied upon by TRS in its purchase of Enron stocks, bonds, preferred stock, commercial paper and other securities. The false and misleading statements were made for the purpose of inducing persons to buy Enron stock at an inflated price.

143. 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 Defendants. Each of the Defendants, by virtue of their positions with Enron and AALLP, directly participated in management of Enron or AALLP, was directly involved in the day-to-day operations of Enron at the highest levels, or was privy to confidential information concerning Enron and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. Defendants were involved in drafting, producing, review and/or

disseminating the false and misleading statements and information alleged herein, and they approved or ratified these statements. Defendants reviewed and/or disseminated the false and misleading statements and information alleged herein, and they approved or ratified these statements. Defendants are liable for damages and exemplary damages as a result of their actions.

**COUNT V – Business and Commerce Code Violations**

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

145. In addition, or in the alternative, Plaintiffs assert this cause of action for violations of TEX. BUS. & COMM. CODE ANN. §§27.01, *et seq.*

146. Defendants have violated, conspired to violate, aided and/or abetted violations of §§27.01, *et seq.* by making false representations of past or existing material facts or omitting to state past or existing material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

147. Such false representations were made for the purpose of inducing entities, such as TRS, and individuals to enter into contracts for the purchase and sale of Enron securities in question. Such false representations were relied upon by TRS in entering into such contracts.

148. Defendants:

(a) made such false representations knowingly and with actual awareness of the falsity thereof, and/or

(b) (i) had actual awareness of the falsity of the representations made by one or more other Defendants,

(ii) yet failed to disclose the falsity of the representations, and

(iii) benefited from the false representations.

149. TRS has suffered substantial losses as a result, to Plaintiffs' detriment.

## VII. Spoilation of Evidence

150. Plaintiffs would show that the Defendant, AALLP, 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 according to information and belief and reports of the news media. The Court should rule that based on the deliberate destruction of evidence by this Defendant 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.

## REQUEST FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

151. It has 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. This has created an emergency requiring Plaintiffs to seek a temporary restraining order without notice enjoining AALLP, its agents, employees and attorneys from further destroying records. Further, after notice and hearing, the Defendant, AALLP, should be temporarily enjoined from destroying any records without notice to this Court and a hearing at which the Plaintiffs would have the opportunity to contest any such destruction.

152. Plaintiffs would show further that as AALLP is a limited liability partnership, any distributions to its partners would decrease its value and the amount Plaintiffs could collect for Defendants' fraud, gross negligence and malfeasance. AALLP, its agents, officers, and employees should be enjoined from making any distributions or salary payments to its partners

or employees outside the normal course of business or greater than the salaries or distributions to those partners or employees that were paid in 2001. To allow greater distributions to occur will prevent the Plaintiffs and others similarly situated from collecting on any potential judgment to the full extent of their loss. Such an injunction would preserve the status quo and prevent this suit from becoming "an exercise in futility" should AALLP elect to dissipate its assets prior to trial.

153. Plaintiffs request a preferential trial setting in accordance with the Texas Rules of Civil Procedure and that a low bond be set pendente lite.

154. Plaintiffs also ask this Court to set its application for TRO and request for temporary injunction for hearing on the issues in Plaintiffs' application. And after the hearing issue, a permanent injunction against Defendant.

## VIII. Damages

155. 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.

156. 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.

157. 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;

(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.

158. As part of their actual damages, TEX. BUS. & COMM. CODE §27.01 and TEX. REV. CIV. STAT. ANN. art. 581-33 entitles TRS Plaintiffs to recover reasonable and necessary attorney's fees, expert witness fees, costs for copies of depositions, and Court costs.

159. In addition to their actual damages, TEX. REV. CIV. STAT. ANN. art. 581-33, TEX. BUS. & COMM. CODE §27.01, and 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.

## VIII. Jury Demand

160. Plaintiffs request and demand a jury trial.

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

(d) A temporary restraining order, as well as a temporary injunction pendente lite, restraining AALLP, its agents, employees and attorneys from destroying more documents relating to Enron and from making distributions to its employees or other partners other than those done in the ordinary course of business and at the set notes of salary and distribution currently in force until final judgment herein.

(e) Granting such other and further relief as this Court deems to be just and proper, including a prompt trial setting as required by the Texas Rules of Civil Procedure.

Respectfully submitted,

**MARIAN ROSEN & ASSOCIATES**
Marian S. Rosen
State Bar No. 17263000
1330 Post Oak Boulevard, Suite 2910
Houston, Texas 77251
Telephone (713) 222-6464
Fax (713) 227-4703

**HOWARD M. RUBENSTEIN**
Attorney at Law
State Bar No. 17361900
1330 Post Oak Boulevard, Suite 2905
Houston, Texas 77056
Telephone (713) 965-0206
Fax (713) 961-5745

**FLEMING & ASSOCIATES, L.L.P.**
G. Sean Jez
State Bar No. 00796829
George M. Fleming
State Bar No. 07123000
1330 Post Oak Boulevard, Suite 3030
Houston, Texas 77056-3019
Telephone (713) 621-7944
Fax (713) 621-9638

By: _____
G. Sean Jez

**ATTORNEYS FOR PLAINTIFFS**

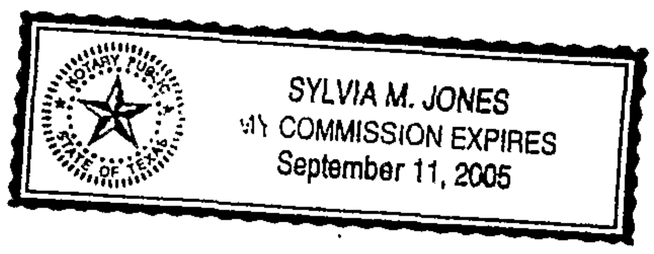
## VERIFICATION

**STATE OF TEXAS** §
§
**COUNTY OF HARRIS** §

On this day, Marian Rosen appeared before me, the undersigned notary public, and after I administered an oath to her, upon her oath, she said she read the PLAINTIFFS' FIRST AMENDED PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION and the facts stated in it are within her personal knowledge and are true and correct.

MARIAN ROSEN

SWORN TO and SUBSCRIBED before me by Marian Rosen on January 16, 2002.




Notary Public In and For the State of Texas

COPY

Cause No. 2001-57517

| | | |
|---|---|---|
| FRED A. ROSEN and MARIAN ROSEN; HOUSTON FEDERATION OF TEACHERS, on behalf of its members; ANNIE M. BANKS; LARRY D. BARNETT; ROBERT CHAZEN; CLIFFORD D. GOOKIN, Trustee for the Clifford D. Gookin Revocable Living Trust; CARL HERRIN; TODD L. JOHNSON, Administrator for RJS & Affiliated Companies Pension Plan; DAVID H. LOWE; ROBIN SAEX; JOHN SIEMER and ELIZABETH SIEMER, Trustees FBO The Siemer Family Trust; ANTHONY G. TOBIN; and JOHN E. WILLIAMS, | § | IN THE DISTRICT COURT OF |
| Plaintiffs, | § | |
| v. | § | |
| ANDREW S. FASTOW; KENNETH L. LAY; JEFFREY J. SKILLING; ROBERT A. BELFER; NORMAN P. BLAKE, JR.; RICHARD B. BUY; RICHARD CAUSEY; RONNIE C. CHAN; JOHN H. DUNCAN; JOE H. FOY; WENDY L. GRAMM; KEN L. HARRISON; ROBERT K. JAEDICKE; MICHAEL J. KOPPER; CHARLES A. LEMAISTRE; REBECCA MARK-JUSBASCHE; JOHN MENDELSOHN; JEROME J. MEYER; LOU PAI; PAUL V. FERRAZ PEREIRA; FRANK SAVAGE; JOHN A. URQUHART; JOHN WAKEHAM; CHARLES E. WALKER; BRUCE WILLISON; HERBERT S. WINOKUR, JR.; BEN GLISAN; KRISTINA MORDAUNT; D. STEPHEN GODDARD, JR.; DAVID B. DUNCAN; DEBRA A. CASH; ROGER WILLARD; THOMAS H. BAUER; and ARTHUR ANDERSEN, L.L.P., | § | HARRIS COUNTY, TEXAS |
| Defendants. | § | 333rd JUDICIAL DISTRICT |

**PLAINTIFFS' FIRST REQUESTS**
**FOR PRODUCTION TO DEFENDANTS**

TO: Defendants Andrew S. Fastow, Kenneth L. Lay, Jeffrey K. Skilling, Robert A. Belfer, Robert P. Blake, Jr., Richard B. Buy, Richard Causey, Ronnie C. Chan, John H. Duncan, Joe L. Foy, John Mendelsohn, Wendy L. Gramm, Ken L. Harrison, Paulo V. Ferraz Pereira, Robert K. Jaedicke, Charles A. LeMaistre, Rebecca Mark-Jusbasche, Jerome J. Meyer, Lou Pai, Frank Savage, John A. Urquhart, John Wakeham, Charles E. Walker, Bruce Willison, Herbert S. Winokur, Jr., Michael Kopper, Ben Glisan, Kathy Lynn, Anne Yeager, and Kristina Mordaunt

Pursuant to Rule 196 of the Texas Rules of Civil Procedure ("Tex. R. Civ. P."), Plaintiffs, by their counsel, hereby requests that Defendants, separately produce and permit Plaintiffs' counsel to inspect and copy the documents specified herein, which are in the possession, custody, or control of Defendants, or their agents, officers, directors, employees or other persons acting on the behalf of Defendants, at the offices of Fleming & Associates, L.L.P. shall be served on the first business day after the expiration of fifty (50) days of service of said Requests, or pursuant to such expedited schedule as the parties may agree upon or the Court may order.

## DEFINITIONS

The following definitions apply to each of the request for production set forth herein and are deemed to be incorporated in each of said requests:

The scope, definitions, and instructions applicable to these discovery requests are co-extensive with the applicable sections of the Tex. R. Civ. P. Accordingly, each discovery request requires the production of information to the full extent permitted under the Tex. R. Civ. P. Nothing herein shall be construed to exceed the applicable sections of the Tex. R. Civ. P.

"Lawsuit" shall mean the above-titled and numbered cause.

"Plaintiffs' means Fred A. Rosen; Marian Rosen; Houston Federation of Teachers, on behalf of its members; Annie M. Banks; Larry D. Barnett; Robert Chazen; Clifford D. Gookin, Trustee for the Clifford D. Gookin Revocable Living Trust; Carl Herrin; Todd L. Johnson,

Administrator for RJS & Affiliated Companies Pension Plan; David H. Lowe; Robin Saex; John Siemer and Elizabeth Siemer, Trustees FBO The Siemer Family Trust; Anthony G. Tobin; and John E. Williams.

"Enron" or the "Company" means Enron Corporation or any of its subsidiaries, divisions, subdivisions, affiliates, predecessors, successors, joint ventures, present and former officers, directors, employees, representatives, agents and all other persons acting or purporting to act on behalf of the foregoing.

"LJM1" means LJM Cayman, L.P. or any of its subsidiaries, divisions, subdivisions, affiliates, predecessors, successors, joint ventures, present and former managing members, members, limited members, general partners, partners, limited partners, officers, directors, employees, representatives, agents and all other persons acting or purporting to act on behalf of the foregoing.

"LJM2" means LJM2 Co-Investment, L.P. or any of its subsidiaries, divisions, subdivisions, affiliates, predecessors, successors, joint ventures, present and former managing members, members, limited members, general partners, partners, limited partners, officers, directors, employees, representatives, agents and all other persons acting or purporting to act on behalf of the foregoing.

"Special Purpose Entities" means all entities, special purpose entities, limited partnerships or companies sponsored by Enron, including but not limited to LJMI, LJM2, JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust, and Whitewing Associates, L.P.

