

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

United States Courts
Southern District of Texas
FILED

MAY 08 2002

Michael R. Milby, Clerk

In re ENRON CORPORATION
SECURITIES LITIGATION

§
§ Civil Action No. H-01-3624
§ (Consolidated)
§

**MOTION OF CERTAIN CURRENT AND FORMER DIRECTORS
TO DISMISS AND MEMORANDUM IN SUPPORT,
PURSUANT TO FED. R. CIV. P. 8**

TO THE HONORABLE MELINDA F. HARMON, UNITED STATES DISTRICT JUDGE:

The individual defendants identified below (“Individual Defendants”)¹ respectfully move this Court to dismiss, as to them, Plaintiffs’ “Consolidated Complaint for Violations of the Securities Laws” (the “Complaint” or “NCC”) in this cause, pursuant to Fed. R. Civ. P. 8 and the PSLRA.

The organization of the Complaint is identical to the structure that Plaintiffs’ counsel have used in other securities-fraud lawsuits, as detailed below. It has *routinely* been cited by courts as a facial violation of Fed. R. Civ. P. 8 and as a “mockery” of the PSLRA, and summarily dismissed on that basis. For this joint motion,² the Individual Defendants would respectfully show the following.

I. INTRODUCTION.

Plaintiffs purport to assert claims on behalf of a sweeping class of all “purchasers of Enron Corporation’s (‘Enron’ or the ‘Company’) publicly traded equity and debt securities between 10/19/98 and 11/27/01 (the ‘Class Period’).” NCC at ¶ 1. During that three-year period, over 3

¹This motion is filed by the following individual defendants: Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Joe C. Foy, Wendy L. Gramm, Ken L. Harrison, Robert K. Jaedicke, Charles A. Lemaistre, Rebecca Mark-Jusbasche, John Mendelsohn, Jerome J. Meyer, Paulo V. Ferraz Pereira, Frank Savage, John A. Urquhart, John Wakeham, Charles Walker, and Herbert S. Winokur, Jr. (collectively the “Individual Defendants”).

²These defendants have also filed *separate* motions that address the failure of Plaintiffs to plead in compliance with the PSLRA, as to each of them individually.

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billion shares of Enron were traded. Plaintiffs, however, generically apply their one-size-fits-all allegations to all such trades and to all purchasers, and to all 80 Defendants, with virtually no differentiation.

The Complaint is a textbook example of the problems that Congress sought to address when it enacted the Private Securities Litigation Reform Act of 1995 (“PSLRA”).³ Congress intended the PSLRA’s reforms to eliminate the effect of sweeping and nonspecific securities-class allegations by imposing “the most stringent pleading” requirements.⁴ The statute provides that non-compliant pleadings shall result in dismissal of the case. 15 U.S.C. § 78u-4(b)(3)(A).

The Newby Plaintiffs’ Complaint should be dismissed as to these Individual Defendants. Even after prior amendments, and over five months of drafting, Plaintiffs’ self-described “creative work”⁵ fails to meet the stringent pleading requirements of the PSLRA. These Individual Defendants are barely mentioned anywhere in the 1,030 paragraphs of the Complaint, and in those few instances, where they are, the accusations are stated in conclusory terms that are facially deficient. As detailed below, the Newby Plaintiffs occasionally lift several-page sections of their Complaint, and repeat the same entire passage *verbatim* elsewhere in the Complaint, in an attempt to give it ballast under the PSLRA. At least two courts — referring specifically to the lead Plaintiffs’ counsel and the authors of this Complaint — have quoted the following observation by Judge Higginbotham to

³Codified in part at 15 U.S.C. § 78u-4, et seq.

⁴Sen. Rep. No. 104-98 (CCH Fed. Sec. Law Reports No. 1696, at p. 75 (1996)); *id.* at p. 79 (PSLRA modeled on the Second Circuit case law, “[r]egarded as the most stringent pleading standard.”).

