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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES LITIGATION	§	Civil Action No. H-01-3624
	§	**(Consolidated)**
	§	
	§	CLASS ACTION
This Document Relates To:	§	
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated,	§	
Plaintiffs,	§	
vs.	§	
ENRON CORP., et al.,	§	
Defendants.	§	

LEAD PLAINTIFF'S RESPONSE TO MOTION FOR CLARIFICATION OF THE COURT'S FEBRUARY 15, 2002 ORDER

Preferred Purchaser Plaintiffs move for clarification of the February 15 Order, but the Court was unambiguous: Milberg Weiss as Lead Counsel "shall henceforth direct and coordinate the prosecution of this action on behalf of all Plaintiffs' counsel."[1] And there was nothing confusing about the firm's credentials and competence to represent all the interests of the class: the Milberg Weiss submissions "stand out in the breadth and depth of its research and insight," and the firm was "fully capable of representing Lead Plaintiff and the class."[2] The Court's conclusion is precisely why the Preferred Purchaser Plaintiffs were assured "that facts and issues relevant to purchasers of all Enron securities will be addressed in the consolidated complaint."[3] Thus, there is nothing to clarify

[1]February 15, 2002 Memorandum and Order ("Mem.") at 84.

[2]*Id.* at 81.

[3]March 11, 2002 letter from Helen Hodges to Preferred Purchaser Plaintiffs' counsel, Ex. C to their motion for clarification.

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about Lead Counsel's ability to plead all relevant claims in the amended complaint, including those of the Preferred Purchaser Plaintiffs.

In rejecting objections to consolidation, the Court fashioned an order "to promote an orderly progression of this very complex litigation."[4] Moreover, in rejecting the appointment of multiple Lead Plaintiffs, the Court found "that the litigation should proceed as a unified class with a strong Lead Plaintiff, at least until the time for class certification," and that "the Regents presents itself as a single, organized coordinated organization represented by a competent and resourceful law firm," which was significant in a case where "the selection of competent, experienced and committed Lead Counsel has even greater import than in normal securities class actions."[5] Indeed, one of the reasons that the Court chose only the Regents as Lead Plaintiff was to prevent duplication of effort and to ensure the best representation of all Enron securities purchasers. To be sure, Lead Counsel has been retained by purchasers of Enron preferred stock and will represent their interests as well as the interests of all purchasers of Enron debt and equity. Just as the Court rejected the argument that each group of notes issued by way of a different registration statement and prospectus required a separate Lead Plaintiff, which would "obstruct any efficient and controlled progress,"[6] there is no reading of the Court's Order that suggests that Lead Counsel – working night and day to meet the April 1 deadline – should be required to provide the draft amended complaint to disappointed Lead-Plaintiff movants, the only result of which would be the needless expenditure of time by lawyers other than Lead Counsel.

In sum, there is nothing in the February 15 Order to clarify. The Court was very clear about why it chose a single Lead Plaintiff and why Milberg Weiss, as the Lead Counsel, was fully capable of directing all aspects of this litigation, which certainly includes the drafting of the amended complaint to protect the interests of ***all*** securities class plaintiffs. Because there is no substance to

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[4]Mem. at 28-29.

[5]*Id.* at 63, 80, 81.

[6]*Id.* at 62.

the Preferred Purchaser Plaintiffs' claim that their rights will be prejudiced unless they are allowed to review and comment on the draft amended complaint, their motion should be denied.

DATED: March 21, 2002

Respectfully submitted,

ROGER B. GREENBERG
Federal I.D. No. 3932
State Bar No. 08390000
SCHWARTZ, JUNELL, CAMPBELL
& OATHOUT, LLP
Two Houston Center
909 Fannin, Suite 2000
Houston, TX 77010
Telephone: 713/752-0017

HOEFFNER & BILEK, LLP
THOMAS E. BILEK
Federal Bar No. 9338
State Bar No. 02313525
440 Louisiana, Suite 720
Houston, TX 77002
Telephone: 713/227-7720

Attorneys in Charge

Lead Counsel for Plaintiffs:

MILBERG WEISS BERSHAD
HYNES & LERACH LLP
WILLIAM S. LERACH
DARREN J. ROBBINS
HELEN J. HODGES
BYRON S. GEORGIOU
G. PAUL HOWES
JAMES I. JACONETTE
MICHELLE M. CICCARELLI
JAMES R. HAIL
JOHN A. LOWTHER
ALEXANDRA S. BERNAY
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: 619/231-1058

MILBERG WEISS BERSHAD
HYNES & LERACH LLP
STEVEN G. SCHULMAN
SAMUEL H. RUDMAN
One Pennsylvania Plaza
New York, NY 10119-1065
Telephone: 212/594-5300

DECLARATION OF SERVICE BY MAIL AND FACSIMILE

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 401 B Street, Suite 1700, San Diego, California 92101.