"Defendants," "Defendant," "you" or "your" individually and collectively refers to Enron; Andrew S. Fastow; Kenneth L. Lay; Jeffrey K. Skilling; Robert A. Belfer; Robert P.

Blake, Jr.; Richard B. Buy; Richard Causey; Ronnie C. Chan; John H. Duncan; Joe L. Foy; John Mendelsohn; Wendy L. Gramm; Ken L. Harrison; Paulo V. Ferraz Pereira; Robert K. Jaedicke; Charles A. LeMaistre; Rebecca Mark-Jusbasche; Jerome J. Meyer; Lou Pai; Frank Savage; John A. Urquhart; John Wakeham; Charles E. Walker; Bruce Willison; Herbert S. Winokur, Jr.; Michael Kopper; Ben Glisan; Kristina Mordaunt; P. Stephen Goddard; David B. Duncan; Debra A. Cash; Roger Willard; Thomas H. Bauer; and Arthur Andersen, L.L.P.

"Board" means Enron's present and former Board of Directors.

"Enron Employees" refers to any individual employed in any capacity by Enron.

The "SEC" means the United States Securities and Exchange Commission.

"Documents" means all printed or recorded matter of any kind, whether fixed in tangible medium or electronically stored on disk or tape. The word "documents" is used in the broadest possible sense and means, and shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audio and video recordings, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes of meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, deal memoranda, transcriptions of audio or video recordings, computer tapes, computer drives or memories, computer and optical diskettes or disks, e-mail, or any other tangible thing on which handwriting, typing, printing, photostatic,

electronic or other form of communication or information is recorded or reproduced together with all notations on any of the foregoing, all originals, file copies or other unique copies of the foregoing and all versions or drafts thereof, whether used or not.

"All documents" means every document, whether an original or copy, as defined above.

"Policy" means any rule, procedure, practice, or course of conduct, whether formal or informal, written or unwritten, recorded or unrecorded, which was explicitly or implicitly recognized or followed.

"Concerning" means referring to, relating to, describing, evidencing or constituting.

"Person" means any natural person or any business, legal or governmental entity or association.

"Communicate" or "communication" means and includes every manner or means of disclosure, transfer, or exchange of information whether orally or by document or face-to-face, by telephone, telecopier, mail, personal delivery or otherwise.

The following rules of construction apply to all discovery requests:

1. the term "all" and "each" shall be construed as all and each;

   the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be construed to be outside of their scope;

   the term "including" shall be construed to mean "without limitation";

2. the use of the singular form of any word includes the plural and vice versa.

## INSTRUCTIONS

1. In responding to the Requests herein, Defendants shall furnish all responsive documents available at the time of production and, since this is a continuing request for production of documents, shall supplement their responses whenever necessary in accordance with the requirements of the Tex. R. Civ. P.

2. All documents shall be produced that respond to any part or clause of any paragraph of any Request, regardless of whether any objection is raised as to any other part or any Request.

3. All documents should be segregated according to the paragraphs of this Request to which they are responsive. Any documents which must be removed from their original folders, binders, covers or containers in order to be produced shall be identified in a manner so as to clearly specify where such documents originated.

4. If any responsive documents are withheld, in whole or in part, for any reason, including, but not limited to, any claim of privilege or work-product, set forth separately with respect to each document; (a) the type of document, i.e., letter, memorandum, etc.; (b) the author of the document; (c) the addressee of the document; (d) the date of the document; (e) the identity of all persons having received copies of the document, seen the document or to whom the document was disclosed; (f) the subject matter of the document; (g) a brief statement or synopsis of the matters dealt with in the document and/or the circumstances surrounding the making of the document; and (h) the nature of the privilege or work-product rule relied upon in withholding production of the document.

5. If a portion of any responsive document is protected from disclosure by privilege, work-product, or otherwise, any such document must be produced with the portion claimed to be protected redacted.

6. If any responsive document was, but is no longer in the possession or subject to the control of the responding party, state whether it (a) is missing or lost; (b) has been destroyed; (c) has been transferred voluntarily or involuntarily to others; or (d) has been otherwise disposed of, and in each instance explain the circumstances surrounding each disposition thereof and state the date or approximate the date thereof.

7. If a document was prepared in several copies or if additional copies were thereafter made, and if any such copies were not identical or are no longer identical by reason of any notation or modification of any kind whatsoever, including, without limitation notations on the front or back or any of the pages thereof, then such non-identical copy is a separate document and must be produced.

## DOCUMENTS REQUESTED

**REQUEST NO. 1:** All organizational charts or other documents describing or depicting Enron, the Special Purpose Entities, and any subsidiaries, affiliates, departments, offices, or other corporate subdivisions and the relationships among them, including documents sufficient to identify the names, responsibilities and duties of the senior officers or managers of Enron and the Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 2:** All hard copy or electronically stored calendars, appointment books, diaries, personal correspondence, working or pcrsonal files, daybooks, reading and chronological files and notebooks, maintained by or for any of the defendants as well as any other current or former Enron employee associated with or having worked for LJM1, LJM2 or other Special Purpose Entities, concerning their activities in connection with LJM1, LJM2 or other Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 3:** All minutes, drafts of minutes, exhibits, agendas, notes, memoranda, reports, resolutions, summaries, and other documents concerning any meeting of Enron's Board of Directors, or any management, audit, executive, special or other committee of the Board of Directors, including all handwritten notes of such meetings and all other documents exchanged, distributed, presented or given to the Board of Directors at or in connection with such meetings, concerning LJM1, LJM2 or other Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 4:** All documents concerning or constituting the financial statements of LJMI, LJM2, and any other Special Purpose Entity, including but not limited to the financial statements of the general partner of LJM1, LJM2, or other Special Purpose Entity, and all documents concerning Fastow's, the general partner's, or any other Defendants' financial interest in LJMI or LJM2.

**RESPONSE:**

**REQUEST NO. 5:** All documents relating to any compensation, cash, salaries, loans, perquisites, opportunities for profits or stock options, received from Enron by the defendants or any Enron employee having associated with or worked for LJMl, LJM2 or other Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 6:** All documents concerning the formation of, investments in, and operations of LJM1, LJM2 or other Special Purpose Entities, including without limitation, all documents concerning the terms, proposed terms, bases, rationale or purposes of such formation or investments, and Enron's contingent or other obligations with regard to the operations of the Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 7:** All documents concerning any possible, contemplated, proposed or actual transaction between Enron and LJMl, LJM2 or other Special Purpose Entities, including without limitation, all documents and records concerning any purchase, sale or transfer of shares of Enron common or preferred stock or Enron's interests and assets, all related business agreements or contracts, all documents relating to all other business transactions between Enron and LJM1,

LJM2 or other Special Purpose Entities, all documents concerning the terms and proposed terms of the transactions, and all documents concerning the magnitudes, methodologies and structures of the transactions.

**RESPONSE:**

**REQUEST NO. 8:** All documents concerning the Board's or Enron's senior officers' involvement in the formation of, and subsequent involvement in, LJM1, LJM2 or other Special Purpose Entities, including without limitation, all notes or minutes of any related discussion or meeting involving any senior officer or Board member, all documents concerning any related approval or review by any senior officer or committee or subcommittee of the Board, as well as all related presentations, reports, and resolutions and all drafts thereof.

**RESPONSE:**

**REQUEST NO. 9:** All documents concerning the Board's or Enron's senior officers' involvement in Enron's transactions with LJM1, LJM2 or other Special Purpose Entities, including without limitation, all notes or minutes of any related discussion or meeting involving any senior officer or Board member, all documents concerning any related approval or review by any senior officer or committee or subcommittee of the Board, as well as all related presentations, reports, and resolutions and all drafts thereof.

**RESPONSE:**

**REQUEST NO. 10:** All documents concerning, comprising, containing or discussing any analysis of any transaction between Enron and LJM1, LJM2 or other Special Purpose Entities, including without limitation, all documents concerning the actual or potential impact or effect of any such transaction on Enron's debt, earnings, financial performance, and ability to finance projects. Included in this request are all documents concerning the reasons and business purposes for Enron to transact with LJM1, LJM2 or other Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 11:** All computation, analyses or estimation of the risks or actual losses incurred by Enron as a result of its transactions with LJM1, LJM2 or other Special Purpose Entities. Included in this request are all documents concerning the $711 million pre-tax charge in the third quarter of 2001 related to the termination of the Raptor SPEs; calculation of the $35 million purchase of LJM2's interest in Raptor; all documents concerning the $1.2 billion reduction in shareholders' equity caused by Enron's repurchase of 55 million shares relating to its transactions with LJM2; all documents estimating potential future risks and losses arising out of transactions with LJM1, LJM2 or other Special Purpose Entities; and all documents concerning the costs and measures necessary to unravel or unwind the agreements with LJM1, LJM2 or other Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 12:** All documents concerning any discussion, understanding or agreement between Enron and LJM1, LJM2 or other Special Purpose Entities regarding or defining Enron's obligations and liabilities to LJM1, LJM2 or other Special Purpose Entities upon the occurrence of certain triggers and conditions such as, by way of example and not by way of limitation, a decrease of Enron stock price below a certain level and a decrease of Enron's credit rating below investment grade.

**RESPONSE:**

**REQUEST NO. 13:** All documents in Defendants' possession concerning LJM1, including, but not limited to, Enron's relationship and transactions with LJM1, and all communications between Enron or its employees, officers or directors and LJMl.

**RESPONSE:**

**REQUEST NO. 14:** All documents in Defendants' possession concerning LJM2, including, but not limited to, Enron's relationship and transactions with LJM2, and all communications between Enron or its employees, officers or directors and LJM2.

**RESPONSE:**

**REQUEST NO. 15:** All documents in Defendants' possession concerning Special Purpose Entities other than LJM1 and LJM2, including, but not limited to, Enron's relationship and

transactions with those Special Purpose Entities, and all communications between Enron or its officers or directors and such Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 16:** All documents concerning the actual or potential conflicts of interest that arose out of transactions between Enron and LJM1, LJM2 or other Special Purpose Entities. Included in this request are documents concerning, reflecting, comprising, discussing or responding to any question, concern or complaint raised by any investor, analyst or Enron employee regarding the involvement of Fastow or other Enron employees in LJM1, LJM2 or other Special Purpose Entities or Enron's transactions with LJM1, LJM2 or other Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 17:** All documents concerning the reassignment of Enron's former treasurer, Jeffrey McMahon.

**RESPONSE:**

**REQUEST NO. 18:** All documents concerning any monitoring, training, review, compliance program or policy Enron implemented to ensure the propriety of its officers' and employees' business conducts, including without limitation, all documents concerning the special review and

approval processes executed by Enron's senior management, the Board, and external audit and legal counsel to evaluate the propriety of Fastow or any Enron employee's involvement in LJM1, LJM2 or other Special Purpose Entities or to assess the fairness of the transactions between Enron and LJM1, LJM2 or other Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 19:** All documents in Defendants' possession concerning the actual and targeted rates of return of LJM1, LJM2 or other Special Purpose Entities, and all documents in Defendants' possession concerning the profits of LJM1, LJM2 or other Special Purpose Entities and the corresponding transactions with Enron.

**RESPONSE:**

**REQUEST NO. 20:** All documents in Defendants' possession concerning all management fees, capital increases, compensation, monetary rewards, cash, salaries, loans, perquisites, returns and profits received by Fastow, Michael Kopper, Ben Glisan, Kristina Mordaunt, Anne Yaeger and Kathy Lynn, other Enron employees and other investors from LJM1, LJM2 or other Special Purpose Entities as a result of their association with and involvement or investment in LJM1, LJM2 or other Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 21:** All documents concerning Fastow's severance of ties with LJM1, LJM2 or other Special Purpose Entities. Included in this request are all documents concerning or describing the facts, circumstances and causes of his departure from acting as the managing member of the general partners of LJM1, LJM2 or other Special Purpose Entities, as well as notes, memoranda and minutes of all related discussions or meetings.