⁵The Complaint’s authors, at the cover page, warn the public that the 500-page document is a “creative work,” and that the authors have “added value to the underlying factual materials” through their unique expression and selections. A comparison of the allegations, against the actual disclosures that are detailed below in this Memorandum, does demonstrate that the Complaint is both inventive and imaginative.

condemn this tactic of submitting “bloated” but empty pleadings in an effort to hide lack of compliance with PSLRA requirements:

“A complaint can be long-winded, even prolix, without pleading with particularity. Indeed, such a garrulous style is not an uncommon mask for an absence of detail. The amended complaint here, although long, states little with particularity.”

See, e.g., Wenger v. Lumisys, Inc., 2 F.Supp.2d 1231, 1243-44 (N.D. Cal. 1998)(quoting *Williams v. WMX Technologies, Inc.*, 112 F.3d 175, 178 (5th Cir. 1997), and dismissing 65-page Milberg Weiss complaint); *Ravens v. Iftikar*, 174 F.R.D. 651, 659 (N. D. Cal. 1997)(quoting *WMX*, and noting that the filings by Milberg Weiss “feature bulk and prolixity”); *Ronconi v. Larkin*, 253 F.3d 423, 437 (9th Cir. 2001)(dismissing Milberg Weiss complaint, noting “The various requirements are not satisfied merely by making a complaint long”).

But it is not merely undue length that has led prior courts to dismiss under Rule 8. The same organization defects that courts have described in prior decisions, and have found to violate Rule 8 and the PSLRA, also pervade the entire Complaint in *this* lawsuit. Those defects are the subject of this motion, and require dismissal of the Complaint in its entirety as to the Individual Defendants.⁶

II. COURTS HAVE PREVIOUSLY CONDEMNED THE PLEADING STRUCTURE USED IN THE INSTANT COMPLAINT AS A “MOCKERY” OF THE PSLRA, AND SUMMARILY DISMISSED ITS ALLEGATIONS UNDER BOTH RULE 8 AND REFORM ACT.

The allegations against the Individual Defendants should be dismissed in their entirety

⁶As noted above, the Individual Defendants have also filed motions that address, separately, the Newby Plaintiffs’ failure to plead particularized facts as to each of them, focusing only on the paragraphs of the Complaint that make any reference to that particular defendant. The PSLRA mandates that “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,” among other details. *In re BMC Software, Inc. Securities Litigation*, 183 F.Supp.2d 860, 886 (S.D. Tex. 2001). The person-by-person analysis shows the complete absence of particularized pleading for each movant, as well as the non-actionable nature of the statements that Plaintiffs selectively paraphrase or quote.

pursuant to Federal Rule of Civil Procedure 8(a) and 8(e), and as a *per se* violation of the PSLRA.

The quotations below demonstrate that the authors of the Complaint have used exactly the same pleading structure in several other lawsuits. In each instance, courts have consistently found that the “structure” and “presentation” of those complaints were defective *in their entirety*, and summarily dismissed them under the PSLRA, Rule 8, or both. In doing so, the courts have not merely dismissed the complaints, but condemned them as abusive and as a “mockery” of the PSLRA and Rule 9(b).

In *Copperstone v. TCSI Corp.*, 1999 U.S. Dist. LEXIS 20978 (N.D. Cal. 1999),⁷ the court described opposing counsel’s pleading as a puzzle-style complaint that was cumbersome to the point of abuse. *Id.* at *16. The *Copperstone* court’s description of the defects that required dismissal in that matter, is an identical description of the structure that counsel has used yet again in this Complaint:

The Complaint fails to comply with the presentation requirements of Fed. R. Civ. P. 8 and the Reform Act. Plaintiffs separate the class period into five different sub-periods of time. Within each sub-period, Plaintiffs lump together several allegedly misleading statements by the Defendants followed by a list of “true facts” allegedly known to the Defendants when the statements were made. [Citations omitted.] Many of the allegations are repeated several times without any variation whatsoever. The Complaint does not indicate which among the nearly 40 pages of statements are alleged to be false, and does not follow each allegedly false statement with a factor or factors showing it to be false. ...

