

IN THE UNITED STATES DISTRICT COURT United States Courts
FOR THE SOUTHERN DISTRICT OF TEXAS Southern District of Texas
HOUSTON DIVISION FILED

MAY 08 2002 LF

MARK NEWBY, *et al.*, Individually and §
On Behalf Of All Others Similarly §
Situated, §

Michael N. Milby, Clerk

Plaintiffs, §
§
v. §
§
ENRON CORP., *et al.*, §
§
Defendants. §

CIVIL ACTION NO. H-01-3624
(Consolidated)

DEFENDANT STANLEY C. HORTON'S MOTION TO DISMISS

Plaintiffs have failed to plead a securities fraud action against Stanley C. Horton.¹ The deficiencies in the few allegations against Mr. Horton are obvious under the standards established by this Court and others under Rule 9(b) of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act (the “PSLRA”).

Introductory Summary

The Complaint contains no allegations whatsoever concerning any statements made by Mr. Horton, nor are there any allegations whatsoever concerning the business unit that Mr. Horton ran (Enron Transportation Services, which included Enron’s regulated pipelines). Plaintiffs do not allege that Mr. Horton was involved in the preparation of Enron’s financial reports or its accounting. Except for boilerplate (such as listings of defendants), Mr. Horton is mentioned only eight times in the 500 pages of the Complaint. Those eight references occur in three contexts: (a) Mr. Horton’s

¹Mr. Horton joins in and incorporates by reference the arguments in both the Defendants’ Joint Brief Relating to Enron’s Disclosures and the Joint Brief of Officer Defendants.

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position at Enron; (b) bonus payments he received; and (c) his sales or transfers of Enron stock. The few isolated allegations concerning Mr. Horton do not state a claim for securities fraud against him.

Allegations of scienter as to Mr. Horton are altogether lacking. Plaintiffs do not allege (1) what Mr. Horton specifically knew at any point in time, (2) what material undisclosed information Mr. Horton may have known, (3) when or how Mr. Horton became aware of any such undisclosed material information, or (4) any facts giving rise to an inference that Mr. Horton acted with the required state of mind. Plaintiffs' allegations of insider trading are also inadequate. Plaintiffs have failed to identify what material inside information Mr. Horton was aware of when he traded or anything suspicious or unusual about Mr. Horton's sales of Enron stock. Finally, they have not alleged any particularized facts as to how Mr. Horton participated in any scheme to defraud.

In short, Plaintiffs have not met the particularity requirement, the basis requirement, or the strong inference requirement under the PSLRA or Rule 9(b) for pleading an action as to Mr. Horton.

I. THE APPLICABLE PLEADING REQUIREMENTS

The standards applicable to pleading this securities fraud case against Mr. Horton are set forth in the Joint Brief of Officer Defendants, which is incorporated herein by reference. Among the pertinent requirements, as stated by this Court, is "Plaintiffs must allege what actions each Defendant took in furtherance of the alleged scheme and specifically plead what he learned, when he learned it, and how Plaintiffs know what he learned." *In re Securities Litigation BMC Software, Inc.*, 183 F. Supp. 2d 860, 886 (S.D. Tex. 2001). As regards alleged misstatements, Plaintiffs must "specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent." *Id.* at 865 n.14 (quoting *Williams v.*

WMX Techs., Inc., 112 F.3d 175, 177 (5th Cir.), *cert. denied*, 522 U.S. 966 (1997)). It is therefore necessary to examine the “specific” allegations that have been made against Mr. Horton.

II. THE ALLEGATIONS SPECIFICALLY REFERENCING HORTON DO NOT MEET RULE 9(b) OR PSLRA PLEADING REQUIREMENTS.

“Specific” allegations about Mr. Horton in the Complaint fall into three categories: (a) his position at Enron; (b) bonus payments he received; and (c) his stock sales. None of the allegations against Mr. Horton – either individually or in the aggregate – satisfy pleading requirements under Rule 9(b) and the PSLRA.

A. Position

In paragraph 83(g), Plaintiffs assert that Mr. Horton was Chairman and Chief Executive Officer of Enron Transportation Services. On pages 92-94, plaintiffs also identify him as Chairman and CEO of Enron Gas Pipeline Group for the years 1997 to 1999, as well as Chairman and CEO of Enron Transportation Services in 2000, and they assert that in those positions he was on the Enron Management Committee or Executive Committee during those years.² (Significantly, those are the only places in the Consolidated Complaint that Enron Transportation Services or the Enron Gas Pipeline Group are even mentioned; in other words, none of the wrongdoing alleged by plaintiffs occurred in the business unit reporting to Mr. Horton.) These allegations concerning Mr. Horton’s executive positions are not sufficient to state a claim against him for securities fraud. *See* Section II.A, Joint Brief of Officer Defendants.

² While the Complaint alleges that “virtually all of Enron’s top insiders have been kicked out of the Company” (¶ 4), that statement does not apply to Mr. Horton, who remains in charge of Enron’s pipeline operations.

B. Bonuses

Plaintiffs allege that Mr. Horton “received bonus payments of over \$3.1 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron’s false financial reports” (Complaint ¶ 83(g).) There are no allegations, however, that Mr. Horton had anything to do with Enron’s financial reports. Moreover, they do not allege any irregularites or improprieties with regard to the financial reporting or accounting activities of Transportation Services or the Pipeline Group for which Mr. Horton was responsible. The single cursory allegation concerning Mr. Horton’s receipt of bonus payments is insufficient to raise a strong inference of scienter or otherwise state a claim of securities fraud against him. *See* Section II.B, Joint Brief of Officer Defendants.