**RESPONSE:**

**REQUEST NO. 22:** All documents concerning the SEC's request to Enron on October 17, 2001 for information about "certain related party transactions." Included in this request are all documents concerning any discussion or meeting about the SEC request, all correspondence with the SEC, and all responses or contemplated responses to the SEC.

**RESPONSE:**

**REQUEST NO. 23:** All documents concerning all statements made in Enron's filings with the SEC regarding its Special Purpose Entities transactions, including but not limited to, all documents that provided the basis and support for such statements, as well as drafts and discussions in preparation thereof Responsive documents are to be segregated and specifically identified as responsive to this request.

**RESPONSE:**

**REQUEST NO. 24:** All documents concerning all statements about the Special Purpose Entities transactions that Enron made in its press releases, conference calls with investors and analysts and interviews with the media, including but not limited to all documents that provided the basis and support for such statements, as well as drafts and discussions in preparation thereof. Responsive documents are to be segregated and specifically identified as responsive to this request.

**RESPONSE:**

**REQUEST NO. 25:** All telephone logs, records of telephone calls, correspondence, responses to inquiries, notes, daytimer entries, calendar entries and memoranda, concerning communications between Defendants and LJM1, LJM2 or other Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 26:** All news articles, periodicals, and magazine articles concerning the Defendants or LJM1, LJM2 or other Special Purpose Entities, as well as all documents concerning or responding to news articles about Defendants or LJM1, LJM2 or other Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 27:** All documents concerning communications between LJM1 or LJM2 or other Special Purpose Entities and their actual or prospective investors.

**RESPONSE:**

**REQUEST NO. 28:** All documents concerning the Lawsuit and other related litigation, except confidential communications between Defendants and their attorneys.

**RESPONSE:**

**REQUEST NO. 29:** All insurance agreements under which any person carrying an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action, or to indemnify or reimburse for payments made to satisfy any judgment that might be rendered in this action, and all documents concerning any such insurance, indemnification or reimbursement agreements.

**RESPONSE:**

**REQUEST NO. 30:** All documents which refer, relate to or contain Enron's policies concerning document retention or destruction.

**RESPONSE:**

**REQUEST NO. 31:** All documents concerning the negotiations of the Merger between Enron and Dynegy, including but not limited to (i) all due diligence materials provided by Enron to Dynery, including all due diligence materials concerning the subject matters identified by Enron in its November 8, 2001 SEC Filing, (ii) all communications between Enron and Dynegy concerning the subject matters of Enron's November 8, 2001 SEC Filing, (iii) all documents or other materials presented to Enron's Board of Directors regarding the Merger, and (iv) all documents concerning Enron's potential claims or liabilities arising out of the subject matters contained in Enron's November 8, 2001 SEC Filing or business relationship with the Special Purpose Entities generally..

**RESPONSE:**

**REQUEST NO. 32:** All documents concerning the transactions identified in the November 8, 2001 SEC Filing, including, but not limited to Arthur Andersen LLP's audit of Enron concerning those transactions.

**RESPONSE:**

**REQUEST NO. 33:** All documents concerning any defendants' transactions in Enron securities.

**RESPONSE:**

**REQUEST NO. 34:** All documents concerning Enron's accounting for transactions with Special Purpose Entities in quarterly and annual financial statements contained in Enron's SEC filing.

**RESPONSE:**

**REQUENT NO. 35:** All documents concerning the intended restatement of Enron's financial statements as reported in Enron's November 8, 2001 SEC filing.

**RESPONSE:**

**REQUEST NO. 36:** All documents concerning the managerial or ownership interest of Fastow, Michael Kopper, Ben Glisan, Kristina Mordaunt, Anne Yaeger and Kathy Lynn, or other Enron employees, in any of the Special Purpose Entities.

**RESPONSE:**

**REQUEST NO. 37:** All documents concerning Andersen's audit of Enron's fiscal 1997 through 2000 financial statements and review of Enron's financial statements during the relevant period, including all documents concerning Andersen's analysis of Enron's transactions that are the subject matter of this action.

**RESPONSE:**

**REQUEST NO. 38:** Copies of any and all written policies and procedures or rules to insure the interests of Enron shareholders were protected in deals with LJM1 and/or LJM2.

**RESPONSE:**

**REQUEST NO. 39:** Copies of any and all written policies and procedures or rules to ensure the interests of Enron shareholders were protected in deals with JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and Whitewing Associates, L.P.

**RESPONSE:**

**REQUEST NO. 40:** All documents relating to or concerning a "Chinese Wall" being in place to protect Enron Shareholders from any conflict of interests between Enron executives and LJM1 and/or LJM2 dealings.

**RESPONSE:**

**REQUEST NO. 41:** All documents relating to or concerning a "Chinese Wall" being in place to protect Enron Shareholders from any conflict of interests between Enron executives and JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P. dealings.

**RESPONSE:**

**REQUEST NO. 42:** All documents relating to or concerning the losses from Enron's broadband division and any transactions it had with entities owned by Enron executives.

**RESPONSE:**

**REQUEST NO. 43:** All documents relating to or concerning the losses from Dabhol Power Company and the cost to Enron for that project.

**RESPONSE:**

**REQUEST NO. 44:** All documents relating to or concerning the losses from Azurix and the cost to Enron for that proposed project.

**RESPONSE:**

**REQUEST NO. 45:** All documents relating to or concerning the creation and/or formation of LJM1 and LJM2 and theirs dealings with Enron and its executives.

**RESPONSE:**

**REQUEST NO. 46:** All documents relating to or concerning the creation and/or formation of the following entities: JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P. and their contracts with Enron or Enron executives.

**RESPONSE:**

**REQUEST NO. 47:** All documents relating to or concerning the reassignment of McMahon as treasurer of Enron and the reasons therefore.

**RESPONSE:**

**REQUEST NO. 48:** All documents relating to or concerning the annual meeting held in February 2001, including transcripts of the meeting.

**RESPONSE:**

**REQUEST NO. 49:** Copies of any and all contracts or policies of insurance and reinsurance which might afford coverage to the Defendants in this lawsuit whether primary or secondary, umbrella, or excess coverage.

**RESPONSE:**

**REQUEST NO. 50:** Copies of all 10-K reports submitted or prepared regarding Enron from 1995 to the present.

**RESPONSE:**

**REQUEST NO. 51:** Copies of all 10-Q reports submitted or prepared regarding Enron from 1995 to the present.

**RESPONSE:**

**REQUEST NO. 52:** Copies of all 8K reports submitted or prepared regarding Enron from 1995 to the present.

**RESPONSE:**

**REQUEST NO. 53:** Copies of any documents reflecting the names, addresses, and number of shares held of each and every shareholder of Enron common stock since 1995.

**RESPONSE:**

**REQUEST NO. 54:** Copies of any documents reflecting the names, addresses, and number of shares held of each and every shareholder of Enron preferred stock since 1995.

**RESPONSE:**

**REQUEST NO. 55:** Copies of any documents reflecting any and all bonuses commissions, or other payments or gifts made to account executives or caused to be made to account executives, in connection with the internal or external audits of Enron.

**RESPONSE:**

**REQUEST NO. 56:** Copies of any documents reflecting the identity of any and all persons involved in the creation and/or formation of LJM1 and LJM2.

**RESPONSE:**

**REQUEST NO. 57:** Copies of any documents reflecting the identity of any and all persons involved in the creation and/or formation of JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P.

**RESPONSE:**

**REQUEST NO. 58:** All documents reflecting the names, addresses and interest of all partners past and present in LJM1, LJM2, Chewco Investments, L.P., Raptor I-IV and Whitewing Associates, L.P.

**RESPONSE:**

**REQUEST NO. 59:** Copies of any balance sheets, whether audited or not, provided to Enron annually regarding LJM1, LJM2, JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P.

**RESPONSE:**

**REQUEST NO. 60:** All documents relating to communications with Enron, its directors, officers and/or shareholders regarding LJM1, LJM2, JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P.

**RESPONSE:**

**REQUEST NO. 61:** All documents distributed or made available to Defendants, Enron directors, officers and/or shareholders regarding LJM1, LJM2, JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P.

**RESPONSE:**

**REQUEST NO. 62:** All documents that were sent to, received by, or generated by Defendants, which related to LJM1, LJM2, JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P.

**RESPONSE:**

**REQUEST NO. 63:** Annual financial statements, including without limitation balance sheets, statement of operations, statements of changes in financial position, statements of income and expense, statements of profit and loss, and cash flow statements, for each of the following companies: LJM1 and LJM2.

**RESPONSE:**

**REQUEST NO. 64:** Annual financial statements, including without limitation balance sheets, statement of operations, statements of changes in financial position, statements of income and expense, statements of profit and loss, and cash flow statements, for each of the following companies: JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and Whitewing Associates, L.P.

**RESPONSE:**

**REQUEST NO. 65:** All financial records and books of account for LJM1 and LJM2, including without limitation audited and unaudited financial statements, statements of profit and loss, statements of income and expense, statements of operations, balance sheets, statements of changes in financial position, and cash flow statements.

**RESPONSE:**

**REQUEST NO. 66:** All financial records and books of account for JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and Whitewing Associates, L.P., including without limitation audited and unaudited financial statements, statements of profit and loss, statements of income and expense, statements of operations, balance sheets, statements of changes in financial position, and cash flow statements.

**RESPONSE:**

**REQUEST NO. 67:** All documents relating to any investigation—whether internal or external, formal or informal—involving improprieties or allegations of improprieties, of whatever kind or nature, by Andrew S. Fastow, Ben Glisan, Kristina Mordaunt, or any other officer of Enron.

**RESPONSE:**

**REQUEST NO. 68:** All documents relating to Andrew S. Fastow leaving the employ of Enron and the circumstances surrounding his departure and the amount of severance pay, if any, received by him.

**RESPONSE:**

**REQUEST NO. 69:** All documents relating to Ben Glisan leaving the employ of Enron and the circumstances surrounding his departure and the amount of severance pay, if any, received by him.

**RESPONSE:**

**REQUEST NO. 70:** All documents relating to Kristina Mordaunt leaving the employ of Enron and the circumstances surrounding her departure and the amount of severance pay, if any, received by him.

**RESPONSE:**

**REQUEST NO. 71:** All documents relating to any agreements or understandings, formal or informal, written or oral, reached in connection with, or which relate to, Andrew S. Fastow's departure or his relationship with any of the Defendants following his departure.

**RESPONSE:**

**REQUEST NO. 72:** All documents relating to any agreements or understandings, formal or informal, written or oral, reached in connection with, or which relate to, Ben Glisan's departure or his relationship with any of the Defendants following his departure.

**RESPONSE:**

**REQUEST NO. 73:** All documents relating to any agreements or understandings, formal or informal, written or oral, reached in connection with, or which relate to, Kristina Mordaunt's departure or her relationship with any of the Defendants following her departure.

**RESPONSE:**

**REQUEST NO. 74:** All documents relating to any agreements or understandings, formal or informal, written or oral, reached in connection with, or which relate to, Jeffrey K. Skilling's resignation or his continuing or future relationship with any of the Defendants.

**RESPONSE:**

**REQUEST NO. 75:** All documents relating to fees, bonuses or other payments made to any of the Defendants, which relate to internal or external audit of Enron.

**RESPONSE:**

**REQUEST NO. 76:** All documents relating to the profitability including any projections of profits of Enron's broadband division and any projections of profits for this division given to shareholders of Enron.

**RESPONSE:**

**REQUEST NO. 77:** All documents relating to the profitability including any projections of profits of Azurix and any projections of profits for this division given to shareholders of Enron.