This Court finds that Plaintiffs have failed to draft the Complaint in accordance with Fed. R. Civ. P. 8(a), which requires a “short and plain statement of the claim.” Moreover, this Court finds that the Complaint does not conform with the requirements of the Reform Act because it fails to specify each statement alleged to have been misleading and the reason or reasons why each statement is misleading. 15 U.S.C. § 78u-4(b)(1). The Complaint is dismissed in its entirety for these structural deficiencies.

Id. at *16-18.

⁷This Court cited *Copperstone* with approval in *BMC*, 183 F.Supp.2d at 908.

Most recently, in *In re Splash Technology Holdings, Inc.*, 160 F.Supp.2d 1059 (N.D. Cal. 2001), the court dismissed opposing counsel's complaint with prejudice as a *per se* violation of the PSLRA's and Rule 8's pleading requirements. The court's description of the complaint in *Splash* shows, once again, that its authors used precisely the same structure that they used in drafting the Complaint in this lawsuit:

The [complaint] tips the scales at 124 pages. Seventy-six of those pages and 89 of the 184 paragraphs contained therein are devoted to a section entitled "False and Misleading Statements During the Class Period." [Citation omitted.] In that section, plaintiffs separate the class period into six general time periods during which they claim defendants made material misrepresentations, and within each of those periods, describe various occasions on which they claim false statements were made, or refer to various documents which they contend contain false statements. [Citation omitted.] Following each of the six groups of allegations of false statements, plaintiffs identify generally those *types* of statements, from the preceding recitation of specific alleged statements, which they contend were false and misleading (without identifying specific paragraph(s) which contain those statements), and then, provide a list of between five and nineteen "reasons" that the statements were false at the time they were made (again, without identifying which alleged false statement(s) are belied by the facts stated in each "reason").

160 F.Supp.2d at 1073 (italics in original). The court noted that once the reader had sorted out which of the statements in specific preceding paragraphs are alleged to be false,

the reader then must scan subsections (a) through (m) of paragraph 149 to select those which contain the basis for the claims that the statements are false and misleading.

Id. at 1074. The *Splash* court dismissed the complaint for noncompliance with the specificity requirements of the PSLRA. Citing the convoluted nature of the pleading, the court found that the complaint should be summarily dismissed under Rule 8 as well. *Id.* at 1074-75.

In fact, at least six different courts have issued opinions in which they describe the identical pleading structure that counsel has used in this case, and then summarily dismissed the entire

complaint pursuant to Rule 8 and the PSLRA.⁸ At least one other court has described a complaint drafted by opposing counsel as an “affront” to Rule 8, but dismissed it only under the PSLRA.⁹

Despite this, the Newby Plaintiffs have again used this jigsaw structure in their complaint in this case. As in *Splash*, the Newby Plaintiffs “separate the class period into six general time periods during which they claim defendants made material misrepresentations, and within each of those periods, describe various occasions on which they claim false statements were made, or refer to various documents which they contend contain false statements.”¹⁰ As in *Splash* and *Copperstone*, the Newby Plaintiffs follow “each of the six groups of allegations of false statements,” with a laundry list of the types of statements from the preceding group of paragraphs which they contend

⁸See also *In re Dura Pharmaceuticals, Inc. Sec. Lit.*, 2000 U.S. Dist. LEXIS 15258 at * 20-21 (S.D. Cal. 2000)(dismissing complaint; “As outlined in the above-referenced case law, Plaintiffs cannot simply group together the misrepresentations and then the reasons why they were false or misleading. Rather, Plaintiffs must set forth each allegedly false or misleading statement, then follow each statement with the specific reasons why the statement was false when made.”); *In re Oak Technology Sec. Lit.*, 1997 U.S. Dist. LEXIS 18503 at *13-14 (dismissing complaint; “However, the vast majority of adverse facts pertaining to all of these statements are lumped together in paragraph 73,” and finding this “puzzle-style” pleading has been consistently criticized as imposing “unnecessary strain on defendants and the court system”).