C. Plaintiffs Do Not Allege Actionable “Insider Trading” by Horton.

In Paragraphs 83(g), 84 and 401, Plaintiffs cite trading history of Mr. Horton in an effort to assert an insider trading claim against him. As they do with all “Enron Defendants,” Plaintiffs attempt to support their “insider trading” claim with the conclusion of their “expert” (Scott D. Hakala) that it was statistically likely that Mr. Horton’s stock trades were made with “the possession and use of material adverse non-public information.” (Complaint ¶ 415.) This “expert analysis” is clearly statistically lacking and does not take into account other material information such as portfolio concentration, vesting dates, and other material individualized trading information. The Hakala Declaration should not even be considered by this Court. *See* Joint Brief of Officer Defendants, Section II.C.2. Plaintiffs’ effort to allege insider trading against Mr. Horton fails, and the insider trading claims against him should be dismissed.

Plaintiffs have altogether failed to plead anything “unusual” or “suspicious” about Mr. Horton’s stock sales, or otherwise meet the requirements of Rule 9(b) and the PSLRA for pleading

illegal insider trading, as reviewed in Section II.C.1, Joint Brief of Officer Defendants. None of the insider trading paragraphs identifies any specific material, non-public information known to Mr. Horton when he made the stock sales about which Plaintiffs complain. Plaintiffs only generally allege that Mr. Horton was in possession of some unspecified “adverse undisclosed information.” (Complaint ¶ 83(g).) They do not plead that Mr. Horton was aware of any specific non-disclosure; nor do Plaintiffs allege that he was aware of any public misstatement. It is well settled that simply being a member of management — *i.e.*, in a position to know inside information — does not equate to scienter or knowledge of false statements. *Nathenson v. Zonagen, Inc.*, 267 F.3d 400, 412 (5th Cir. 2001) (allegations of motive and opportunity alone are almost always insufficient to establish scienter). This is the kind of generalized, non-specific allegations the PSLRA outlawed. Paragraph 83(g) is further flawed by the absence of any allegation that the undisclosed information (itself unidentified) was material. The Complaint is devoid of (1) any specific allegations concerning nonpublic information (2) of which Mr. Horton was aware or (3) how he allegedly knew the undisclosed information was material or nonpublic. See *In re Securities Litigation BMC Software*, 183 F. Supp. 2d at 916.

Plaintiffs also make no specific allegations regarding how Mr. Horton’s sales are improper, unusual, or suspicious. The closest Plaintiffs come is to allege that “[t]hese defendants’ illegal insider selling escalated massively as Enron’s stock moved to more inflated levels during the Class Period and also when internally they knew the scheme was unraveling.” This is yet another instance of group pleading, now prohibited by the PSLRA, and is not obviously applicable to Mr. Horton’s alleged sales.

Beyond that defect, Plaintiffs' asserted insider trading claim against Mr. Horton fails — and must be dismissed — for the following reasons. First, Plaintiffs do not — and cannot — allege a “pattern” of trading by Mr. Horton. He had sales transactions in 14 separate months, from October 1998 to June 2001. He sold from \$26 a share to \$85 a share. The vast majority of his sales, according to Plaintiffs' own figures, came at prices below the market peak. Sixty percent of the shares he sold were sold, again using Plaintiffs' figures, by the end of March 2000 — well before the market peak, before most of the alleged wrongdoing, and twenty months before the end of the Class Period. Further, Plaintiffs apparently ignore sales history outside the Class Period against which the relevant sales could be measured. While the chart at paragraph 83(g) reflects sales by Mr. Horton outside the Class Period in the first quarter of 1998, the chart ignores the sales in September 1998 — again before the Class Period — reflected on the Form 4 appended as Exhibit A, as well as the sales in various months in 1996 reflected on his Form 4s, appended as Exhibit B. *See In re Securities Litigation BMC Software, Inc.*, 183 F. Supp. 2d at 901-02 (citing *In re Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 987 (9th Cir.), *reh'g and reh'g en banc denied*, 195 F.3d 521 (9th Cir. 1999), for proposition that “stock sales cannot be viewed as ‘unusual’ where defendant ‘ha[s] no significant trading history for purposes of comparison.’”)

Second, Mr. Horton's insider trades or “pattern” (such as it is) are inconsistent with Plaintiffs' allegations concerning the “pattern” of other Defendants who, according to the Complaint, were also “aware” of some undisclosed information. Indeed, according to the Complaint, one or more (but not all) of the Defendants collectively sold in almost every month of the Class Period. Plaintiffs then claim that each Defendant's sales “pattern” — although different from the others — somehow supports the same statistically certain inference. If, however, there truly is a specific

“pattern” that demonstrates the use of inside information and other Defendants’ sales match or establish that pattern, then Mr. Horton’s sales cannot possibly match that purported pattern. For example, it is patent nonsense for Plaintiffs to allege that Mr. Horton’s “pattern” matches the “pattern” of Mr. Lay’s trades (which number in the hundreds) or that of Mr. McMahon’s single trade, and that all are recognized patterns of trading on inside information. Any trading “matches” this “pattern.” Indeed, according to Plaintiffs, every sale by every insider in the three-year Class Period was suspect. Like all “one size fits all” garments, Plaintiffs’ droops here and pinches there.

Third, Plaintiffs’ allegation that Mr. Horton sold 75 percent of his holdings during the three-year Class Period establishes nothing where, as here, he cannot be charged with any alleged misstatements. See *In re Scholastic Corp. Sec. Litig.*, 2000 WL 91939, at *13 (S.D.N.Y. Jan. 27, 2000) (stock sales of eighty percent of holdings by executive that did not make any alleged misstatements did not establish scienter); *Head v. NetManage, Inc.*, 1998 WL 917794, at *5 (N.D. Cal. Dec. 30, 1998) (executives’ sales of 76 percent and 94 percent held “insufficient to create the requisite strong inference of scienter in light of the lack of any specific allegations as to their fraudulent conduct, including the lack of any allegation that they personally made any of the fraudulent statements.”)