**RESPONSE:**

**REQUEST NO. 78:** All income statements, including statements of profit and loss, statements of revenue and expense, and the like, for LJM1, LJM2, JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P.

**RESPONSE:**

**REQUEST NO. 79:** All documents relating to the contribution of Enron to the profitability of LJM1, LJM2, JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P.

**REQUEST NO. 80:** All documents relating to the compensation, of whatever kind or nature, of Andrew S. Fastow, Kenneth L. Lay, Jeffrey J. Skilling, Robert A. Belfer, Robert P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Wendy L. Gramm, Robert K. Jaedicke, Charles A. Lemaistre, John Mendelsohn, Paul V. Ferraz Pereira, Frank Savage, John Wakeham, and Herbert S. Winokur, Jr., Michael Kopper, Ben Glisan, Kathy Lynn, Anne Yeager and Kristina Mordaunt.

**RESPONSE:**

**REQUEST NO. 81:** All documents relating to any investigation —internal or external, formal or informal—relating to improprieties or allegations of improprieties, of whatever kind or nature, by officers, employees, agents, or representatives of Enron.

**RESPONSE:**

**REQUEST NO. 82:** All documents relating to any agreement or understanding, written or oral, formal or informal, under or by which any other person, may be liable to satisfy, in whole or in part, any judgment that may be rendered against you in this case, or to indemnify or reimburse you, in whole or in part, for payments made to satisfy any such judgment, or to pay, indemnify you for, or contribute toward, in whole or in part, the costs of defending this case, including attorneys fees.

**RESPONSE:**

**REQUEST NO. 83:** All documents relating to any settlement or other agreement relating to this case that has been made between Enron and any executives or former executives of this or any related litigation, or the claims or costs in this case or any related litigation.

**RESPONSE:**

**REQUEST NO. 84:** All documents relating to all agreements of indemnity or contribution for costs or other liability that may be incurred in this case or any related litigation between Enron and its former employees.

**RESPONSE:**

**REQUEST NO. 85:** All reports, models, compilations of data, and all other documents prepared by or for, or reviewed by, any expert retained on your behalf.

**RESPONSE:**

**REQUEST NO. 86:** All documents relating to the documents described in the preceding paragraph.

**RESPONSE:**

**REQUEST NO. 87:** All documents requested by the plaintiffs in any related litigation as alleged in Plaintiffs' complaint in the above styled matter.

**RESPONSE:**

**REQUEST NO. 88:** All documents produced to the plaintiffs in any related litigation as alleged in Plaintiffs' complaint in the above styled matter.

**RESPONSE:**

**REQUEST NO. 89:** All filings with any governmental entity or other regulatory body concerning Enron's finances since November 1995.

**RESPONSE:**

**REQUEST NO. 90:** The minutes of all Board of Directors meetings, or committees thereof, of you or any subsidiary or affiliate, or of meetings of members of Enron's Executive Office, at which LJM1, LJM2, JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II,

Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P. were discussed, and all documents relating to any such meetings.

**RESPONSE:**

**REQUEST NO. 91:** All documents in the possession, custody or control of Enron relating to LJM1, LJM2, JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P. or any of their subsidiaries or affiliates, or to any officer, director, employee, agent, or representative of LJM1, LJM2, JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P. or any of their subsidiaries or affiliates.

**RESPONSE:**

**REQUEST NO. 92:** All documents relating to Enron's investments in or with LJM1, LJM2, JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P. or any other entity affiliated or associated with LJM1, LJM2, JEDI, Chewco Investments, L.P., Raptor I-IV, Marlin Water Trust II, Osprey Trust, Yosemite Securities Trust and/or Whitewing Associates, L.P.

**RESPONSE:**

**REQUEST NO. 93:** All documents concerning or reflecting Defendants document retention and/or destruction policy.

**RESPONSE:**

**REQUEST NO. 94:** All documents relating to or concerning the "sanitation" and/or destruction of Enron documents.

**RESPONSE:**

**REQUEST NO. 95:** All documents relating to or concerning the "sanitation" and/or destruction of Enron audit reports.

**RESPONSE:**

**REQUEST NO. 96:** All documents relating to or concerning the "sanitation" and/or destruction of Enron notes or memorandum.

**RESPONSE:**

**REQUEST NO. 97:** All documents relating to or concerning the "sanitation" and/or destruction of documents prepared for the proposed Enron and Dynegy merger.

**RESPONSE:**

**REQUEST NO. 98:** A copy of all documents provided to any Senate or Congressional committee, subcommittee, the Justice Department, SEC, or other governmental agency regarding the investigation of Enron and/or Arthur Andersen's audit of Enron.

**RESPONSE:**

**MARIAN ROSEN & ASSOCIATES**
Marian S. Rosen
State Bar No. 17263000
1330 Post Oak Boulevard, Suite 2910
Houston, Texas 77251
Telephone (713) 222-6464
Fax (713) 227-4703

**HOWARD M. RUBENSTEIN**
Attorney at Law
State Bar No. 17361900
1330 Post Oak Boulevard, Suite 2905
Houston, Texas 77056
Telephone (713) 965-0206
Fax (713) 961-5745

**FLEMING & ASSOCIATES, L.L.P.**
G. Sean Jez
State Bar No. 00796829
George M. Fleming
State Bar No. 07123000
1330 Post Oak Blvd., Suite 3030
Houston, Texas 77056-3019
Telephone (713) 621-7944
Fax (713) 621-9638

By_____
G. Sean Jez

**ATTORNEYS FOR PLAINTIFFS**

CAUSE NO. 200157517

RECEIPT NO. 32811 50.00 CO1
01-17-2002 TR # 71555727

PLAINTIFF: ROSEN, FRED A
vs.
DEFENDANT: ENRON CORP

In The 333rd
Judicial District Court
of Harris County, Texas
333RD DISTRICT COURT
Houston, TX

CITATION

THE STATE OF TEXAS
County of Harris

Delivered this 29 day of Jan, 20 02
JACK F. ABERCIA, Constable
Precinct #1, Harris County
By Ramey Hm DEPUTY

TO: SKILLING, JEFFREY J
10 BRIARWOOD COURT HOUSTON TX 770195802

Attached is a copy of PLAINTIFF'S FIRST AMENDED PETITION REQUEST FOR DISCLOSURE REQUEST FOR PRODUCTION

This instrument was filed on the 16th day of January, 2002, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:
This citation was issued on 25th day of January, 2002, under my hand and seal of said Court.

Issued at request of:
JEZ, GREGORY SEAN
1330 POSTOAKBLVD3030
HOUSTON, TX 77056
Tel: (713) 621-7944
Bar No.: 796829

(Seal) DISTRICT COURT OF HARRIS COUNTY TEXAS

CHARLES BACARISSE, District Clerk
Harris County, Texas
301 Fannin Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

BY Tracey Miller
Deputy MILLER, TRACEY FGT/IOJ/6252067

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at _____ o'clock ____ .M., on the _____ day of _____, _____.

Executed at (address) _____ in

_____ County at _____ o'clock _____.M., on the ____ day of _____,

____, by delivering to _____ defendant, in person, a true copy of this Citation together with the accompanying _____ copy(ies) of the Petition attached thereto and I endorsed on said copy of the Citation the date of delivery.
To certify which I affix my hand officially this _____ day of _____, _____.

Fee: $_____

_____

# EXHIBIT 2

Original

Cause No. 2002CI01906

| | | |
|---|---|---|
| DAVID JOSE, JAMES BRISTER, PETER MAXFIELD and GEORGE ATALLAH | § | IN THE DISTRICT COURT OF |
| Plaintiffs, | § | |
| v. | § | BEXAR COUNTY, TEXAS |
| ARTHUR ANDERSEN, L.L.P., D.; STEPHEN GODDARD, JR.; DAVID B. DUNCAN; DEBRA A. CASH; ROGER WILLARD; THOMAS H. BAUER; ANDREW S. FASTOW; KENNETH L. LAY; JEFFREY J. SKILLING; ROBERT A. BELFER; NORMAN P. BLAKE, JR.; RICHARD B. BUY; RICHARD CAUSEY; RONNIE C. CHAN; JOHN H. DUNCAN; JOE H. FOY; WENDY L. GRAMM; KEN L. HARRISON; ROBERT K. JAEDICKE; MICHAEL J. KOPPER; CHARLES A. LEMAISTRE; REBECCA MARK-JUSBASCHE; JOHN MENDELSOHN; JEROME J. MEYER; LOU PAI; PAUL V. FERRAZ PEREIRA; FRANK SAVAGE; JOHN A. URQUHART; JOHN WAKEHAM; CHARLES E. WALKER; BRUCE WILLISON; HERBERT S. WINOKUR, JR.; BEN GLISAN; KRISTINA MORDAUNT; MICHAEL C. ODOM; GARY B. GOOLSBY; AND MICHAEL M. LOWTHER. | § | 57th JUDICIAL DISTRICT |
| Defendants. | § | _____ JUDICIAL DISTRICT |

**ORDER**

On this the 7th day of February, 2002, the foregoing Application for Temporary Restraining Order was presented for consideration. The Court, having reviewed the pleadings and been advised regarding the urgency of this matter, was of the opinion that a temporary restraining order should be entered immediately without notice to the Defendants Lay, Fastow, Skilling, and David Duncan. It is, therefore,

ORDERED that the Defendants David B. Duncan, Jeffrey J. Skilling, Andrew S. Fastow, and Kenneth L. Lay be enjoined until hearing on Plaintiffs' Application for Temporary Restraining Injunction from:

(a) Destroying, altering, or deleting any documents related to their work done in connection with any audits of Enron Corporation, its subsidiaries, or related partnerships;

(b) Destroying, altering, or deleting any of their personal records or minutes of their attendance at Enron board meetings;

(c) Transferring any property, funds, or assets to third parties not in the ordinary course of their business; and

(d) Transferring any property, funds, or assets outside of the United States without permission of this Court and notice to Plaintiffs in this case.

C.R.T.

This matter is set for hearing at Room 218, on _____, the 20th day of February, 2002, at 9:00 A.m.

PAT BOWE

JUDGE PRESIDING

APPROVED:

FLEMING & ASSOCIATES, L.L.P.

By: _____

G. Sean Jez
State Bar No. 00796829
1330 Post Oak Blvd., Suite 3030
Houston, Texas 77056-3019
Telephone: 713-621-7944
Facsimile: 713-621-9638

ATTORNEYS FOR PLAINTIFFS

# EXHIBIT 3

Fed ct
M.O
(5) O/C CIV w/ Bond
(5) O/C TRO w/ PD

2002CI 01308

Cause No. _____

| | | |
|---|---|---|
| DAVID JOSE, JAMES BRISTER, PETER MAXFIELD and GEORGE ATALLAH | § | IN THE DISTRICT COURT OF |
| Plaintiffs, | § | |
| v. | § | BEXAR COUNTY, TEXAS |
| ARTHUR ANDERSEN, L.L.P., D.; STEPHEN GODDARD, JR.; DAVID B. DUNCAN; DEBRA A. CASH; ROGER WILLARD; THOMAS H. BAUER; ANDREW S. FASTOW; KENNETH L. LAY; JEFFREY J. SKILLING; ROBERT A. BELFER; NORMAN P. BLAKE, JR.; RICHARD B. BUY; RICHARD CAUSEY; RONNIE C. CHAN; JOHN H. DUNCAN; JOE H. FOY; WENDY L. GRAMM; KEN L. HARRISON; ROBERT K. JAEDICKE; MICHAEL J. KOPPER; CHARLES A. LEMAISTRE; REBECCA MARK-JUSBASCHE; JOHN MENDELSOHN; JEROME J. MEYER; LOU PAI; PAUL V. FERRAZ PEREIRA; FRANK SAVAGE; JOHN A. URQUHART; JOHN WAKEHAM; CHARLES E. WALKER; BRUCE WILLISON; HERBERT S. WINOKUR, JR.; BEN GLISAN; KRISTINA MORDAUNT; MICHAEL C. ODOM; GARY B. GOOLSBY; AND MICHAEL M. LOWTHER. | § | 57th |
| Defendants. | § | _____ JUDICIAL DISTRICT |

**PLAINTIFFS' ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION**

COME NOW Plaintiffs, David Jose, James Brister, Peter Maxfield and George Atallah, with this their Original Petition, Application for Temporary Restraining Order and Temporary Injunction, complaining of Defendants Arthur Andersen, L.L.P.; D. Stephen Goddard, Jr.; David B. Duncan; Debra A. Cash; Roger Willard; Thomas H. Bauer; Andrew S. Fastow; Kenneth L.