⁹*In re MCI WorldCom, Inc. Sec. Lit.*, 2002 U.S. Dist. LEXIS 5819 at *5(S.D. Miss., March 29, 2002)(“The Court has painstakingly examined the 110 page, 285 paragraph Complaint. The Complaint is replete with cross-references and repetition. On first reading, the instinctive reaction is exactly what is intended by Plaintiffs. The numbers are so large, the stakes were so high, and the fall of the dollar value of WorldCom stock so precipitous, that the reader reacts by thinking that there must have been some corporate misbehavior. However, after a thorough examination, it becomes apparent that the Complaint is a classic example of ‘puzzle pleading’ and that it does not attain the heightened pleadings requirements for this type case.”); *In re Syntex Corp. Sec. Lit.*, 95 F.3d 922, 932 n. 9 (9th Cir. 1996)(Use of “litigation tactic” in the 103-page complaint of repeating allegations and mixing statements, made review “almost impossible” and “affronts Rule 8’s mandate”). See also *Schiller v. Physicians Resource Group, Inc.*, 2002 U.S. Dist. LEXIS 3240 at *16-17 & n. 3 (N. D. Tex. 2002)(describing same pleading structure, by same law firm, and dismissing complaint under PSLRA).

¹⁰See Complaint at ¶¶ 112-121 (covering July 14, 1998 to October 14, 1998); 122-55 (covering October 21, 1998 to July 6, 1999); ¶¶ 156-214 (covering July 13, 1999 to February 28, 2000); ¶¶ 215-300 (covering March 31, 2000 to March 1, 2001); ¶¶ 301-39 (covering March 12, 2001 to July 26, 2001); ¶¶ 340-90 (covering October 16, 2001 to November 14, 2001).

are misleading.¹¹ The Newby Plaintiffs provide that laundry list “without identifying the specific paragraph(s)” which contain those allegedly false statements. As was done in *Splash*, the Newby Plaintiffs then provide a list of between eleven “and nineteen ‘reasons’ that the statements were false at the time they were made,”¹² each time using almost verbatim text to cover several of those time periods. The Court must then scan those subsections “to select those which contain the basis for the claims that the statements are false and misleading.” 160 F.Supp.2d at 1074.

On still another occasion, the *Wenger* court found that the “65-page Complaint [drafted by opposing counsel in this case] fails to conform with the presentation requirements of Rule 8 and the Reform Act.” 2 F.Supp.2d at 1243. But again, the “presentation” which required summary dismissal in *Wenger* is identical to what the Newby Plaintiffs have recycled here:

Determining whether “the pleader is entitled to relief” requires a laborious deconstruction and reconstruction of a great web of scattered, vague, redundant, and often irrelevant allegations. The Complaint repeats many allegations three or four times, often giving them a slightly different flourish at each turn. In violation of the Reform Act’s requirement that a complaint must specify the reasons why *each* statement is alleged to have been misleading, the Complaint lumps all alleged misrepresentations together in one unwieldy 14-page segment (the statements span eight months, from November 1995 to June 1996) and then follows that catalog with a three-page laundry list of reasons why all the statements were allegedly false when made. [Citation omitted.] ... Plaintiff merely throws the statements and the alleged “true facts” together in an undifferentiated clump and apparently expects the reader to sort out and pair each statement with a supposedly relevant “true fact.” The predictable demands of reviewing such a complaint abuse judicial resources.

2 F.Supp.2d at 1243 (italics in original). The *Wenger* court quoted numerous decisions that have dismissed lengthy and “puzzle-style” complaints as an undue strain on judicial resources and a “mockery of Rule 9(b) and the Reform Act.” The *Wenger* court concluded, “Accordingly, this

¹¹Compare 160 F.Supp.2d at 1073, with the Newby Complaint at ¶¶ 121, 155, 214, 300, 339, 390.

