

Consolidated Complaint. Federal Rule of Civil Procedure 10(c), entitled "Adoption by Reference; Exhibits," provides

Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

In the Declaration, Hakala explains his statistical analysis of the movements of Enron Corporation's stock prices and the exercise of stock options and sales by Defendants and concludes that the results demonstrate insider trading.

Lay contends that the Declaration should be stricken at the pleading stage for three reasons: (1) it is not a "written instrument" within the meaning of Fed. R. Civ. P. 10(c), i.e., "a document evidencing legal rights or duties or giving formal expression to a legal act or agreement, such as a deed, will bond, lease, insurance policy or security agreement," DeMarco v. Depotech Corp., 149 F. Supp.2d 1212, 1220 (S.D. Cal. 2001)³; (2) it would require an evidentiary hearing

³ The district court in DeMarco, 149 F. Supp.2d at 1220, wrote,

A "written instrument" within the meaning of Rule 10(c) is a document evidencing legal rights or duties or giving formal expression to a legal act or agreement, such as a deed, will, lease, insurance policy or security agreement. Murphy v. Cadillac Rubber & Plastics, Inc., 946 F. Supp. 1108, 1115 (W.D.N.Y. 1996)(citing Black's Law Dictionary 801, 1613 (6th ed. 1990)). The documents that satisfy this definition "consist largely of documentary evidence, specifically, contracts, notes and other writings on which a party's action or defense is based[.]" Rose v. Bartle, 871 F.2d 331, 339 n.3 (3d Cir. 1989)(internal quotations and alterations omitted). Here, [the expert's] affidavit does not resemble any of the classes of documents that meet the definition of a written instrument" under Rule 10(c). The affidavit represents a piece of evidentiary matter generated by a retained expert who had no contact with DepoTech and no involvement in the DepoCyt clinical trials. The affidavit contains

under Daubert v. Merrell Dow Pharmacy, Inc., 509 U.S. 579 (1993) and interfere with the discovery stay under the Private Securities Litigation Reform Act of 1995 ("the PSLRA"); and (3) it does not relieve Plaintiff of its burden to meet heightened pleading standards under the PSLRA, 15 U.S.C. § 78u-4(b)(ii) ("state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind"). Even if it should not be stricken, Lay argues that the Declaration is inadmissible expert testimony under the tests established in Daubert, 509 U.S. at 593-95, and Kumho Tire Co. Ltd. v. Carmichael, 526 U.S. 137, 147 (1999).⁴

[the expert's] assessment of Defendants' public statements, but it does not form the basis of Plaintiff's claims.

⁴ The trial court has discretion under Federal Rule of Evidence 702 to exclude expert evidence, and that decision is reviewed only for abuse of discretion. Munoz v. Orr, No. 97-50736, 2000 WL 6156 (5th Cir. Jan. 5, 2000), citing Daubert v. Merrell Dow Pharmacy, Inc., 509 U.S. 579, 592-93 (1993), and Boyd v. State Farm Ins. Cos., 158 F.3d 326, 221 (5th Cir. 1998) ("With respect to expert testimony offered in the summary judgment context, the trial court has broad discretion to rule on the admissibility of the expert's evidence and its ruling must be sustained unless manifestly erroneous."). "The question of admissibility of expert testimony is not . . . an issue of fact, and is reviewable under the abuse of discretion standard." General Electric Co. v. Joiner, 522 U.S. 136, 118 S. Ct. 512, 517 (1997); see also Curtis v. M&S Petroleum, Inc., 174 F.3d 661, 667-68 (5th Cir. 1999). The trial judge must first preliminarily assess "whether the reasoning or methodology underlying the testimony is scientifically valid and . . . whether that reasoning or methodology properly can be applied to the facts at the issue" to be certain of the relevance and reliability of the evidence. Daubert, 509 U.S. 592-95. The High Court required the district court to be the "gatekeeper" under Rule 702 to insure that these two requirements of relevance and reliability are met. Id. at 2796-97. The Supreme Court identified four, nonexhaustive factors for the trial judge to consider in determining reliability--whether it will assist the trier of fact and can be tested, whether it has been subjected to peer review, the known or potential error rates and the existence of standards controlling the technique's operation, and the extent to which the methodology or technique employed by the expert is generally accepted in the scientific community--but warned they do not constitute a definitive checklist. Daubert, 509 U.S. at 593-94.

In Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 147-152, 119 S. Ct. 1167, 1174-76 (1999), the Supreme Court extended the gatekeeping function beyond scientific experts to non-scientific testimony because Rule 702 does not distinguish between "scientific" knowledge and "technical" or "other specialized" testimony, and underlined that the trial judge "make certain that

In response (#800), Lead Plaintiff argues that because Lay does not ask the Court to strike the sections of the complaint that expressly incorporate Dr. Hakala's Declaration, under Rule 12(b)(6) the allegations of those sections of the Complaint must be accepted as true for purposes of a motion to dismiss and of giving rise to a strong inference of scienter in the face of the PSLRA's heightened pleading requires.⁵ Defendant has not disputed the majority of facts or

an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." The Supreme Court made clear that the test for reliability for nonscientific experts is "flexible" and that "Daubert's list of specific factors neither necessarily nor exclusively applies to all experts or in every case." Id.

⁵ In reviewing the sufficiency of a complaint in response to a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), before any evidence has been submitted, the district court's task is limited. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support its claims. Id. The district court should consider all allegations in favor of the plaintiff and accept as true all well-pleaded facts in the complaint. Lawal v. British Airways, PLC, 812 F. Supp. 713, 716 (S.D. Tex. 1992). Dismissal is not appropriate "unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of [his] claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Nevertheless, conclusory allegations or legal conclusions masquerading as factual conclusions do not defeat a motion to dismiss. Fernandez-Montes v. Allied Pilot Assoc., 987 F.2d 278, 284 (5th Cir. 1993).

Even under Rule 12(b)(6), however, this Court is required to view as true and in a light most favorable to Plaintiff only "well-pleaded facts." Campbell v. City of San Antonio, 43 F.3d 973, 975 (5th Cir. 1995), citing Heaney v. United States Veterans Admin., 756 F.2d 1215, 1217 (5th Cir. 1985). To be well pled, "the complaint must contain either direct allegations on every material point necessary to sustain a recovery . . . or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial." Id. at 975, quoting 3 Wright & Miller, Federal Practice And Procedure: Civil 2d § 1216 at 156-59. "[A] statement of facts that merely creates a suspicion that the pleader might have a right of action" is insufficient. Dismissal is proper if the complaint lacks an allegation regarding a required element necessary to obtain relief. . . . [citations omitted]." Id., quoting 2A Moore's Federal Practice par. 12.07 [2.-5] at 12-91. Moreover, "conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." id., quoting Fernandez-Montes v. Allied Pilots Ass'n, 987 F.2d 278, 284 (5th Cir. 1993).

conclusions in the Declaration. Moreover, Lead Plaintiff argues that the Declaration is a very detailed, statistical analysis of various Defendants' insider stock sales and that it employed well established methodologies, specifically "event study" and option risk premium analysis, which relies upon well accepted financial valuation techniques, and both of which were designed to apply to pleading standards of the PSLRA, as interpreted in Nathenson v. Zonagen, Inc., 267 F.3d 400, 407 (5th Cir. 2001). The Declaration also analyzed the exercise of stock options by various Defendants and found their premature exercises of such options were related to factual allegations in the Consolidated Complaint and were inconsistent with each individual Defendant's prior behavior. Through his analysis Hakala found that there was less than one chance in a thousand that Defendants would have traded their stock as they did, absent inside information, indeed with a degree of certainty between 95% and 99.9%. Moreover, Lead Plaintiff maintains that Hakala's resume, Declaration, and Insider Trading Chart (Exs. A-C of #442) demonstrate Hakala's qualifications to give an expert opinion on these matters. Lead Plaintiff characterizes the motion to strike as "in reality, a premature motion in limine" that would require the Court, in order to strike, to make improper factual inferences in favor of Defendants.