Further, analysis of the alleged percentages of stock sales by Mr. Horton must be placed in the context of the extraordinarily long class period selected by Plaintiffs – 37 months. See Joint Brief of Officer Defendants, Section II.C.1.a. It is obvious that more sales would occur in a three-year class period than in a shorter, more reasonable timeframe. A number of courts have found nothing suspicious or alarming in sales of stock by insiders in percentages that, if adjusted to reflect a three-year “window,” would dwarf Mr. Horton’s sales. See, e.g., *Silicon Graphics*, 183 F.3d at 985-86,

987 (sales by some individuals ranging up to 75 percent was insufficient to infer scienter even in a fifteen week class period); *Ronconi v. Larkin*, 253 F.3d 423, 435 (9th Cir. 2001) (sale of 17 percent of holdings in a seven-month period clearly “not suspicious in amount.”); *In re Waste Management, Inc. Securities Litigation*, C.A. No. H-99-2183, at *16, 131 (S.D. Tex. Aug. 16, 2001) (no basis for strong inference of scienter when individuals sold as much as 39.6 percent in a five-month class period).

Finally, the timing of Mr. Horton’s sales are neither suspicious nor unusual. His sales of stock, at various dates after the options vested, are exactly the type of activity that one would expect from a rational investor seeking to diversify his portfolio.³ Contrarily, to establish “suspicious timing,” Plaintiffs must show that Mr. Horton’s sales were “at times calculated to maximize personal benefit” to him. *In re Apple Computer Litigation*, 886 F.2d 1109, 1117 (9th Cir. 1989). An example would be the sale of a significant percentage of his shares of stock “immediately before a negative earnings announcement.” See, e.g., *Wenger v. Lumisys*, 2 F. Supp. 2d 1231, 1251 (N.D. Cal. 1998). Sales made before the market peaks, after its decline, or at other times not maximizing seller’s proceeds, give rise to no inference of scienter. See *Nathenson*, 267 F.3d at 420-21 (sales made when stock well below “class period high” were “so inauspiciously timed” they “[d]id not meet this test.”); *Greebel v. FTP Software*, 194 F.3d 185, 206 (1st Cir. 1999) (“timing does not appear very suspicious” where stock not “sold at the high points of the stock price.”) “When insiders miss the boat [by selling well below market peak], their sales do not support an inference” of scienter.

³Under Plaintiffs’ model, however, an Officer Defendant who sold everything as it vested (a not irrational diversification strategy), or simply sold enough to cover taxes on the exercise of options, would automatically be assumed to have traded on illegal inside information, *even if he had no inside information*.

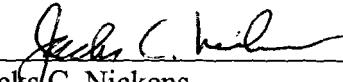
Ronconi, 253 F.3d at 435. Plaintiffs' own figures show that the vast majority of Mr. Horton's sales were at prices well below the market peak. Indeed, his single largest sale occurred on October 19, 1998 – the very first day of Plaintiffs' Class Period – where he sold 72,000 shares at \$26.376 a share. His sales were made typically at prices well below the market peak, and on dates both before and after that peak occurred.

In sum, Plaintiffs have not pleaded adequate specific facts to support a claim for insider sales against Mr. Horton.

III. PLAINTIFFS' SECTION 20(a) AND 20A CLAIMS AGAINST MR. HORTON SHOULD BE DISMISSED.

For the reasons set forth in Section III of the Joint Brief of Officer Defendants, Plaintiffs have failed to plead an actionable claim against Mr. Horton under either Sections 20(a) or 20A of the Exchange Act.

Respectfully submitted,



Jack C. Nickens
State Bar No. 15013800
1000 Louisiana Street, Suite 5360
Houston, Texas 77002
(713) 571-9191
(713) 571-9652 (Fax)

ATTORNEY-IN-CHARGE FOR DEFENDANT
STANLEY C. HORTON

OF COUNSEL:

Paul D. Flack
State Bar No. 00786930
NICKENS, LAWLESS & FLACK, L.L.P.
1000 Louisiana Street, Suite 5360
Houston, Texas 77002
(713) 571-9191
(713) 571-9652 (Fax)

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was forwarded to all counsel listed on the attached Exhibit A Service List by e-mail or facsimile on this 8th day of May, 2002.



Paul D. Flack

FORM 4

Check this box if no longer subject to Section 16, Form 4 or Form 5 obligations may continue. See Instruction 1(b).
(Print or Type Responses)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(c) of the Investment Company Act of 1940

1. Name and Address of Reporting Person*

HORTON	STANLEY C	2. Issuer Name and Ticker or Trading Symbol ENRON CORP. (ENE)
(Last)	(First)	3. IRS or Social Security Number of Reporting Person (Voluntary) 267-88-8151
1400 SMITH STREET	(Street)	4. Statement for Month/Year September 1998
HOUSTON, TEXAS 77002-7369	(City)	5. If Amendment, Date of Original Month/Year
	(State)	6. Owner-ship Form: Direct (D) or Indirect (I) (Instr. 4)
	(Zip)	7. Individual or Joint/Group Filing (Check Applicable) <input checked="" type="checkbox"/> Form filed by One Reporting Person <input type="checkbox"/> Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Trans-action Date (Month/ Day/ Year)	3. Trans-action Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Owner- ship Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of In- direct Bene- ficial Owner- ship (Instr. 4)
Common Stock	09/24/98	X	22,450.000 A	\$33,5000		3,691,979 I by ESOP
Common Stock	09/24/98	S	22,450.000 D	\$53,6359		D
Common Stock	09/24/98	X	12,000.000 A	\$29,5000		D
Common Stock	09/24/98	S	12,000.000 D	\$53,6359	\$2,462,000	D
Common Stock					32,108	I by 401(k) Plan (1)
Common Stock					706,438	I (2) by spouse
Common Stock					1,287,747	I by spouse 1a 401(k) (2)
Common Stock					1,077,736	I by spouse 1a ESOP (2)

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.
* If the form filed by more than one reporting person, see Instruction 4(b)(v).