2. That on March 21, 2002, declarant served the LEAD PLAINTIFF'S RESPONSE TO MOTION FOR CLARIFICATION OF THE COURT'S FEBRUARY 15, 2002 ORDER by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List. Declarant also served the parties by facsimile.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of March, 2002, at San Diego, California.

Mo Maloney

Mo Maloney

Lynn Lincoln Sarko KELLER ROHRBACK LLP 1201 Third Avenue, Suite 3200 Seattle, WA 98101-3052 206/623-1900 206/623-3384 (fax) Co-Lead Counsel for *Tittle* Plaintiffs	Roger B. Greenberg SCHWARTZ, JUNELL, CAMPBELL & OATHOUT, LLP Two Houston Center 909 Fannin, Suite 2000 Houston, TX 77010 713/752-0017 713/752-0327 (fax) Local Counsel for Securities Plaintiffs in *Newby*
William S. Lerach Helen J. Hodges Byron S. Georgiou MILBERG WEISS BERSHAD HYNES & LERACH LLP 401 B Street, Suite 1700 San Diego, CA 92101-5050 619/231-1058 619/231-7423 (fax) - and - Melvyn I. Weiss Steven G. Schulman Samuel H. Rudman MILBERG WEISS BERSHAD HYNES & LERACH LLP One Pennsylvania Plaza New York, NY 10119-0165 212/594-5300 212/868-1229 (fax) Lead Counsel for Securities Plaintiffs in *Newby*	Steve W. Berman Clyde A. Platt, Jr. HAGENS BERMAN LLP 1301 Fifth Avenue, Suite 2900 Seattle, WA 98101 206/623-7292 206/623-0594 (fax) Co-Lead Counsel for *Tittle* Plaintiffs
Thomas E. Bilek HOEFFNER & BILEK, LLP 440 Louisiana, Suite 720 Houston, TX 77002 713/227-7720 713/227-9404 (fax) Local Counsel for Securities Plaintiffs in *Newby*	Justin M. Campbell, III CAMPBELL HARRISON & DAGLEY, LLP 4000 Two Houston Center 909 Fannin Street Houston, TX 77010 713/752-2332 713/752-2330 (fax) Local Counsel for *Tittle* Plaintiffs

George M. Fleming Gregory Sean Jez FLEMING & ASSOCIATES 1330 Post Oak Blvd., Suite 3030 Houston, TX 77056-3019 713/621-7944 713/621-9638 (fax) Attorneys for Plaintiffs Jane Bullock, John Barnhill, Don Reiland, Scott Borchart, Michael Mies, Virginia Acosta, Jim Hevely, Mike Bauby, Robert Moran, Jack Turner, Marilyn Turner, Hal Moorman, Milton Tate, The Jose Plaintiffs and/or F&A, Fleming & Associates LLP, John Odam, Marian Rosen, Fred A. Rosen, Houston Federation of Teachers, on behalf of its members, Annie M. Banks, Larry D. Barnett, Robert Chazen, Clifford D. Gookin, Carl Herrin, Todd L. Johnson, David H. Lowe, Robin Saex, John Siemer, Elizabeth Siemer, Anthony G. Tobin, John E. Williams, Ruben Delgado, Irene Delgado, Preston Clayton, Harold Ahlich, Frances Ahlich, Irving Babson, Mary Bain Pearson	James F. Marshall JUDICIAL WATCH INC. 2540 Huntington Drive, Suite 201 San Marino, CA 91108-2601 626/287-4540 626/237-2003 (fax) Attorneys for Plaintiff Ralph A. Wilt, Jr.
COUNSEL FOR DEFENDANTS	
Stephen Susman * SUSMAN GODFREY L.L.P 1000 Louisiana Street, Suite 5100 Houston, TX 77002-5096 713/651-9366 713/653-7897 (fax) Attorneys for Defendant Enron	David Clarke, Jr. * Keara M. Gordon PIPER MARBURY RUDNICK & WOLFE, LLP 1200 Nineteenth Street, N.W Washington, DC 20036-2430 202/861-3900 202/223-2085 (fax) Attorneys for Defendant Kenneth Lay
Bruce Hiler * O'MELVENY & MYERS LLP 555 13th Street, N.W. Washington, DC 20004-1109 202/383-5300 202/383-5414 (fax) Attorneys for Defendant Jeffrey Skilling	Eric Nichols * BECK, REDDEN & SECREST L.L.P. One Houston Center 1221 McKinney Street, Suite 4500 Houston, TX 77010 713/951-3700 713/951-3720 (fax) Attorneys for Defendants Michael J. Kopper, Chewco Investments, LJM