As authority for its argument, Lead Plaintiff notes that in Mortensen v. AmeriCredit Corp., 123 F. Supp.2d 1018, 1026 (N.D. Tex. 2000), affd., 240 F.3d 1073 (5th Cir. 2000), the court did consider two expert opinions in resolving a motion to dismiss the complaint. Although it ultimately did dismiss the pleadings, its decision was based on the fact that the affidavits demonstrated only that the company had violated Generally Accepted Accounting Principles ("GAAP"), which fact, by itself, is not a sufficient basis to establish scienter under the PSLRA.

Id. at 2027. Lead Plaintiff also identifies various federal Courts of Appeals that have considered affidavits, declarations, etc. in resolving motions to dismiss. Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994)("material which is properly submitted as part of the complaint may be considered" on a motion to dismiss")(quoting Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1555 n. 19 (9th Cir. 1989)), cert. denied, 512 U.S. 1219 (1994); Bryant v. Avado Brands, Inc., 187 F.3d 1271, 1279 (11th Cir. 1999)(taking judicial notices of SEC filings submitted by plaintiffs to be considered because they did not implicate the policy behind Rule 12(b)(6): i.e., "[t]he prohibition against going outside of the facts alleged in the complaint protects against a party being caught by surprise when documents outside the pleading are presented at an early stage."); Thomason v. Nachtrieb, 888 F.2d 1202, 1205 (7th Cir. 1989)(allowing consideration of affidavits where facts alleged are consistent with allegations in the complaint); Swin Resource Sys., Inc. v. Lycoming Co., 883 F.2d 245, 247 (3d Cir. 1989)(allowing consideration of a deposition submitted by plaintiff to be considered in ruling on motion to dismiss "to the extent that [the facts set forth therein] fall within the ambit of the complaint, as illustrative of those facts which [the plaintiff] could prove if its complaint were upheld"), cert. denied, 493 U.S. 1077 (1990). Lead Plaintiff emphasizes that the purpose of a 12(b)(6) motion is to determine whether the plaintiff has alleged facts which, if proven, could support an award of relief. It argues that in a motion to dismiss, given the heightened pleading requirements of the PSLRA, the Court should review any document within the ambit of the complaint that demonstrates what the plaintiff would be able to prove at trial.⁶

⁶ Lay maintains the cases cited by Lead Plaintiff are inapposite. In Thomason, 888 F.2d at 1205, the Seventh Circuit did not mention the word "affidavit," but held that a party may not amend its complaint through a brief in opposition to a motion to dismiss. In Bryant, a securities fraud case, the court addressed an appeal of a district court's ruling excluding documents filed with the SEC in

Aside from the fact that Lay ignores rulings by other courts, including the Fifth Circuit's holding that district courts should consider the complaint and "documents either attached to or incorporated in the complaint" in reviewing a motion to dismiss, Lead Plaintiff further argues that DeMarco, 149 F. Supp.2d at 1222, should have little application here. Although the expert's declaration was stricken, the court observed, "A better approach might be to include the expert's nonconclusory assertions within specific paragraphs in the complaint. This would reduce needless redundancy and simplify pleadings in federal securities cases." Id. Lead Plaintiff emphasizes that it has incorporated and summarized Hakala's Declaration in the Consolidated Complaint. Moreover because the PSLRA requires pleading of specific facts to give rise to a strong inference of scienter, the striking of the Declaration would merely eliminate some of the factual details that the statute requires. 15 U.S.C. § 78u-4(b)(2). Striking the declaration would undermine the specific factual pleading requirement of the statute. Where "unusual," courts have recognized that stock transactions can give rise to the strong inference of scienter. See, e.g., Nathenson, 267 F.2d at 421. Lead Plaintiff notes that statistics have long been used to plead and prove a defendant's state of mind and that these transactions were based on non-public information. Lead Plaintiff