(Over)
SBC 1474 (7-96)

30630220

FORM 4 (continued)

Table II — Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conver- sion or Exercise Price of Deriv- ative Security	3. Trans- action Date (Month/ Day/ Year)	4. Transac- tion Code (Instr. 8)	5. Number of Deriv- ative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exer- cisable and Ex- piration Date (Month/Day/ Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)	8. Price of Deriv- ative Secur- ity (Instr. 5)	9. Number of Deriv- ative Secur- ities Benefi- cially Owned at End of Month (Instr. 4)	10. Owner- ship Form of De- rivative Secu- rities Direct (D) or Indi- rect (I) (Instr. 4)	11. Na- ture of In- direct Bene- ficial Own- ership (Instr. 4)
					Date Exer- cisable	Title	Amount or Number of Shares			
			Code V	(A)	(D)					
Employee Non-Qualified Stock Option (right to buy)	\$13,500.00	09/24/98	X			22,000.000	01/25/95 p1/23/00 Common Stock	12,000.000	0.000	D
Employee Non-Qualified Stock Option (right to buy)	\$33,500.00	09/24/98	X			22,850.000	02/07/94 p2/07/94 Common Stock	22,850.000	0.000	P

Explanation of Responses:

- (1) 401(k) plan uses unit accounting system which assumes that the Baron Corp. stock fund is fully invested in shares of Baron Corp. Common Stock (notwithstanding that the fund may hold some uninvested cash or shares of Baron Corp. Cumulative Second Preferred Convertible Stock of which each share is entitled to a distribution of the entire amount in shares of Baron Corp. Common Stock).
- (2) The reporting person acquired beneficial ownership of these shares upon his marriage to their owner.

* Intentional misstatements or omissions of facts constitute Federal Criminal Violations.
See 18 U.S.C. 1001 and 15 U.S.C. 78ff(d).
Note: File three copies of this Form, one of which must be manually signed.

If space provided is insufficient, See Instruction 6 for procedure.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays the currently valid OMB Number.

Sgt. C. Hanks
Signature of Reporting Person

10-5-95
Date

FORM 4U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Check this box if no longer
subject to Section 16. Form 4
or Form 5 obligations may
continue. See Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

1. Name and Address of Reporting Person		2. Issuer Name and Ticker or Trading Symbol		6. Relationship of Reporting Person to Issuer (Check all applicable)	
HORTON STANLEY C (Last) (First) (Middle)		ENRON CORP. (ENE) 29356 3. IRS or Social Security Number of Reporting Person (Voluntary) 267-88-8151 4. Statement for Month/Year MAY 1996 5. If Amendment, Date of Original (Month/Year) CO-CHAIRMAN AND CEO, ENRON OPERATIONS CORP. DS - 25/11/96		Director <input type="checkbox"/> Officer <input checked="" type="checkbox"/> Other (give title below) (specify below)	
1400 SMITH STREET (Street) HOUSTON, TEXAS 77002-7369 (City) (State) (Zip)					
Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned					
1. Title of Security (Instr. 3)	2. Trans- action Date (Month/ Day/ Year)	3. Trans- action Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Owner- ship Form: Direct (D) or Indirect (I) (Instr. 4)
Code	V	Amount	(A) or (D)	Price	
Common Stock 10					
05/14/96	X	6,670,000	A	\$15,5000	D
05/14/96	S	6,670,000	D	\$40,6250	D
				28,764,000	

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly. (Print or Type Responses)

(Over)

FORM 4

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
SERIAL RECD S.E.C.

Washington, D.C. 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

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Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

Table I -- Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Trans- action Date (Month/ Day/ Year)	3. Trans- action Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Owner- ship Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of In- direct Bene- ficial Owner- ship (Instr. 4)
			Code	V	Amount (A) or (D)	Price		
Common Stock	10/17/96	X					7,304.827	I
Common Stock	10/17/96	S						By ESOP
Common Stock	10/17/96	M						
Common Stock	10/17/96	B						

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly if the form filed by more than one reporting person. See Instruction 4(b)(v).

(Over)
SEC 1474 (7-96)

SERVICE LIST

<p>Lead Counsel for <i>Newby</i> Plaintiffs:</p> <p>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)</p> <p>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)</p> <p>Service by e-mail: enron@milberg.com</p>	<p>Local Counsel for <i>Newby</i> Plaintiffs:</p> <p>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)</p> <p>Service by e-mail: rgreenberg@schwartz-junell.com</p>
<p>Co-Lead Counsel for <i>Tittle</i> Plaintiffs:</p> <p>Lynn Lincoln Sarko Keller, Rohrback, LLP 1201 Third Avenue, Suite 3200 Seattle, WA 98101-3052 (206) 623-1900 (206) 623-3384 (fax)</p> <p>Service by e-mail: lsarko@kellerrohrback.com</p>	<p>Co-Lead Counsel for <i>Tittle</i> Plaintiffs:</p> <p>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)</p> <p>Service by e-mail: steve@hagens-berman.com</p>