Michael D. Warden * Thomas C. Green Luisa Caro SIDLEY AUSTIN BROWN & WOOD, LLP 1501 K Street, N.W. Washington, DC 20005 202/736-8000 202/736-8711 (fax) Attorneys for Defendant Stephen Goddard, Jr.	J. Clifford Gunter III * Abigail K. Sullivan BRACEWELL & PATTERSON, L.L.P. South Tower Pennzoil Place 711 Louisiana Street, Suite 2900 Houston, TX 77002-2781 713/223-2900 713/221-1212 (fax) Attorneys for Defendant James Derrick
John J. McKetta III * Helen Currie Foster GRAVES, DOUGHERTY, HEARON & MOODY, P.C. 515 Congress Avenue, Suite 2300 Austin, TX 78701 512/480-5600 512/478-1976 (fax) Attorneys for Defendants Rebecca Mark-Jusbasche	Jack C. Nickens * Paul D. Flack NICKENS, LAWLESS & FLACK, LLP 1000 Louisiana, Suite 5360 Houston, TX 77002 713/571-9191 713/571-9652 (fax) Attorneys for Defendants Kenneth Rice, Richard Buy, Richard Causey, Mark Frevert, Stanley Horton, Michael McConnel, Jeffrey McMahon, Cindy Olson, Mark Metts, Joseph Sutton, Steven Kean, Mark Koenig
Ronald G. Woods * RONALD G. WOODS, ATTORNEY AT LAW 5300 Memorial, Suite 1000 Houston, TX 77007 713/862-9600 713/864-8738 (fax) Attorneys for Defendant Jeffrey Skilling	Dr. Bonnee Linden PRO SE 1226 West Broadway, P.O. Box 114 Hewlett, NY 11557 516/295-7906 **DO NOT FAX**
Billy Shepherd * CRUSE, SCOTT, HENDERSON & ALLEN, L.L.P. 600 Travis Street, Suite 3900 Houston, TX 77002-2910 713/650-6600 713/650-1720 (fax) Attorneys for Defendant Stephen Goddard, Jr.	James E. Coleman, Jr. * CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL 200 Crescent Court, Suite 1500 Dallas, TX 75201 214/855-3000 214/855-1333 (fax) Attorneys for Defendant Kenneth Lay

Barnes H. Ellis * STOEL RIVES LLP 900 S.W. Fifth Avenue, Suite 2300 Portland, OR 97204-1268 503/224-3380 503/220-2480 (fax) Attorneys for Defendant Joseph Hirko	Kathy D. Patrick * Robin C. Gibbs GIBBS & BRUNS, L.L.P. 1100 Louisiana, Suite 5300 Houston, TX 77002 713/650-8805 713/750-0903 (fax) Attorneys for Defendants Robert Belfer, Norman Blake, Ronnie Chan, John Duncan, Joe Foy, Charles Lemaistre, Wendy Gramm, Robert Jaedicke, Charles Walker, John Wakeman, Bruce G. Wilson, John Mendelson, Paulo V. Ferraz Pereira, Frank Savage, Herbert S. Winokur, Jr., Jerome J. Meyer
William F. Martson, Jr. * Zachary W.L. Wright TONKON TORP LLP 888 S.W. Fifth Avenue, Suite 1600 Portland, OR 97204-2099 503/802-2041 503/927-3741 (fax) Attorneys for Defendant Ken Harrison	Richard B. Drubel * BOIES SCHILLER & FLEXNER LLP 26 South Main Street Hanover, NH 03755 603/643-9090 603/643-9010 (fax) Attorneys for Defendant Andrew Fastow
Charles G. King * James P. Pennington KING & PENNINGTON, L.L.P. 711 Louisiana Street, Suite 3100 Houston, TX 77002-2734 713/225-8400 713/225-8488 (fax) Attorneys for Defendants Goldman Sachs & Co., Bank of America Securities LLC, Salomon Smith Barney Inc.	H. Bruce Golden * GOLDEN & OWENS, LLP 1221 McKinney Street, Suite 3600 Houston, TX 77010 713/223-2600 713/223-5002 (fax) Attorneys for Defendant John Urquhart
Craig Smyser * SMYSER KAPLAN & VESELKA, L.L.P. 700 Louisiana Street, Suite 2300 Houston, TX 77002 713/221-2300 713/221-2320 (fax) Attorneys for Defendant Andrew Fastow	Rusty Hardin * RUSTY HARDIN & ASSOCIATES, P.C. 1201 Louisiana, Suite 3300 Houston, TX 77002 713/652-9000 713/652-9800 (fax) Attorneys for Defendant Arthur Andersen LLP, John Nieman, William Swanson, Dean Swick, Tom Elsenberg