Lay; Jeffrey J. Skilling; Robert A. Belfer; Norman P. Blake, Jr.; Richard B. Buy; Richard Causey; Ronnie C. Chan; John H. Duncan; Joe H. Foy; Wendy L. Gramm; Ken L. Harrison; Robert K. Jaedicke; Michael J. Kopper; Charles A. LeMaistre; Rebecca Mark-Jusbasche; John Mendelsohn; Jerome J. Meyer; Lou Pai; Paul V. Ferraz Pereira; Frank Savage; John A. Urquhart; John Wakeham; Charles E. Walker; Bruce Willison; Herbert S. Winokur, Jr.; Ben Glisan; Kristina Mordaunt; Michael C. Odom; Gary B. Goolsby; and Michael M. Lowther 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. Plaintiff **David Jose** is a citizen of Bexar County, Texas that acquired 257 shares of Enron stock valued at $66.50 per share and sold those shares for $.28 on or about December 5, 2001, for a loss.

3. Plaintiff **James Brister** is a citizen of Bexar County, Texas who acquired 650 shares of Enron stock on or about October 19, 2001, after the Defendant Lay announced that the company was in "good shape" and that all the negative news about Enron had been disclosed. This representation caused Plaintiff to act to his detriment. This Plaintiff still owns his shares as of the date of this filing as he relied on the reports prepared by AALLP called 10-Q's, which falsely pictured the stock causing this Plaintiff to hold onto his stock rather than sell it.

4. Plaintiff **Peter Maxfield** is a citizen of Bexar County, Texas who purchased 300 shares of Enron in September, 1997, for more than $40.00 per share. He still owns his shares as of this filing. He relied on the representations and reports of the Defendants concerning the

financial status of the company in not selling his shares. His reliance on the Defendants' representations and reports was to his detriment.

5. Plaintiff **George Atallah** is a citizen of Bexar County, Texas that acquired 3,000 shares of Enron stock in 2001, beginning after the Defendant Lay represented that the profits of the company would need to be restated but that the company was in good shape. This Plaintiff also relied on the reports prepared by the Defendant, Arthur Andersen, L.L.P., that were filed with the SEC and made public called 10-Q's. Such reliance was to the detriment of this Plaintiff. This Plaintiff disposed of his shares at a loss on or about November 26, 2001. Had this Plaintiff known the true facts, he would not have held on to his shares until November 26, 2001.

O/C 6. Defendant **Arthur Andersen, L.L.P.** ("AALLP") is a limited liability partnership, whose business address is 901 Main Street, Suite 5600, Dallas, Texas 75202. Defendant Arthur Andersen may be served with process by mailing its registered agent, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to P. Scott Ozanus, 901 Main Street, Suite 5600, Dallas, Texas 75202. Arthur Anderson was the independent and an internal auditor for Enron during the relevant portions complained of herein.

7. Defendant **D. Stephen Goddard, Jr.** ("Goddard") is the office managing partner of the Houston, Texas office of Arthur Andersen, L.L.P. that 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 who may be served with process at his home office and regular place of business, 711 Louisiana Street, Houston, Texas 77002.

8. Defendant **David B. Duncan** ("Duncan") 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 who was discharged by AALLP for destroying documents relevant to the Enron audits. Duncan is an individual residing in Houston, Harris County, Texas who may be served with process at 10911 Wickwild Street, Houston, Texas 77024-7615 by certified mail, return receipt requested.

9. Defendant **Debra A. Cash** ("Cash") is 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. Cash is an individual residing in Harris County, Texas who may be served with process at the offices of Arthur Andersen, L.L.P., 711 Louisiana Street, Suite 1300, Houston, Texas 77002 by certified mail, return receipt requested.

10. Defendant **Roger Willard** ("Willard") is 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. Willard is an individual residing in Houston, Harris County, Texas who may be served with process at 3723 Maroneal St., Houston, Texas 77025-1219 by certified mail, return receipt requested.

11. Defendant **Thomas H. Bauer** ("Bauer") is 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 is an individual residing in Houston, Harris

County, Texas who may be served with process at 1515 Pebble Chase Dr., Katy, TX 77450-4358 by certified mail, return receipt requested.

12. Defendant **Robert A. Belfer** ("Belfer") has served as a Director of Enron since 1983, serving 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 Belfer's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf by certified mail, return receipt requested.

13. Defendant **Norman P. Blake, Jr.** ("Blake") has served as a Director of Enron since 1993, serving 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 Blake's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf by certified mail, return receipt requested.

14. Defendant **Richard B. Buy** ("Buy") is the Executive Vice President and Chief Risk Officer of Enron and has been Senior Vice President and Chief Risk Officer. Buy is an individual residing at 246 S. Post Oak Lane, Houston, Texas 77056-1056, Harris County, who may be served with citation by serving his attorney, J. C. Nickens at 1000 Louisiana, Suite 5360, Houston, Texas 77002 by certified mail, return receipt requested.

15. Defendant **Richard Causey** ("Causey") served as Executive Vice President and Chief Accounting Officer of Enron. Causey is an individual residing in Spring, Montgomery County, Texas at 39 N. Regent Oak, Spring, Texas 77381-6442. His attorney J.C. Nickens has agreed to accept service by certified mail at 1000 Louisiana, Suite 5360, Houston, Texas 77002.

16. Defendant **Ronnie C. Chan** ("Chan") has been an Enron director since 1996. Chan is 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. Defendant Chan's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf by certified mail.

17. Defendant **John H. Duncan** ("Duncan") has been an Enron director since 1985. Duncan's principal occupation has been investments since 1990. 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's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf by certified mail.

18. Defendant **Andrew S. Fastow** ("Fastow") was Enron's former Executive Vice President and Chief Financial Officer. Defendant Fastow resides at 1831 Wroxton, Houston, Texas 77005, but may be served through his attorney, D. Craig Sonyser at 700 Louisiana Street, Suite 2300, Houston, Texas 77002.

19. Defendant **Joe H. Foy** ("Foy") served as a member of the Audit Committee for Enron from 1997-1999. Defendant Foy is an individual residing in Kerrville, Kerr County, Texas. Defendant Foy's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf.

20. Defendant **Wendy L. Gramm** ("Gramm") has been an Enron director since 1993. Gramm is a member of the audit and compliance committee. 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., Dr. Gramm 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 Gramm's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf by certified mail. She is a legal resident of College Station, Brazos County, Texas.

21. Defendant **Ken L. Harrison** ("Harrison") served as a Director for Enron from 1997-2001. Harrison executed the 1997, 1998, 1999 and 2000 financial statements of Enron. Harrison is an individual residing in Portland, Oregon, who may be served with citation by serving him at Portland General Corporation, 121 Southwest Salmon Street, Portland, Maine 97204 by certified mail.

22. Defendant **Robert K. Jaedicke** ("Jaedicke") has been an Enron director since 1985. Jaedicke has been 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. He has been on the Stanford University faculty since 1961 and served as Dean from 1983 until 1990. Dr. Jaedicke is a director of California Water Service Company and Boise Cascade Corporation and he plans to retire from the Boise Cascade Corporation board in April 2001. Dr. Jaedicke was also a director of GenCorp, Inc. until July 2000. Defendant

Jaedicke's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf by certified mail.

23. 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 who may be served with citation by serving him at 2138 Bolsover Street, Houston, Texas 77005-1618.

24. Defendant **Kenneth L. Lay** ("Lay") has been an Enron director since 1985. Lay has been Chairman of the Board of Enron since 1986. From 1986 until February 2001, Mr. 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. Mr. Lay is also a director of Eli Lilly and Company, Compaq Computer Corporation, EOTT Energy Corp. (the general partner of EOTT Energy Partners, L.L.P.), i2 Technologies, Inc. and NewPower Holdings, Inc. Defendant Lay may be served with citation at his principal place of business, 1400 Smith Street, Suite 3300, Houston, Texas 77002 by certified mail, return receipt requested.

25. Defendant **Charles A. LeMaistre** ("LeMaistre") has been an Enron director since 1985. 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 LeMaistre's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf by certified mail.

26. Defendant **Rebecca Mark-Jusbasche** ("Mark-Jusbasche") was an Enron director from 1999-2000. Mark-Jusbasche executed the 1999 financial statements of Enron. Mark-

Jusbasche is an individual residing in Houston, Harris County, Texas, who may be served with citation by serving her attorney of record, John J. McKetta, Graves, Dougherty, Hearon & Moody, 515 Congress, Suite 2300, Austin, Texas 78767 by certified mail.

27. Defendant **John Mendelsohn** ("Mendelsohn") has been an Enron director since 1999. Mendelsohn is 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, Dr. Mendelsohn is also a director of ImClone Systems, Inc. Mendelsohn is an individual residing in Houston, Harris County, Texas, Defendant Mendelsohn's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf by certified mail.

28. Defendant **Jerome J. Meyer** ("Meyer") served as an Enron director from 1997-2001, 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 Meyer's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf by certified mail.

29. Defendant **Lou Pai** ("Pai") has been an Enron director at all times relevant to this lawsuit. Pai is also the Chairman and CEO of Enron Xcelerator and Chairman of Enron Energy Services. Pai may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to his attorney J.C. Nickens at 1000 Louisiana, Suite 5360, Houston, Texas 77002.

30. Defendant **Paul V. Ferraz Pereira** ("Pereira") has been an Enron director since 1999. Pereira is a member of the audit and compliance committee. Pereira is Executive Vice President of Group Bozano. Mr. Pereira served for over five years as President and Chief Operating Officer of Meridional Financial Group and Managing Director of Group Bozano. Mr. Pereira is also the former President and Chief Executive Officer of the State Bank of Rio de Janeiro. Defendant Pereira's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf by certified mail.

31. Defendant **Frank Savage** ("Savage") has been an Enron director since 1999. Savage has served as Chairman of Alliance Capital Management International (a division of Alliance Capital Management, L.P.). Mr. Savage is also a director of Lockheed Martin Corporation, Alliance Capital Management L.P. and Qualcomm Corp. Defendant Savage's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf by certified mail.

32. Defendant **Jeffrey K. Skilling** ("Skilling") has been an Enron director at all times relevant to this lawsuit. Mr. 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. 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. Mr. 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. Mr. Skilling is also a director of the Houston Branch of the Federal Reserve Bank of

Dallas. Defendant Skilling may be served with citation at 10 Briarwood Court, Houston, Texas 77019-5802 by certified mail.

33. Defendant **John A. Urquhart** ("Urquhart") served as Director of Enron from 1990-2001, 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 who may be served with citation by serving him at 7 Sasco Point, Fairfield, Connecticut 06430 by certified mail.

34. Defendant **Charles E. Walker** ("Walker") served as a Director of Enron from 1995-1998, 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 who may be served with citation by serving him at 10120 Chapel Road, Potomac, Maryland 20854-4143 by certified mail.

35. Defendant **John Wakeham** ("Wakeham") has been an Enron director since 1994. Wakeham is 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. Lord Wakeham's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf by certified mail.