<p>Local Counsel for <i>Newby</i> Plaintiffs:</p> <p>Thomas E. Bilek Hoeffner & Bilek LLP 440 Louisiana, Suite 720 Houston, TX 77002 (713) 227-7720 (713) 227-9404 (fax)</p> <p>Service by e-mail: tbilek722@aol.com</p>	<p>Liaison Counsel for <i>Tittle</i> Plaintiffs:</p> <p>Robin Harrison 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)</p> <p>Service by e-mail: rharrison@chd-law.com</p>
<p>Attorneys for Defendant Jeffrey Skilling:</p> <p>Robert M. Stern O'Melveny & Myers, LLP 555 13th Street, N.W., Suite 500W Washington, DC 20004-1109 (202) 383-5300 (202) 383-5414 (fax)</p> <p>Service by e-mail: rstern@omm.com</p>	<p>Attorneys for Defendant Enron:</p> <p>Kenneth S. Marks Stephen D. Susman Karen A. Oshman Susman Godfrey L.L.P. 1000 Louisiana, Suite 5100 Houston, TX 77002-5096 (713) 651-9366 (713) 654-6666 (fax)</p> <p>Service by e-mail: kmarks@susmangodfrey.com</p>
<p>Attorneys for Defendants Michael J. Kopper, Chewco Investments, LP, LJM Cayman, LP:</p> <p>Eric Nichols Beck, Redden & Secrest, L.L.P. One Houston Center 1221 McKinney, Suite 4500 Houston, TX 77010 (713) 951-3700 (713) 951-3720 (fax)</p> <p>Service by e-mail: enichols@brsfir.com</p>	<p>Attorneys for Defendants The Northern Trust Company, Northern Trust Retirement Consulting LLC:</p> <p>Linda L. Allison Fulbright & Jaworski, LLP 1301 McKinney, Suite 5100 Houston, TX 77010 (713) 651-5628 (713) 651-5246 (fax)</p> <p>Service by e-mail: laddison@fulbright.com</p>

<p>Attorneys for Defendants David Stephen Goddard, Jr., Debra A. Cash, Michael M. Lowther:</p> <p>Billy Shepherd Cruse, Scott, Henderson & Allen, L.L.P. 600 Travis, Suite 3900 Houston, TX 77002-2910 (713) 650-6600 (713) 650-1720 (fax)</p> <p>Service by e-mail: bshepherd@crusescott.com</p>	<p>Attorneys for Defendants Philip J. Bazelides, Mary K. Joyce, James S. Prentice:</p> <p>Anthony C. Epstein Steptoe & Johnson, LLP 1330 Connecticut Ave., N.W. Washington, DC 20036 (202) 429-3000 (202) 429-3902 (fax)</p> <p>Service by e-mail: aepstein@steptoe.com</p>
<p>Attorneys for Defendant James V. Derrick, Jr.:</p> <p>Abigail K. Sullivan Bracewell & Patterson, L.L.P. South Tower Pennzoil Place 711 Louisiana, Suite 2900 Houston, TX 77002-2781 (713) 223-2900 (713) 221-1212 (fax)</p> <p>Service by e-mail: asullivan@bracepatt.com</p>	<p>Attorneys for Defendant Rebecca Mark-Jusbasche:</p> <p>John J. McKetta III Graves, Dougherty, Hearon & Moody, P.C. 515 Congress Avenue, Suite 2300 P.O. Box 98 78767 Austin, TX 78701 (512) 480-5600 (512) 478-1976 (fax)</p> <p>Service by e-mail: mmcketta@gdhm.com</p>
<p>Attorneys for Defendant Kenneth Lay:</p> <p>James E. Coleman, Jr. Diane Sumoski Carrington, Coleman, Sloman & Blumenthal, LLP 200 Crescent Court, Suite 1500 Dallas, TX 75201 (214) 855-3000 (214) 855-1333 (fax)</p> <p>Service by e-mail: deakin@ccsb.com</p>	<p>Attorneys for Defendants Bank of America Corp., Banc of America Securities LLC:</p> <p>Charles G. King King & Pennington, L.L.P. 711 Louisiana Street, Suite 3100 Houston, TX 77002-2734 (713) 225-8400 (713) 225-8488 (fax)</p> <p>Service by e-mail: cking@kandplaw.com</p>

<p>Attorneys for Defendants Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Joe H. Foy, Charles A. LeMaistre, Wendy L. Gramm, Robert K. Jaedicke, Charles E. Walker, John Wakeham, John Mendelsohn, Paulo V. Ferraz Pereira, Frank Savage, Herbert S. Winokur, Jr., Jerome J. Meyer:</p> <p>Jeremy L. Doyle Robin C. Gibbs rgibbs@gibbs-bruns.com</p> <p>Kathy D. Patrick kpatrick@gibbs-bruns.com</p> <p>Gibbs & Bruns, L.L.P. 1100 Louisiana, Suite 5300 Houston, TX 77002 (713) 650-8805 (713) 750-0903 (fax) jdoyle@gibbs-bruns.com</p>	<p>Attorneys for Defendant John A. Urquhart:</p> <p>H. Bruce Golden Golden & Owens, L.L.P. 1221 McKinney, Suite 3600 Houston, TX 77010 (713) 223-2600 (713) 223-5002 (fax)</p> <p>Service by e-mail: golden@goldenowens.com</p>
<p>Pro se:</p> <p>Dr. Bonnee Linden Linden Collins Associates 1226 West Broadway P.O. Box 114 Hewlett, NY 11557 (516) 295-7906</p> <p>Service by Federal Express</p>	<p>Attorneys for Defendant Ken L. Harrison:</p> <p>William F. Martson, Jr. Tonkon Torp, LLP 888 S.W. Fifth Ave., Suite 1600 Portland, OR 97204-2099 (503) 802-2005 (503) 972-7407 (fax)</p> <p>Service by e-mail: enronservice@tonkon.com</p>
<p>Carolyn S. Schwartz United States Trustee, Region 2 33 Whitehall St., 21st Floor New York, NY 10004 (212) 510-0500 (212) 668-2255 (fax)</p> <p>Service by fax</p>	<p>Attorneys for Defendant Andrew Fastow:</p> <p>Craig Smyser Smyser Kaplan & Veselka, L.L.P. 700 Louisiana, Suite 2300 Houston, TX 77002 (713) 221-2300 (713) 221-2320 (fax)</p> <p>Service by e-mail: enronservice@skv.com</p>