¹²*Id.* at ¶¶ 300, 339 (repeating nineteen reasons, through subpart (s)).

court must dismiss the Complaint for failure to comply with the requirements of Rule 8 and the Reform Act, 15 U.S.C. § 78u-4(b)(1).” *Id.* at 1244.

The Complaint filed in the instant case is indistinguishable from the structure that was used, condemned and summarily dismissed in *Wenger, Splash, Copperstone*, and the other decisions cited in footnotes 10 and 11. The extent of the abuse, however, has been magnified. Each of the courts found that the structure used by opposing counsel was particularly abusive because of the extraordinary length of those pleadings, ranging up to 124 pages. Here, the Newby Plaintiffs have quadrupled their word count and produced a complaint in excess of 500 pages in length. The *Splash* court ridiculed the fact that the plaintiffs lumped together allegedly false statements covering eight months. 2 F.Supp.2d at 1243. In this case, however, one of the six time periods at issue traverses an entire *year* by itself.

This lawsuit has been the subject of intense publicity. Plaintiffs have had the benefit of enormous pre-trial discovery including: (a) an investigative report of Enron’s Board (the so-called Powers Report); (b) more than five Congressional hearings in which witnesses have testified under oath; and (c) a steady drumbeat of “revelations” on the front pages of the nation’s most prominent publications. With this abundance of information, one would have thought Plaintiffs could allege a fraud claim clearly and concisely if there were a claim to be made. That they have chosen, instead, to obfuscate and confound leads to the unmistakable conclusion that Plaintiffs chose fiction over fact because they had nothing specific to allege against these individuals.

The structure used for the instant Complaint has come under review on multiple prior occasions. It has consistently been found to violate the PSLRA and Rule 8. It is no more compliant in this, its tenth known outing. Still other courts have applied Rule 8 to dismiss “unnecessarily

complicated and verbose” securities-fraud complaints filed by other law firms.¹³ The Complaint should be dismissed in its entirety as to these Individual Defendants.

III. DISMISSAL AS TO THESE INDIVIDUAL DEFENDANTS IS PARTICULARLY APPROPRIATE: THE COMPLAINT MAKES FEW REFERENCES TO THEM ANYWHERE IN THE 1,030 PARAGRAPHS, AND RELIES INSTEAD ON “GROUP PLEADING” DOCTRINES THAT THE PSLRA REJECTS.

The PSLRA forbids the use of “group pleading” to state a claim as to Individual Defendants. This Court has so held. Multiple sister courts have so held. In this case, the Newby Plaintiffs refer to the Individual Defendants in only a handful of the 1,030 paragraphs of the Complaint. Lacking particularized facts, Plaintiffs candidly admit that they rely on group pleading throughout the Complaint. All such allegations should be dismissed pursuant to Rule 8 and the PSLRA.

The contrast between what the PSLRA requires, and what the Newby Plaintiffs attempt to plead, is evident when Plaintiffs’ pleading is laid side-by-side with this Court’s holding in *BMC*:

This Court’s rejection of group pleading in BMC Software, Inc:

The Newby Plaintiffs’ admitted reliance on group pleading throughout the Complaint:

<p>“Because this Court believes a more stringent pleading is required by the PSLRA, it agrees with those district courts that find <u>the group pleading doctrine is at odds with the PSLRA and has not survived the amendments.</u>” [BMC, 183 F.Supp.2d at 902 & n. 45.]</p>	<p>“It is appropriate to <u>treat the Enron Defendants as a group for pleading purposes</u> and to <u>presume</u> that the false, misleading and incomplete information conveyed in the Company’s public filings, press releases and other publications, as alleged herein, <u>are the collective actions</u> of the Enron Defendants identified above.” [NCC at ¶ 89.]</p>
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Group pleading has not survived the enactment of the PSLRA. Plaintiffs are forbidden from alleging that one defendant’s or entity’s actions are attributable to any other individuals. That puzzle-like approach is also an affront to Rule 8. Allegations of the Complaint that attribute