36. Defendant **Bruce G. Willison** ("Willison") served as a member of the Audit Committee in 1997. Willison is individual residing in Los Angeles, California who may be

served with citation by serving him at 162 S. Burlingame Avenue, Los Angeles, California 90049-2642 by certified mail.

37. Defendant **Herbert S. Winokur** ("Winokur") has been an Enron director since 1985. 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 Winokur's legal counsel Jeremy Doyle of Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002 has agreed to accept service on his behalf by certified mail.

38. Defendant **Ben Glisan** ("Glisan") was a managing director and treasurer of Enron until November of 2001, when he was fired for self dealing. Defendant was discharged for self-dealing the week of November 5, 2001. Defendant Glisan may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to 15322 Baybrook Drive, Houston, Texas 77062. Plaintiffs seek to recover through a constructive trust their losses from the illegal profits made by this Defendant to the extent of their respective losses.

39. Defendant **Kristina Mordaunt** ("Mordaunt") was a managing director and general counsel of Enron Broadband Services until November of 2001, when she was fired for

self dealing. Defendant was discharged for self-dealing the week of November 5, 2001 and was discharged for such activities. Defendant Mordaunt may be served with process by mailing, by certified mail, return receipt requested, a copy of the citation and a copy of the petition attached thereto, to her home address of 4531 West Alabama, Houston, Texas 77027-4803. Plaintiffs seek to recover through a constructive trust their losses from the illegal profits made by this Defendant to the extent of their respective losses.

40. The Defendant **Michael C. Odom** is a resident of Harris County, Texas living at 1945 W. Bell Street, Houston, Texas 77019 where he may be served by certified mail.

41. The Defendant **Gary B. Goolsby** is a resident of Harris County living at 1602 Kings Castle Drive, Katy, Texas 77450 where he may be served by certified mail.

42. The Defendant **Michael M. Lowther** is a resident of Harris County, Texas living at 19122 Foxtree Lane, Houston, Texas 77094 where he may be served by certified mail.

## III. Introduction

43. As a result of the actions of Defendants in this case, Plaintiffs available investments have been reduced, and Plaintiffs will be unable to have the use of the funds that they invested.

44. Collectively, the Defendants identified in paragraphs 41-68 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.

45. Collectively, the Defendants identified in paragraphs 35-40 are referred to as the "Andersen Defendants."

46. 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 their high-level positions 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.

47. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the New York Stock Exchange ("NYSE"), and governed by the provisions of the federal securities laws, the Individual 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.

48. 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.

49. 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.

50. 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 New York Stock Exchange. 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 that were required to be placed on Enron's consolidated balance sheet.

51. Defendant AALLP was also hired by Enron with the approval of its directors to provide their 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 and were relied upon by the Plaintiffs herein to their detriment.

52. 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 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 continue their ownership of Enron stock in their private investing devices and/or their 401k plans.

## IV. Jurisdiction and Venue

53. This Court has jurisdiction over each Defendant because Defendant has committed a tort in whole or in part in Bexar County, Texas by making representations in Bexar County which were relied upon by the Plaintiffs to their detriment. This Court also has jurisdiction over the controversy because the damages are above the minimum jurisdictional limits.

54. Venue is proper in Bexar County, Texas. Specifically, venue is proper in Bexar County, Texas because it is the county in which one of the Defendants resides. Defendant LeMaistre maintains his legal residence in Bexar County, Texas.

## V. Just the Facts

55. In 1999, Defendant Fastow formed two investment partnerships, LJM Cayman LP ("LJM") and LJM2 Co-Investment LP ("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.

56. Mr. Fastow's role as chief financial officer made him privy to internal asset analyses at Enron. An offering memorandum for the LJM2 Co-Investment, L.P. ("LJM2") partnership said that this dual role "should result in a steady flow of opportunities. . . to make investments at attractive prices."

57. Incredibly, the document reportedly goes so far as to expressly acknowledge the glaring conflict of interest that existed under this agreement and the multi-million dollar incentive for Fastow to engage in self-dealing to the detriment, and at the expense of, Enron and its stockholders to whom he and the Director Defendants owned a fiduciary duty and states that this dual role "should result in a steady flow of opportunities. . . to make investments at attractive prices and that *Mr. Fastow would find his interests "aligned" with investors because the "economics of the partnership would have significant impact on the general partner's [Mr. Fastow] wealth."* (Emphasis added).

58. Defendants clearly breached their duties by expressly approving the agreement with Mr. 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.

59. Remarkably, Defendant Lay reportedly denied the existence of any conflict of interest arising out of the LJM arrangement. Such related-party transactions, involving top managers or directors, aren't unusual, he said. "Almost all big companies have related-party transactions."

60. 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. 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.

61. Despite statements designed to make the partnership deals seem innocuous, the positions Fastow held with the partnerships (and Enron) allowed Fastow to benefit from the illicit use of confidential, non-public information. An egregious example of this occurred in connection with a $30 million LJM2 investment in a project known as "Raptor III" in September 2000. This transaction involved writing put options committing LJM2 to buy Enron stock at a set price for six months. Writers of put options benefit from higher prices of the underlying stock, and are hurt by declining prices. As reported in the *Wall Street Journal* on October 19, 2001: "Only four months into this six month deal, LJM2 approached Enron to settle the investment early, causing LJM2 to receive its $30 million capital invested, plus $10.5 million in profit." The information quoted came from an internal report produced by Defendant Fastow for the partnership investors, but withheld from the public. The article further reported that: "The renegotiation was before a decline in Enron's stock price, which could have forced LJM2 to buy Enron shares at a loss of as much as $8 each." Thus, Fastow and LJM2 took advantage of inside

information to recap illicit insider trading profits, in the millions of dollars in this transaction alone.

62. Finally, the fallout from the revelations about the partnership wrongdoing has had negative financial repercussions for Enron. These include a steep decline in its stock price, loss of investor and Wall Street confidence, and increased costs of attracting and retaining employees. The cover up of the Fastow agreement and other related transactions by the directors and auditors has subjected Enron to strong criticism from investors and analysts alike.

63. On October 23, 2001, the Associated Press reported that various partnership transactions purportedly resulted in a gain of $16 million (pretax) in 1999, and a loss of $36 million in 2000. The same article quoted a top analyst as sharply criticizing the directors and officers' concealment of the partnership deals. "What you are hearing from many is that the company's credibility is being questioned and there is a need for disclosure," said David Fleischer of Goldman, Sachs & Co. "That is exactly what I think needs to happen. There is an appearance that you are hiding something . . . I for one find the disclosure is not complete enough for me to understand." To add fuel to the fire, the Company also acknowledged that the SEC had begun an investigation into AALLP's auditing practices with regard to the partnerships and whether the audits were done according to GAAP

64. On the basis of the foregoing, the Director Defendants breached their duties that each of them owed to its stockholders by expressly approving of a number of agreements that placed Enron's Chief Financial Officer 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.

65. Significantly, officers and directors of Enron had financial interests in all or some of these partnerships. As such, by approving the agreements that enabled Mr. Fastow to act in dual capacities, Defendants effectively engaged in self-dealing and placed Mr. 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 Enron. In so doing, the Defendants breached the duties that each of them owed to Enron's stockholders and caused Enron to incur losses in the amount of at least $35 million and the stock value to drop drastically.

66. According to published reports, the general partner of the two investment partnerships was paid management fees as much as 2% annually of the total amounts invested in the partnerships. Additionally, the general partner was eligible for profit participation that could produce tens of millions of dollars more if the partnership met its performance goals over its projected 10-year life. Inasmuch as the partnerships were formed with the intention of managing over $200 million in assets, Defendant Fastow's potential profits from managing the partnership exceeded $4 million a year.

67. Since their formation, LJM and LJM2 have engaged in billions of dollars of complex hedging transactions with Enron -- in which Enron's interests were adverse to these entities. By their very nature, Enron's transactions with these two investment partnerships, if successful, would result in losses to Enron and a lowering of Plaintiffs' stock value.

68. Because Defendant Fastow was on both sides of the transactions between Enron and the investment partnerships, the terms of those transactions were not at arm's-length and there was no reasonable method to ensure that the terms of those transactions were equivalent to

transactions that could have been engaged in with third parties. AALLP failed to include these transactions on a consolidated balance sheet as required by GAAP.

69. For example, Enron entered into a series of complex transactions in 1999 involving LJM and a third-party, pursuant to which (i) Enron and the third-party amended certain forward contracts to purchase shares of Enron common stock, resulting in Enron having forward contracts to purchase Enron common shares at the market price on the day of the agreement, (ii) LJM received about 6.8 million shares of Enron common stock, and (iii) Enron received a note receivable and certain financial instruments from LJM hedging an investment held by Enron. These transactions should have appeared on the consolidated accounts of Enron in accordance with GAAP.

70. During the fourth quarter of 1999, LJM2 acquired approximately $360 million of merchant assets and investments from Enron. Further, in December, 1999, LJM2 entered into agreements to acquire certain of Enron's interest and assets for about $45 million. This was not on a consolidated balance sheet.

71. In 2000, Enron again entered into transactions with LJM, LJM2, and entities related to LJM and LJM2, to hedge certain merchant investments and other assets. Enron contributed about $1.2 billion of assets, including notes payable and restricted shares of outstanding Enron common stock and warrants, to LJM-related entities. Additionally, Enron entered into derivative transactions with a combined amount of about $2.1 billion with LJM-related entities to hedge certain assets. These transactions put Enron at risk in amounts exceeding $1 billion, yet were not included on Enron's consolidated balance sheet or properly reported to investors by Enron's independent auditor, AALLP.

72. In all, between June 1999 and September 2001, Enron and Enron-affiliated entities did 24 deals with LJM1 or LJM2 or both, ranging from buying and selling hard assets, purchasing debt or equity interests, and selling the rights to buy or sell shares of stock at certain preset prices. These were not included on reports prepared by AALLP and relied upon by Plaintiffs.

73. In fact, the LJM2 offering document, which was prepared under the direction of Defendant Fastow, admitted that the responsibilities of Mr. Fastow and other partnership officials to Enron could "from time to time conflict with fiduciary responsibilities owed to the Partnership and its partners."

74. As reported in TheStreet.com on July 12, 2001, Enron was questioned in a conference call that day about the Company's transactions with LJM and LJM2. Defendant Skilling falsely represented the true state of affairs by representing that LJM and LJM2 had done "a couple of real minor things." The Defendants either knew or should have known that these representations were false, yet they did nothing to inform the Plaintiffs of the true facts and liabilities of these transactions. The Plaintiffs herein relied on these representations in holding their shares.

75. In July 2001, Fastow terminated his interests in the partnerships, and Enron unwound its financial relationships with the partnerships, yet Plaintiffs were kept in the dark concerning the effect of these transactions on the value of Plaintiffs' shares.

## VI. Additional Materially False and Misleading Statements

76. On January 18, 2000, Enron issued a press release approved by its officers and directors announcing its financial results for the fourth quarter of 1999 and fiscal year 1999. The

Company reported that for fiscal 1999 it earned $957 million and had revenues of $40 billion.

Defendant Lay commented on the results, stating in pertinent part as follows:

> Our strong results in both the fourth quarter and full year 1999 reflect excellent performance in all of our operating businesses. . . . In addition, Enron continues to develop innovative, high-growth new businesses that capitalized on our core skills, as demonstrated by the early success of our new broadband services businesses. Overall, a great year – one in which our shareholders received a total return of 58 percent.

77. On January 20, 2000, Enron issued a press release announcing that the Company had hosted its annual analyst conference in Houston that same day. With respect to the broadband services division, the press release stated in pertinent part as follows:

> The new name of Enron's communications business, Enron Broadband Services, reflects its role in the very fast growing market for premium broadband services. Enron is deploying an open flexible global broadband network controlled by software intelligence, which precludes the need to invest in a traditional point-to-point fiber network.