<p>Attorneys for Defendants Arthur Anderson LLP, C.E. Andrews, Dorsey L. Baskin, Michael L. Bennett, Joseph F. Berardino, Donald Dreyfus, James A. Friedlieb, Gary B. Goolsby, Gregory W. Hale, Gregory J. Jonas, Robert G. Kutsenda, Benjamin S. Neuhausen, Richard R. Petersen, Danny D. Rudloff, Steve M. Samek, John E. Sorrells, John E. Stewart, and William E. Swanson</p> <p>Russell (Rusty) Hardin, Jr. Andrew Ramzel Rusty Hardin & Associates, P.C. 1201 Louisiana, Suite 3300 Houston, TX 77002 (713) 652-9000 (713) 652-9800 (fax)</p> <p>Service by e-mail: aramzel@rustyhardin.com</p>	<p>Attorneys for Defendants Arthur Andersen LLP, Dorsey L. Baskin, Michael L. Bennett, Joseph F. Berardino, Donald Dreyfus, James A. Friedlieb, Gary B. Goolsby, Gregory W. Hale, Gregory J. Jonas, Robert G. Kutsenda, Benjamin S. Neuhausen, Richard R. Petersen, Danny D. Rudloff, Steve M. Samek, John E. Sorrells, John E. Stewart, and William E. Swanson</p> <p>Sharon Katz sharon.katz@dpw.com Daniel F. Kolb Michael P. Carroll Timothy P. Harkness Davis, Polk & Wardwell 450 Lexington Avenue New York, NY 10017 (212) 450-4000 (212) 450-5649 (fax) (212) 450-3633 (fax for service of papers)</p> <p>Service by e-mail: andersen.courtpapers@dpw.com</p>
<p>Attorneys for Defendants Banc of America Securities LLC and Salomon Smith Barney Inc.:</p> <p>Paul Vizcarrondo, Jr. Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 (212) 403-1000 (212) 403-2000 (fax)</p> <p>Service by e-mail: pvizcarrondo@wlrk.com</p>	<p>Attorneys for Defendant Andersen Worldwide, S.C.:</p> <p>William Edward Matthews Gardere Wynne Sewell LLP 1000 Louisiana, Suite 3400 Houston, TX 77002 (713) 276-5500 (713) 276-5555 (fax)</p> <p>Service by fax</p>

<p>Attorneys for Defendants Vinson & Elkins, L.L.P., Ronald T. Astin, Joseph Dilg, Michael P. Finch, Max Hendrick, III:</p> <p>John K. Villa Williams & Connolly, LLP 725 Twelfth Street, N.W. Washington, DC 20005 (202) 434-5000 (202) 434-5029 (fax)</p> <p>Service by e-mail: jvilla@wc.com</p>	<p>Attorneys for Defendant Citigroup, Inc. and Salomon Smith Barney, Inc.:</p> <p>Jacalyn D. Scott Wilshire Scott & Dyer P.C. 3000 One Houston Center 1221 McKinney Houston, TX 77010 (713) 651-1221 (713) 651-0020 (fax)</p> <p>Service by e-mail: jscott@wsd-law.com</p>
<p>Attorneys for Defendant David B. Duncan:</p> <p>Barry G. Flynn Law Offices of Barry G. Flynn, PC 1300 Post Oak Blvd., Suite 750 Houston, TX 77056 (713) 840-7474 (713) 840-0311 (fax)</p> <p>Service by e-mail: bgflaw@mywavenet.com</p>	<p>Attorneys for Defendant LJM2 Coinvestments, LP:</p> <p>Mark A. Glasser Reginald R. Smith King & Spalding 1100 Louisiana, Suite 4000 Houston, TX 77002-5213 (713) 751-3200 (713) 751-3290 (fax)</p> <p>Service by e-mail: mkglasser@kslaw.com</p>
<p>Attorneys for Defendant Ben F. Glisan, Jr.:</p> <p>Tom P. Allen McDaniel & Allen, APC 1001 McKinney Street, 21st Floor Houston, TX 77002 (713) 227-5001 (713) 227-8750 (fax)</p> <p>Service by e-mail: tallen@mcdanielallen.com</p>	<p>Attorneys for Defendant Kristina Mordaunt:</p> <p>Robert Hayden Burns Burns Wooley & Marseglia 1415 Louisiana, Suite 3300 Houston, TX 77002 (713) 651-0422 (713) 651-0817 (fax)</p> <p>Service by e-mail: hburns@bwmzlaw.com</p>

<p>Attorneys for Defendant Michael C. Odom:</p> <p>Bernard V. Preziosi, Jr. Curtis, Mallet-Prevost, Colt & Mosle, L.L.P. 101 Park Avenue New York, NY 10178-0061 (212) 696-6000 (212) 697-1559 (fax)</p> <p>Service by e-mail: bpreziosi@cm-p.com</p>	<p>Attorneys for Defendant Kirkland & Ellis:</p> <p>Kevin S. Allred Kelly M. Klaus Munger, Tolles & Olson 355 South Grand Avenue, 35th Floor Los Angeles, CA 90071 (213) 683-9100 (213) 687-3702 (fax)</p> <p>Service by e-mail: allredks@mto.com</p>
<p>Attorneys for Defendant D. Stephen Goddard, Jr.:</p> <p>Michael D. Warden Sidley Austin Brown & Wood, LLP 1501 K Street, N.W. Washington, DC 20005 (202) 736-8000 (202) 736-8711 (fax)</p> <p>Service by e-mail: mwarden@sidley.com</p>	<p>Roman W. McAlindan The Sharow 34 Lickey Square Barnet Green, Rednal, Birmingham, B45 8HB Great Britain</p> <p>Service by Federal Express</p>
<p>Attorneys for Defendant Thomas H. Bauer:</p> <p>Scott B. Schreiber Arnold & Porter 555 Twelfth Street, N.W. Washington, DC 20004-1206 (202) 942-5000 (202) 942-5999 (fax)</p> <p>Service by e-mail: enroncourtapers@aporter.com</p>	<p>Attorneys for Defendant Nancy Temple:</p> <p>Mark C. Hansen Reid M. Figel Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. 1615 M Street, N.W., Suite 400 Washington, DC 20036 (202) 326-7900 (202) 326-7999 (fax)</p> <p>Service by e-mail: mhansen@khte.com rfigel@khte.com</p>