¹³See, e.g., *In re Westinghouse Sec. Lit.*, 90 F.3d 696, 703 (3d Cir. 1996) (“rambles for more than 600 paragraphs and 240 pages, including a 50-plus page ‘overview’ of the alleged wrongful conduct.”).

statements or actions to “Enron,” “management,” and other unspecified groups therefore should be dismissed in their entirety as to these defendants. *Schiller*, 2002 U.S. Dist. LEXIS 3240 at *21.¹⁴

IV. THIS COURT HAS ALREADY REJECTED PLEADING OF VIOLATIONS “BY VIRTUE OF” HIGH COMPANY POSITION AND DAILY MANAGEMENT. PLAINTIFFS DEFIANTLY USE EXACTLY THAT LANGUAGE THROUGHOUT THEIR COMPLAINT.

The PSLRA forbids a plaintiff from pleading that a defendant knew of particular alleged events simply because of the defendant’s company position, or involvement in day-to-day affairs. This Court has so held on at least two occasions. Again, a tandem comparison show that the Newby Plaintiffs defiantly ignore this Court’s prior holdings, and for purposes of Rule 8, make it impossible to extract any particularized facts that are asserted against these Individual Defendants:

This Court’s rejection of company position as a tenable claim under the PSLRA:

The Newby Plaintiffs’ reliance on company position to state a claim in the Complaint:

<p>“Plaintiffs also rely on knowledge acquired <u>by reason of the high level positions held by Defendants</u> at Compaq. This global allegation, too, lacks any factual specifics as to what information they were exposed, how, and when. In view of the purpose of the PSLRA amendments, this Court finds that Plaintiffs rely on <u>too minimal and conclusory allegation of incomplete motive and opportunity by reason of Defendants’ positions</u> at Compaq to attempt to satisfy the scienter standard under the PSLRA.”</p> <p>[<i>Kurtzman v. Compaq.</i>, Cause No. H-99-779, slip op. (Dec. 12, 2000), quoted in <i>BMC</i> at 886 n. 34.]</p>	<p>“Each of the above officers and directors of Enron, <u>by virtue of their high-level positions with the Company</u>, participated in the management of the Company, and was privy to confidential proprietary information concerning the Company and its business, operations, financial statements, and financial condition, as alleged herein.”</p> <p>[NCC at ¶ 89.]</p>
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¹⁴Still other paragraphs should be dismissed as to the non-speakers; those paragraphs are addressed separately in each Individual Defendant’s motion to dismiss.

Likewise, this Court wrote in *BMC*:

“There is no specific allegation of what nonpublic information was used by Defendants to trade and how they knew such information was material or nonpublic, other than the unacceptable assertion that they knew by virtue of their positions and day-to-day business activities.”¹⁵

Plaintiffs have recycled in this case the same allegations that this Court has already rejected as being facially defective under the PSLRA. When such allegations are stripped from the Complaint, as commanded by PSLRA analysis, they leave nothing in the way of an actionable securities claim against the Individual Defendants. All such allegations, premised on position and mere access to information, must be dismissed.

V. DISMISSAL WITH PREJUDICE IS APPROPRIATE.

The dismissal of the Complaint should be with prejudice to any right to replead. That is particularly true where, as here, the pleading under review is itself a repleading:

In addition, where the Complaint fails to allege fraud with sufficient particularity against any of the individual defendants, this Court will dismiss those claims with prejudice. “After consolidation of the [two] lawsuits comprising this litigation, plaintiffs, represented by experienced and competent counsel, were given an adequate opportunity to file a new complaint setting forth their best theories of this case.... Given the high stakes in securities litigation, two bites at the apple are enough.”

Picard Chem. Inc. Profit Sharing Plan v. Perrigo Co., 940 F.Supp. 1101, 1116 (W.D. Mich. 1996).