Jeffrey W. Kilduff * O'MELVENY & MYERS LLP 1650 Tysons Blvd. McLean, VA 22102 703/287-2402 703/287-2404 (fax) Attorneys for Defendant Jeffrey Skilling	Paul Vizcarrondo, Jr. * David Gruenstein Jonathan E. Pickhardt WACHTELL, LIPTON, ROSEN & KATZ 51 West 52nd Street New York, NY 10019 212/403-1000 212/403-2000 (fax) Attorneys for Defendant Goldman Sachs & Co., Bank of America Securities LLC, Salomon Smith Barney Inc.
Barry G. Flynn * ATTORNEY AT LAW 1300 Post Oak Blvd., Suite 750 Houston, TX 77056 713/840-7474 713/840-0311 (fax) Attorneys for Defendant David Duncan	Henry F. Schuelke, III * JANIS, SCHUELKE & WECHSLER 1728 Massachusetts Ave., N.W. Washington, D.C. 20036 202/861-0600 202/223-7230 (fax) Attorneys for Defendant Ben Glisan
Sharon Katz * DAVIS POLK & WARDWELL 450 Lexington Avenue New York, NY 10017 212/450-4000 212/450-3633 (fax) Attorneys for Defendant Arthur Andersen	Robert Hayden Burns* BURNS WOOLEY & MARSEGLIA 1111 Bagby, Suit 4900 Houston, TX 77002 713/651-0422 713/651-0817 (fax) Attorneys for Defendant Kristina Mordaunt
Mark K. Glasser * KING & SPALDING 1100 Louisiana Street, Suite 4000 Houston, TX 77002-5213 713/751-3200 713/751-3290 (fax) Attorneys for Defendant LJM2 Co-Investments	Scott B. Schreiber * John C. Massaro ARNOLD & PORTER 555 Twelfth Street, N.W. Washington, D.C. 20004-1206 202/942-5000 202/942-5999 (fax) Attorneys for Defendant Thomas Bauer
John K. Villa * Mary G. Clark George A. Borden WILLIAMS & CONNOLLY LLP 725 Twelfth Street, N.W. Washington, D.C. 20005 202/434-5000 202/434-5029 (fax) Attorneys for Defendants Vinson & Elkins LLP, Ronald T. Astin, Joseph Dilg, Michael P. Finch, Max Hendrick, III	Gary A. Orseck * Lawrence S. Robbins ROBBINS, RUSSELL, ENGLERT ORSECK & UNTEREINER, L.L.P. 1801 K. Street, N.W., Suite 411 Washington, D.C. 20006 202/775-4500 202-775-4510 (fax) Attorneys for Defendant Michael Lowther

Eliot Lauer * Peter Fleming CURTIS, MALLET-PREVOST, COLT & MOSLE, L.L.P. 101 Park Avenue New York, NY 10178-0061 212/696-6000 212/697-1559 (fax) Attorneys for Defendant Michael C. Odom	Mark C. Hansen * KELLOGG, HUBER HANSEN, TODD & EVANS, P.L.LC. 1615 M Street, N.W., Suite 400 Washington, D.C. 20036 202/326-7900 202/326-7999 (fax) Attorneys for Defendant Nancy Temple
Charles E. Andrews 9958 S. Hamilton Chicago, IL 60643	Michael L. Bennett 6514 Belmont Street Houston, TX 77005
John E. Stewart 1560 N. Sandburg Terrace #2702 Chicago, IL 60610	Joseph F. Berardino 4 Avon Lane Greenwich, CT 06830
Dorsey L. Baskin, Jr. 12 Hubbell Court Barrington Hills, IL 60010	Gary B. Goolsby 1602 Kings Castle Drive Katy, TX 77450
Robert Kutsenda 195 N. Harbor Drive #2302 Chicago, IL 60601	Steve M. Samek 502 Robinwood Lane Wheaton, IL 60187
Roger D. Willard 3723 Maroneal Street Houston, TX 77025	William E. Swanson 2701 Cason Street Houston, TX 77005
Greg J. Jonas 161 S. Chicago Avenue #48B Chicago, IL 60611	Andersen Worldwide 33 W. Monroe St. Chicago, IL 60603
Rex R. Rogers Enron Corporation 1400 Smith St. Houston, TX 77002	Debra A. Cash 2906 Forest Garden Drive, Unit D Humble, TX 77345

James V. Pianelli * Timothy D. Riley MCGHEE & PIANELLI, L.L.P. 1225 N. Loop West, Suite 810 Houston TX 77008 713/864-4000 713/868-9393 (fax) Daniel W. Krasner * Jeffrey G. Smith WOLF HALDENSTEIN ADLER FREEMAN & HERZ 270 Madison Avenue New York, NY 10016 212/545-4600 212/545-4653 (fax) Counsel for Preferred Purchasers	

* denotes service via facsimile and U.S. mail