The Defendants either knew or should have known that this was false and misleading.

78. On April 12, 2000, Enron issued a press release announcing its financial results for the first quarter of 2000, the period ending March 31, 2000. The Company reported net income of $338 million, or $0.40 per share, and revenues of $13.1 billion. Defendant Lay highlighted the Company's broadband business, stating in pertinent part as follows:

> In our newest business, we significantly advanced deployment of our broadband network and saw strong response to our bandwidth intermediation and content delivery products.

The press release further described the developments in the broadband business as follows:

> Enron is replicating its unique business model and skills to deploy a global network for the delivery of comprehensive bandwidth solutions and high bandwidth applications.
>
> During the first quarter, Enron significantly advanced its network development. New agreements have been signed with over 20 broadband distribution partners.

The Defendants either knew or should have known that this was false and misleading.

79. On July 24, 2000, Enron issued a press release announcing its financial results for the second quarter of 2000, the period ending June 30, 2000. The Company reported net income of $289 million, or $0.34 per share, and revenues of $16.9 billion for the second quarter. Defendant Lay described the results as "another excellent quarter" and highlighted that Enron Broadband Services had recently executed "an exclusive, 20-year, first-of-its-kind contract with Blockbuster to stream on-demand movies." The press release further reported that Enron Broadband Services had executed $19 million of new contracts. The directors, officers and auditors should have known that this was false and misleading.

80. On October 17, 2000, Enron issued a press release announcing its financial results for the third quarter of 2000, the period ending September 30, 2000. The Company reported net income of $292 million, or $0.34 per share, and revenues of $30 billion. Defendant Lay commented on the results stating in pertinent part as follows:

> Enron delivered very strong earnings growth again this quarter, further demonstrating the leading market positions in each of our major businesses . . .. We operate in some of the largest and fastest growing markets in the world and we are very optimistic about the continued strong outlook for our company.

With respect to Enron Broadband Services, the press release reported among other things, that "Enron delivered 1,399 DS-3 months equivalents of broadband capacity, which was a 42 percent increase over the previous quarter." The directors, officers and auditors should have known that this was false and misleading.

81. On January 22, 2001, Enron issued a press release announcing its financial results for the fourth quarter of 2000 and fiscal year 2000, the period ending December 31, 2000. The Company reported earnings of $0.41 per share for the fourth quarter of 2000. Defendant Lay commented on the results stating in pertinent part as follows:

> Our strong results reflect breakout performances in all of our operations, . . .. Our wholesale services, retail energy and broadband businesses further expanded their leading market positions, as reflected in record levels of physical deliveries, contract originations and profitability. Our shareholders had another excellent year in 2000, as Enron's stock returned 89 percent, significantly in excess of any major investment index.

With respect to Enron Broadband Services, the press release stated:

> In addition, Enron Broadband Services reported a $32 million IBIT loss. These results include costs associated with building this new business, partially offset by the monetization of a portion of Enron's broadband delivery platform.
>
> * Enron Broadband Services delivered 2,393 DS-3 month equivalents of capacity, representing a 71 percent increase over the third quarter of 2000. In addition, transaction levels also significantly increased to 236 transactions in the fourth quarter, compared to 59 transactions in the third quarter of 2000.

This was false and misleading and should not have been allowed by the directors, officers and auditors.

82. On January 30, 2001, Enron issued a press release announcing that it had priced an offering of 20-year zero coupon convertible senior debt securities, raising $1.25 billion.

83. On April 17, 2001, Enron issued a press release announcing its financial results for the first quarter of 2001, the period ending March 30, 2001. The Company reported earnings of $0.47 per share. Defendant Skilling commented on the results, stating in pertinent part as follows:

> Enron's wholesale business continues to generate outstanding results. Transaction and volume growth are translating into increased profitability . . . . In addition, our retail energy services and broadband intermediation activities are rapidly accelerating.

With respect to Enron Broadband Services, the press release stated, among other things, as follows:

> Enron's global broadband platform is substantially complete, and 25 pooling points are operating in North America, Europe and Japan. Enron's broadband intermediation activity increased significantly, with over 580 transactions executed during the quarter – more than in all of 2000. Enron also added 70 new broadband customers this quarter for a total of 120 customers.

The directors approved this press release, causing a false impression to Plaintiffs of the value of Enron shares.

84. On July 12, 2001, Enron issued a press release announcing its financial results for the second quarter of 2001, the period ending June 30, 2001. The Company reported diluted earnings of $0.45 per share. Defendant Skilling downplayed any concerns investors might have about Enron Broadband Services, stating in pertinent part as follows:

> In contrast to our extremely strong energy results, this was a difficult quarter in our broadband business. However, our asset-light approach will allow us to adjust quickly to weak broadband industry conditions. We are significantly reducing our broadband cost structure to match the reduced revenue opportunities currently available.

None of the directors or other officers who were aware of the falsity of this statement made any attempt to correct this misstatement of the facts.

85. On July 25, 2001, Bloomberg Business News reported that at a meeting with analysts, Defendant Skilling stated that Enron will meet or beat its profit projections. The article stated in pertinent part:

> "We will hit those numbers, and we will beat those numbers," Skilling told a meeting of analysts and investors in New York . . . .
>
> Analysts have also cited concern about unpaid power bills by Enron customers in California and India, and losses by Enron's broadband trading unit, which may hurt Enron's profits.
>
> "All of these are bunk," Skilling said. "These are not issues for this stock."

86. On August 14, 2001, Enron issued a press release announcing that Defendant Skilling had resigned his positions at the Company. This announcement surprised investors and the price of Enron common stock dropped in response. According to a report carried by Bloomberg Business News, on August 17, 2001, after the announcement of Defendant Skilling's

resignation, Defendant Lay met with investors and analysts "to calm fears that the Company may be hiding dire financial news . . .." The article quoted an analyst from UBS Warburg as stating: "Ken met with us to reassure us that there is nothing wrong with the company . . .. There is no other shoe to fall, and no charges to be taken." Plaintiffs believed Lay's statement to their detriment.

87. Then, on August 29, 2001, Defendant Lay provided an interview to Bloomberg Business News which was carried on the newswires. Defendant Lay portrayed the broadband services division in highly positive terms. The following question/answer is illustrative:

> Johnson: There has been a lot of concern by investors recently over the company's broadband trading unit, which trades space on fiber optic networks. Where does Enron stand with fiber optic trading now? Have you – do you still remain hopeful in that sector? Or what's the outlook now?
>
> Lay: Why, no, that continues to grow, quarter-to-quarter, at a very good rate, so we're continuing to develop liquidity in the marketplace. I mean, the biggest single problem has been the shortage of creditworthy counter parties to do longer term transactions. But certainly, quarter-to-quarter, we continue to increase the number of trades rather significantly.

88. The Defendant Lay sent an e-mail to employees after he knew that the stock value had declined appreciably indicating that the stock was still a good value. This representation was false, misleading and fraudulent and resulted in damages to the Plaintiffs herein.

89. The statements referenced above, were each materially false and misleading when made as they misrepresented and/or omitted the following adverse facts which then existed and disclosure of which was necessary to make the statements made not false and/or misleading, including:

(a) that Enron Broadband Services was experiencing declining demand for bandwidth and the Company's efforts to create a trading market for bandwidth were not meeting with success as many of the market participants were not creditworthy;

(b) that the Company's operating results were materially overstated as a result of the Company failing to timely write-down the value of its investments with LJM Cayman LP and LJM2 Co-Investment LP;

(c) that Enron was failing to write-down impaired assets on a timely basis in accordance with GAAP; and

(d) as a result of the foregoing, Defendants' earnings projections and statements about the Company's prospects and outlook were lacking in a reasonable basis at all times. The Plaintiffs either invested based on these statements or did not sell their shares based on these false and misleading statements.

## VII. The Results

90. On October 16, 2001, Enron surprised the market by 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.

The press release further detailed the charge as follows: $287 million related to asset impairments recorded by Azurix Corp.; $180 million associated with the restructuring of the Company's Broadband Services division; $544 million related to losses with certain investments and early termination during the third quarter of certain structured finance arrangements with a previously disclosed entity.

91. An article in The Wall Street Journal, on October 17, 2001, further explained the nature of the "structured finance arrangements with a previously disclosed entity," which was

mentioned in the Company's earnings release. According to the article, the structured finance arrangements involved limited partnerships that were managed by Enron's Chief Financial Officer, Defendant Fastow. The article stated in pertinent part as follows:

> The two partnerships, LJM Cayman LP and the much larger LJM2 Co-Investment LP, have engaged in billions of dollars of complex hedging transactions with Enron involving company assets and millions of shares of Enron stock. It isn't clear from Enron filings with the Securities and Exchange Commission what Enron received in return for providing these assets and shares. In a number of transactions, notes receivable were provided by partnership-related entities.

92. According to The Wall Street Journal, in a news report on October 17, 2001, the cryptic reference in the press release was to the "pair of limited partnerships that until recently were run by Enron's chief financial officer." According to The Wall Street Journal, Enron privately acknowledged (initially) that its transactions with those partnerships resulted in write-downs of $35 million.

93. The next day, on October 18, 2001, The Wall Street Journal further reported on the nature of Defendant Fastow's financial arrangements with the Company. The article reported that "Enron had shrank 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. The article stated in pertinent part as follows:

> According to Rick Causey, Enron's chief accounting officer, these shares were contributed to a "structured finance vehicle" set up about two years ago in which Enron and LJM2 were the only investors. In exchange for the stock, the entity provided Enron with a note. The aim of the transaction was to provide hedges against fluctuating values in some of Enron's broadband telecommunications and other technology investments.

94. Defendants did not acknowledge, however, until October 17, 2001, that the $1.2 billion writedown was attributable to Enron's transactions with Fastow's investment partnerships. On October 18, 2001, The Wall Street Journal reported that in a conference call on

October 17, 2001, Defendant Lay stated that 55 million shares had been repurchased by Enron, as the Company "unwound" its participation in the transactions with the limited partnerships.

95. Defendants failed to disclose this huge reduction in assets and shareholder's equity attributable to Enron's transactions with the investment partnerships, either in the October 16, 2001 press release or on the October 16, 2001 conference call, in an apparent admission of guilt of their wrongful conduct.

96. 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."

97. 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 triple-B-minus from triple-B-plus, just a notch above junk bond or high-yield status. The prior week, Standard & Poor's Corp. lowered its credit rating on Enron to triple-B while Moody's Investors Service lowered its rating to Baa2.

98. 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. This news prompted John Olson, an analyst with Sanders Morris Harris to

state: "At the end of the day these details give support to the fear that Enron was a financial house of cards." In trading, Enron's stock closed at $8.63 on November 9, 2001.

99. 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.

100. 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.

101. Defendants' reckless conduct is further evidenced by the insider selling of certain of the Enron Defendants and other Enron Insiders. This trading was unusual and suspicious given its timing and amount as follows:

> Defendant Lay: sold 84,714 shares from Jan. 2 to Jan 31 for $68.28 to $82 each, or more than $5.78 million; sold 80,680 shares from Dec. 1 to Dec. 29 for $67.19 to $84.06 each, or more than $5.42 million. The sales total $11.2 million. Plaintiffs seek a disgorgement of Lay's ill-gotten gains made at the expense of Plaintiffs.
>
> Defendant Skilling: sold 50,000 shares from Jan. 3 to Jan. 31 for $68.94 to $80.28 each, or more than $3.45 million; sold 20,000 shares from Dec. 20 to Dec. 27 for $79.03 to $83 each, or more than $1.58 million, and 20,000 shares from Dec. 6 to Dec. 13 for $68.91 to

$77.06, or $1.38 million. The sales total $6.41 million. Plaintiffs seek a disgorgement of Skilling's ill-gotten gains.