Moreover, as described in detail above, the substance of this motion has been previously expressed in a number of opinions. As this Court stated in *BMC*:

Moreover, because this Court's conclusions regarding most of the legal issues raised

¹⁵*BMC*, 183 F.Supp.2d at 915-16 (The Court further wrote, “[The amended complaint] generally attributes to them knowledge of the alleged fraud to their high positions in *BMC* and their day-to-day involvement in the business or from unidentified internal corporate documents and conversations. Defendants correctly state that this Court has previously rejected such vague pleading as insufficient to give rise to a strong inference of scienter under the PSLRA.”).

here were previously expressed in a number of opinions which have been made part of the record in this case and which both parties have cited and quoted, and because Plaintiffs have not requested an opportunity to replead if the Court finds the pleading of their amended complaint insufficient, the Court dismisses the amended complaint with prejudice.

183 F.Supp.2d at 917.

The failure of an experienced law firm to produce a pleading that complies with the PSLRA, after over five months of opportunity and abundant pre-trial “discovery,” is most telling of all. The Complaint should be dismissed as to these Individual Defendants, with prejudice.

WHEREFORE, PREMISES CONSIDERED, the Individual Defendants (as individually identified in footnote 1 above) pray that this Rule 8 motion come on for consideration, and that upon consideration this Court dismiss the Complaint in its entirety, as to these movants, for the reasons that are set forth in detail hereinabove.

Respectfully submitted,

GRAVES, DOUGHERTY, HEARON & MOODY, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served upon all known counsel of record by facsimile, on this the 8th day of May, 2002.

Please see attached Service List



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

In re ENRON CORPORATION
SECURITIES LITIGATION

§
§ Civil Action No. H-01-3624
§ (Consolidated)
§

**ORDER GRANTING THE
MOTION OF CERTAIN CURRENT AND FORMER DIRECTORS
TO DISMISS PURSUANT TO FED. R. CIV. P. 8**

On this _____ day of _____, 2002, came on for consideration the “Motion of Certain Current Former Directors to Dismiss and Memorandum in Support, Pursuant to Fed. R. Civ. P. 8,” (hereinafter “Rule 8 Motion”), filed by Defendants Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Joe C. Foy, Wendy L. Gramm, Ken L. Harrison, Robert K. Jaedicke, Charles A. Lemaistre, Rebecca Mark-Jusbasche, John Mendelsohn, Jerome J. Meyer, Paulo V. Ferraz Pereira, Frank Savage, John A. Urquhart, John Wakeham, Charles Walker, and Herbert S. Winokur, Jr. (collectively the “Individual Movants”), in the above-styled and numbered consolidated cause.

The Court finds that the Consolidated Complaint for Violation of the Securities Laws (the “Complaint”) in this cause is identical in organization and structure to the “puzzle-style” pleadings that have been routinely found to violate Fed. R. Civ. P. 8(a) and (e), as well as the pleading requirements of the Private Securities Litigation Reform Act of 1995 (“PSLRA”). The Court further finds that the Complaint should be dismissed as to Individual Movants for the reasons set forth in detail in the Rule 8 Motion and the authorities cited therein.

The Court further notes that Plaintiffs have previously been given opportunities to replead, most recently when they filed the Complaint. The Court notes that Plaintiffs are represented by

experienced and competent legal counsel. Those counsel appeared in the same legal actions that the Individual Movants have cited in their Rule 8 Motion, which resulted in dismissal for failure to comply with Rule 8 and the PSLRA, and which involved precisely the same structural defects that this Court has found to exist in the Complaint. Accordingly, the Court finds that the dismissal of the Complaint as to the Individual Movants should be with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Complaint be, and the same hereby is, DISMISSED as to the Individual Movants listed above, WITH PREJUDICE to Plaintiffs' right to replead.

SIGNED this ____ day of _____, 2002.

MELINDA F. HARMON
UNITED STATES DISTRICT JUDGE