<p>Attorneys for Defendant Alliance Capital Management:</p> <p>Ronald E. Cook Cook & Roach, LLP Chevron Texaco Heritage Plaza 1111 Bagby, Suite 2650 Houston, TX 77002 (713) 652-2031 (713) 652-2029 (fax)</p> <p>Service by e-mail: rcook@cookroach.com</p>	<p>Attorneys for American National Plaintiffs:</p> <p>Andrew J. Mytelka David Le Blanc Greer, Herz & Adams, L.L.P. One Moody Plaza, 18th Floor Galveston, TX 77550 (409) 797-3200 (409) 766-6424 (fax)</p> <p>Service by e-mail: amytelka@greerherz.com dleblanc@greerherz.com bnew@greerherz.com swindsor@greerherz.com</p>
<p>Attorneys for Defendant Lou L. Pai:</p> <p>Murray Fogler McDade Fogler Maines, L.L.P. Two Houston Center 909 Fannin Suite 1200 Houston, Texas 77010-1006 (713) 654-4300 (713) 654-4343 (fax)</p> <p>Service by fax</p>	<p>Attorneys for Defendant Lou L. Pai:</p> <p>Roger E. Zuckerman Steven M. Salky Deborah J. Jeffrey 1201 Connecticut Avenue, N.W. Washington, D.C. 20036-2638 (202) 778-1800 (202) 822-8106 (fax)</p> <p>Service by e-mail: djeffrey@zuckerman.com</p>
<p>Philip A. Randall Andersen United Kingdom 180 Strand London WC2R 1BL England 44 20 7438 3000 44 20 7831 1133 (fax)</p> <p>Service by fax</p>	<p>Attorneys for Defendant Deutsche Bank AG:</p> <p>Lawrence Byrne Owen C. Pell Lance Croffoot-Suede White & Case, LLP 1155 Avenue of the Americas New York, New York 10036-2787 (212) 819-8200</p> <p>Service by e-mail lbyrne@whitecase.com</p>

<p>Attorneys for Defendant Bank of America Corporation:</p> <p>Paul Bessette Brobeck, Phleger & Harrison, LLP 4801 Plaza on the Lake Austin, Texas 78746 (512) 330-4000 (512) 330-4001 (fax)</p> <p>Service by e-mail: pbessette@brobeck.com</p>	<p>Attorneys for Defendant Bank of America Corp.:</p> <p>Gregory A. Markel Ronit Setton Nancy Ruskin Brobeck, Phleger & Harrison LLP 1633 Broadway, 47th Floor New York, NY 10019 (212) 581-1600 (212) 586-7878 (fax)</p> <p>Service by e-mail: gmarkel@brobeck.com rsetton@brobeck.com nruskin@brobeck.com</p>
<p>Michael D. Jones Andersen United Kingdom 180 Strand London WC2R 1BL England 44 20 7438 3000 44 20 7831 1133 (fax)</p> <p>Service by fax</p>	<p>Attorneys for Defendant Alliance Capital Management:</p> <p>Mark A. Kirsch James F. Moyle James N. Benedict Clifford Chance Rogers & Wells 200 Park Avenue, Suite 5200 New York, NY 10166 (212) 878-8000 (212) 878-8375 (fax)</p> <p>Service by e-mail: james.moyle@cliffordchance.com james.benedict@cliffordchance.com mark.kirsch@cliffordchance.com</p>

<p>Attorneys for Defendant J.P. Morgan Chase & Co.:</p> <p>Richard Mithoff Mithoff & Jacks One Allen Center, Penthouse 500 Dallas Houston, TX 77002 (713) 654-1122 (713) 739-8085 (fax)</p> <p>Service by e-mail: enronlitigation@mithoff-jacks.com</p>	<p>Attorneys for Defendant J.P. Morgan Case & Co.:</p> <p>Bruce D. Angiolillo Thomas C. Rice Jonathan K. Youngwood Simpson Thacher & Bartlett 425 Lexington Avenue New York, NY 10017-3954 (212) 455-2000 (212) 455-2502 (fax)</p> <p>Service by e-mail: bangiolillo@stblaw.com trice@stblaw.com jyoungwood@stblaw.com</p>
<p>Attorneys for Defendant Credit Suisse First Boston Corp.:</p> <p>Lawrence D. Finder Haynes and Boone, LLP 1000 Louisiana Street, Suite 4300 Houston, TX 77002-5012 (713) 547-2006 (713) 547-2600 (fax)</p> <p>Service by e-mail: finderl@haynesboone.com</p>	<p>Attorneys for Defendant Barclays Bank PLC:</p> <p>David H. Braff Sullivan & Cromwell 125 Broad Street New York, NY 10004-2498 (212) 558-4000 (212) 558-3588 (fax)</p> <p>Service by e-mail: braffd@sullcrom.com candidoa@sullcrom.com brebnera@sullcrom.com</p>
<p>Attorneys for Defendant J.P. Morgan Chase & Co.:</p> <p>Chuck A. Gall James W. Bowen Jenkens & Gilchrist 1445 Ross Avenue, Suite 3200 Dallas, TX 75202-2799 (214) 855-4338 (214) 855-4300 (fax)</p> <p>Service by e-mail: cgall@jenkens.com jbowen@jenkens.com</p>	<p>Attorneys for Defendant Credit Suisse First Boston Corp.:</p> <p>Richard W. Clary Julie A. North Cravath, Swaine & Moore 825 Eighth Avenue New York, NY 10019 (212) 474-1000 (212) 474-3700 (fax) rclary@cravath.com</p>