102. At all relevant times, the market for Enron's securities was an efficient market for the following reasons, among others:

(a) Enron's stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

(b) As a regulated issuer, Enron filed periodic public reports with the SEC and the NYSE;

(c) Enron regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Enron was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

103. As a result of the foregoing, the market for Enron's securities promptly digested current information regarding Enron from all publicly available sources and reflected such information in Enron's stock price.

104. The Defendant Lou L. Pai headed the division at Enron Corporation called Enron Energy Services. Under his direction, the accounting procedures did not follow either GAAP or GAAS, the earnings were overstated and "illusory earnings" were created. The false representations of Enron Energy Services earnings were relied upon by the Plaintiffs herein,

causing them to hold their Enron stock to their detriment. The "illusory earnings" were included in the annual reports and quarterly reports filed by AALLP, its partners and associates and were relied upon to the detriment of Plaintiffs by holding their stock in Enron Corporation.

105. 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 Generally Accepted Accounting Practices ("GAAP") and Generally Accepted Auditing Standards ("GAAS").

106. 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.

## VIII. Causes of Action

### COUNT I – Fraud

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

108. 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 and/or retain Enron common stock at artificially inflated prices believing the price of their stock would increase.

109. 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.

110. 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.

111. Each of the Defendants knew or recklessly disregarded the fact that the above acts and practices, misleading statements, and omissions would adversely affect the integrity of the market in Enron stock. Had the adverse facts Defendants concealed been properly disclosed, Enron's shares would not have been retained at artificially inflated prices did.

112. As a result of the foregoing, the market price of Enron stock was artificially inflated. In ignorance of the false and misleading nature of the representations, Plaintiffs relied,

to their detriment, on the integrity of the market as to the price of Enron stock and retained their Enron stock.

113. Had Plaintiffs and the marketplace 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 retained an ownership interest in their Enron common stock and they would have divested their holdings of Enron stock before its tumultuous decline.

114. 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.

115. 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.

116. 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**

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

118. 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.

119. For instance, based on information and belief, the Defendant Fastow formed L-JM Cayman, L.P. (LJM1) and LJM2 Co. – Investment, L.P. (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.

120. 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. The Plaintiffs relied to their detriment on the financial statements prepared by AALLP by retaining their shares of Enron stock.

121. The financial activities of JEDI should have been consolidated into Enron's financial statements prepared by AALLP beginning in 1997 causing a false financial picture to

be given of Enron to its investors such as Plaintiffs. Such failure amounted to a violation of standard accounting practices by AALLP and resulted in damages to Plaintiffs.

122. The financial activities of LJM1 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 resulted in losses to Plaintiffs. Such failure by AALLP was also a violation of standard accounting practices.

123. Four SPE's 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 was to overstate both notes receivable and shareholders' equity by approximately $172,000,000.00.

124. 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 ("SPE's") which would have caused such SPE's 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 SPE's, which themselves had huge liabilities that AALLP knew did not show up on consolidated financial reports of Enron; and

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

125. 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.

126. 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 – 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.

129. Plaintiffs relied on the Defendants statements, whether written or oral, and their positions at Enron and retained Enron stock, unaware that the finances of the Enron were being inflated and no what had been represented, and 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, Fastow, Causey and Buy. 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 Jaedicke, Chan, Foy, Wakeham, Gramm, Willison, Mendelsohn and Pereira. These Directors wholly failed in their duties to oversee the auditing process and acted in concert with the Andersen Defendants in misrepresenting the true financial picture of Enron.

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 Director 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 Director 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 continue to request the public's confidence.

## IX. Spoilation of Evidence

132. Plaintiffs would show that the Defendant, AALLP, 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 according to information and belief and reports of the news media. The Court should rule that based on the deliberate destruction of evidence by this Defendant 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. Documents have also been destroyed by employees of Enron Corp. acting under the direction of their CEO, the Defendant Lay.

## X. Request For Temporary Restraining Order and Temporary Injunction

133. It has 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. Documents relevant to the Enron audits have been admittedly destroyed by the Defendant, David Duncan. This has created an emergency requiring Plaintiffs to seek a temporary restraining order without notice enjoining Defendants David Duncan, Lay, Skilling and Fastow, their agents, employees and attorneys from further destroying records or their electronic data. Further, after notice and hearing, the

Defendants, David Duncan, Lay, Skilling and Fastow should be temporarily enjoined from destroying any records without notice to this Court and a hearing at which the Plaintiffs would have the opportunity to contest any such destruction.

134. Plaintiffs would show further that Defendants David Duncan, Lay, Skilling and Fastow are all currently unemployed and should be enjoined from transferring any assets out of the country pending the conclusion of this case or from secreting any assets or transferring such assets to third parties. To allow such transactions to occur will prevent the Plaintiffs and others similarly situated from collecting on any potential judgment to the full extent of their loss. Such an injunction would preserve the status quo and prevent this suit from becoming "an exercise in futility" should Defendants David Duncan, Lay, Skilling and Fastow elect to dissipate their assets prior to trial.

135. As late as January 21, 2002, it was acknowledged by spokesmen for Defendants Lay, Fastow and Skilling that documents were being shredded at the former place of their employment at Enron Corporation. The document shredding was made public by Maureen Castaneda, a former Enron executive acting under the Defendant Lay. Plaintiffs seek to enjoin Defendants Lay, Fastow, Skilling and David Duncan from destroying any of their personal records which may relate to their attendance at board meetings, off the books partnerships or their profits from Enron stock transactions.

136. Plaintiffs request a preferential trial setting in accordance with the Texas Rules of Civil Procedure and that a low bond be set pendente lite.

137. Plaintiffs also ask this Court to set its application for TRO and request for temporary injunction for hearing on the issues in Plaintiffs' application. And after the hearing issue, a permanent injunction against Defendants David Duncan, Lay, Skilling and Fastow.

## XI. Damages

138. 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.

139. 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.

140. 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;

(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.

141. 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.

## XII. Jury Demand

142. Plaintiffs request and demand a jury trial.

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

(d) A temporary restraining order, as well as a temporary injunction pendente lite, restraining Defendants David Duncan, Lay, Skilling and Fastow, their agents, employees and attorneys from destroying more documents relating to Enron and from making distributions to their employees or third parties other than those done in the ordinary course of business, until final judgment herein. Further Plaintiffs seek to enjoin the Defendants Lay, Skilling and Fastow from destroying any personal or corporate records relating to their sales of Enron Corp shares, their knowledge of insider trades by themselves or others at Enron or its subsidiaries and any records relating to the audits and public reports done by AALLP or their attendance at board meetings.

(e) Granting such other and further relief as this Court deems to be just and proper, including a prompt trial setting as required by the Texas Rules of Civil Procedure.

Respectfully submitted,

**FLEMING & ASSOCIATES, L.L.P.**
G. Sean Jez
State Bar No. 00796829
George M. Fleming
State Bar No. 07123000
1330 Post Oak Boulevard, Suite 3030
Houston, Texas 77056-3019
Telephone (713) 621-7944
Fax: (713) 621-9638

By: _____
G. Sean Jez

**ATTORNEYS FOR PLAINTIFFS**

Received 02/07/2002 08:50 01:04 on line [7] for MM10137 Printed 02/07/2002 08:55 * Pg 2/2
Sent by: FLEMING&ASSOCIATES 7138217944; 02/07/02 9:05AM;JetFax #54; Page 2/2
Feb-07-2002 08:22am From-ROUND ROCK HOSPITAL 5123415116 T-284 P.002/002 F-592

Received: 02-08-02 08:04pm From-7138217944 To-OAKI HOTEL SOUTHPARK Page 02

## VERIFICATION

**STATE OF TEXAS** §
§
**COUNTY OF BEXAR** §

On this day, David Jose ~~February 7th 2002~~ appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said he read the PLAINTIFFS' ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION and the facts stated in it are within his personal knowledge and are true and correct or are in the public domain through media reports, news interviews, and newspaper articles.

David Jose

SWORN TO and SUBSCRIBED before me by David Jose on February 7th 2002.

Wendy Wilde
Notary Public In and For the State of Texas

WENDY WILDE

# EXHIBIT 4

United States Courts
Southern District of Texas
ENTERED

JAN 2 3 2002

Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, | } | Civil Action No. H-01-3624 (Consolidated) |
| Plaintiffs, | } | CLASS ACTION |
| vs. | } | |
| ENRON CORP., et al., | } | |
| Defendants | } | |

**ORDER PROHIBITING THE DESTRUCTION OF EVIDENCE, GRANTING LIMITED DISCOVERY, AND PROVIDING OTHER RELIEF REGARDING ARTHUR ANDERSON**

IT IS HEREBY ORDERED:

(1) Arthur Andersen shall segregate, preserve and protect all writings, recordings, and electronically stored material (FRE 1001) in its possession, custody or control concerning Enron Corporation, including but not limited to, documents, correspondence, e-mails or other communications or evidence related to audit examinations, quarterly reviews, tax-related services, or consulting engagements on behalf of enron Corporation, or any Enron-related entities. Enron-related entities shall include Special Purpose Entities and any affiliates, subsidiaries, partnerships, or joint ventures in which, to Arthur Andersen's knowledge, Enron Corporation or any Enron-related entity participated (hereinafter collectively "Enron-related entities") (all such materials and evidence collectively to be referred to as "Enron-related Materials"). Arthur Andersen shall also preserve and protect all writings, recordings and electronically stored material relating to Arthur Andersen's

159

## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing:

1. Notice of Motion;

2. Memorandum Of Law In Support Of Motion For Emergency Injunctive Relief Under The All Writs Act And Imposition Of Sanctions On Fleming & Associates; and

3. Declaration of Robert M. Stern in Support of Jeffrey K. Skilling's Motion For Emergency Injunctive Relief Under The All Writs Act And Imposition Of Sanctions On Fleming & Associates

has been served on all counsel of record via facsimile, as shown on the service list attached, this 12th day of February, 2002.

Robert M. Stern, Esq.

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

United States Courts
Southern District of Texas
FILED
FEB 1 3 2002
Michael N. Milby, Clerk

| | | |
|---|---|---|
| MARK NEWBY, *et al.*, | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| v. | § | Civil Action No. H-01-3624 |
| | § | Consolidated Lead Case |
| ENRON CORP., *et al.*, | § | |
| | § | |
| Defendants. | § | CLASS ACTION |

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. Section §1651, Defendant Jeffrey K. Skilling will move this Court, located at 515 Rusk Street, Houston, Texas 77002, at the Court's earliest convenience, for an order:

(1) Mandating that Fleming dissolve the TRO obtained in the *Jose* action;

(2) Enjoining Fleming from filing any new Enron-related actions without leave of this Court; and

(3) Granting defense counsel fees and costs reasonably incurred in the pursuit of this motion and hearing.

This motion is supported by the accompanying Memorandum of Law In Support Of Motion For Emergency Injunctive Relief Under The All Writs Act And Imposition Of Sanctions On Fleming & Associates and Declaration of Robert M. Stern with exhibits annexed thereto.

Date: February 12, 2002

Respectfully Submitted,

By: _____

Jeffrey W. Kilduff
**O'MELVENY & MYERS LLP**
1650 Tysons Boulevard
McLean, Virginia 22102
(703) 287-2400

Bruce A. Hiler
Robert M. Stern
**O'MELVENY & MYERS LLP**
555 Thirteenth Street, NW
Suite 500 West
Washington, DC 20004-1109
Tel: 202/383-5300

*Attorneys in Charge for*
*Jeffrey K. Skilling*

Of Counsel:

Ronald G. Woods
**RONALD G. WOODS, ATTORNEY AT LAW**
6300 Memorial, Suite 1000
Houston, Texas 77007
Tel: 713/862-9600