<p>Attorneys for Defendant Merrill Lynch & Co., Inc.:</p> <p>Taylor M. Hicks Hicks Thomas & Lilienstern, LLP 700 Louisiana, Suite 1700 Houston, TX 77002 (713) 547-9100 (713) 547-9150 (fax)</p> <p>Service by e-mail: thicks@hicks-thomas.com</p>	<p>Attorneys for Defendant Barclays Bank PLC:</p> <p>Barry Abrams Abrams Scott & Bickley, LLP JP Morgan Chase Tower 600 Travis, Suite 6601 Houston, TX 77002 (713) 228-6601 (713) 228-6605 (fax)</p> <p>Service by e-mail: babrams@asbtexas.com</p>
<p>John L. Murchison, Jr. Vinson & Elkins, L.L.P. 2300 First City Tower 1001 Fannin Houston, TX 77002 (713) 758-2222 (713) 758-2346 (fax)</p> <p>Service by e-mail: jmurchison@velaw.com</p>	<p>Attorneys for Defendant Citigroup:</p> <p>Brad S. Karp Mark F. Pomerantz Richard A. Rosen Michael E. Gertzman Claudia L. Hammerman Paul, Weiss, Rifkind, Wharton & Garrison 1285 Avenue of the Americas New York, NY 10019-6064 (212) 373-3000 (212) 757-3990 (fax)</p> <p>Service by e-mail: grp-citi-service@paulweiss.com</p>
<p>Andersen LLP (Andersen-Cayman Islands) 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>	<p>Arthur Andersen (Andersen-United Kingdom) 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>
<p>Andersen Co. (Andersen-India) 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>	<p>Lehman Brothers Holding, Inc. c/o Thomas A. Russo 745 Seventh Avenue New York, NY 10019 (212) 526-7000 (212) 526-2628 (fax)</p> <p>Service by fax</p>

<p>Attorneys for Defendant Canadian Imperial Bank of Commerce:</p> <p>Alan N. Salpeter Michele Odorizzi T. Mark McLaughlin Andrew D. Campbell Mayer, Brown, Rowe & Maw 190 South LaSalle St. Chicago, IL 60603 (312) 782-0600 (312) 706-8680 (fax)</p> <p>William H. Knull, III Mayer, Brown, Rowe & Maw 700 Louisiana Street, Suite 3600 Houston, Texas 77002-2730 (713) 221-1651 (713) 224-6410 (fax)</p> <p>Service by e-mail: cibc-newby@mayerbrownrowe.com</p>	<p>Arthur Andersen-Puerto Rico (Andersen-Puerto Rico) 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>
<p>Arthur Andersen-Brazil 33 W. Monroe Street Chicago, IL 60603</p> <p>Service by Federal Express</p>	<p>Attorney for Joseph Sutton:</p> <p>Jack O'Neill Clements, O'Neill, Pierce, Wilson & Peterson 1000 Louisiana, Suite 1800 Houston, Texas 77002 (713) 654-7600 (713) 654-7690</p> <p>Service by e-mail: oneilljack@copwf.com</p>

<p>Roger D. Willard 3723 Maroneal Street Houston, TX 77025</p> <p>Service by Federal Express</p>	<p>Additional Counsel for Defendant Joseph Hirko:</p> <p>Barnes H. Ellis David H. Angeli STOEL RIVES LLP 900 SW 5th Avenue, Suite 2600 Portland, Oregon 97204 (503) 224-3380 (phone) (503) 220-2480 (fax)</p> <p>Service by e-mail: dhangeli@stoel.com</p>
<p>Additional Counsel for Kevin Hannon:</p> <p>Stephen J. Crimmins PEPPER HAMILTON LLP Hamilton Square 600 Fourteenth Street, N.W. Washington, D.C. 20005 (202) 220-1200 (202) 220-1665 (Fax)</p> <p>Elizabeth T. Parker PEPPER HAMILTON LLP 3000 Two Logan Square 18th and Arch Streets Philadelphia, PA 19103 (215) 981-4000 (215) 981-4756 (Fax)</p> <p>Service by e-mail: criminss@pepperlaw.com parkere@pepperlaw.com</p>	<p>Attorneys for Defendants Richard B. Buy, Richard A. Causey, Mark A. Frevert, Stanley C. Horton, Kevin Hannon, Joseph Hirko, Steven Kean, Mark E. Koenig, Michael S. McConnell, Jeffrey McMahon, Cindy K. Olson, Kenneth D. Rice, Paula Rieker, and Lawrence Greg Whalley</p> <p>Jacks C. Nickens Paul D. Flack Nickens, Lawless & Flack 1000 Louisiana, Suite 5360 Houston, Texas 77002 (713) 571-9191 (713) 571-9652 (fax)</p> <p>Service by e-mail trichardson@nlf-law.com</p>

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

MARK NEWBY, et al., Individually and On §
Behalf of All Others Similarly Situated, §
§
Plaintiffs §
§
vs. § CIVIL ACTION NO. H-01-3624
§ (Consolidated)
ENRON CORP., et al., §
§
§
Defendants §
§

ORDER

Having considered the motion to dismiss filed by Defendant Stanley C. Horton and all materials filed in support of and in opposition to this motion, and finding that the Complaint fails to state a claim against this Defendant upon which relief can be granted,

It is hereby ORDERED that:

1. Defendant's motion is GRANTED, and
2. The claims against Defendant Stanley C. Horton are DISMISSED with prejudice.

SIGNED this _____ day of _____, 2002.

Melinda Harmon
United States District Judge