connection with a motion to dismiss. 187 F.3d at 1278. It concluded that a court may judicially notice such documents, but only for determining the statements they contain and not to prove the truth of those statements. Id. In Branch, the issue was whether a government agent violated the plaintiff's fourth amendment rights by misleading the magistrate judge in an affidavit supporting search warrants, the basis of the plaintiff's claim. 14 F.3d at 450. In Swin, 883 F.2d at 247, after a plaintiff's complaint had been dismissed under Rule 12(b)(6) and the plaintiff tried to amend the complaint by attaching deposition testimony, the Third Circuit held that the facts in the deposition "could only be considered to the extent that they fall within the ambit of the complaint, as illustrative of those facts which [the plaintiff could prove if its complaint were reinstated]." The Court agrees with Lay that the cases do not address the specific issue in dispute here, i.e., whether an expert's conclusions can buttress the factual allegations in a complaint to meet a pleading standard.

underlines that the analysis of stock sales and of exercises of stock options by Hakala is significant circumstantial evidence of the requisite scienter and extremely material to this suit.

Furthermore, Lead Plaintiff, although maintaining that an evidentiary Daubert challenge is not appropriate at the pleading stage, goes through the test to demonstrate that Hakala's Declaration satisfies its requirements.

In reply (#825), Lay objects that the conclusory and unsupported conclusions in the Declaration of paid expert Hakala, which is "long on opinions but very short in facts," does not satisfy the PSLRA's requirement of pleading particular facts sufficient to raise to a strong inference of scienter. Nathenson, 267 F.3d at 411 (PSLRA's pleading standard "may only be met on the basis of 'facts,' which are 'state[d] with particularity' in the pleading."); Tuchman v. DSC Communications Corp., 14 F.3d 1061, 1067 (5th Cir. 1994)("We will thus not accept as true conclusory allegations or unwarranted deductions of fact."); In re Azuris Corp. Sec. Litig., 198 F. Supp.2d 862, 877 (S.D. Tex. 2002) ("[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss."). Lay challenges Lead Plaintiff's view that declaring Hakala's expert conclusions and opinions to be "facts" will transform them into facts.⁷

⁷ Lay contests not only the validity of Hakala's conclusions, but also the truth of the alleged facts relating to him in the Declaration, i.e., that Lay's exercise of 25,000 employee stock options on August 20, 2001 was to sell shares, reflecting insider trading. Lay contends that, as demonstrated by his Form 4, filed with the SEC, he paid \$519,530.50 to exercise those options and acquired 25,000 shares of Enron common stock on that date for a family limited partnership, which at the end of August 2001 beneficially owned 100,000 shares of Enron common stock. His filed Form 5 reflects that the family limited partnership at the end of 2001 still owned 100,000 shares, even though by that time they were essentially worthless. Forms 4 and 5, Tab 1 in Appendix to Lay's motion to dismiss Consolidated Complaint (#720). He also points to his payment of \$1,479,618.75 on August 21, 2001 to exercise options and acquire an additional 68,620 shares of Enron common

Although Lead Plaintiff argues that because of the PSLRA's heightened pleading requirements for scienter, it should be allowed to rely on an expert's conclusions, the Court finds no authority for this view. The Court agrees with Lay that an expert statistician's conclusions cannot replace Plaintiff's burden to plead specific facts with particularity sufficient to give rise to a strong inference of scienter. While DeMarco is the only case cited by the parties and found by the Court to address the propriety under Rule 10(c) of considering an expert opinion attached to a complaint in resolving a motion to dismiss, the Court find that its reasoning is sound.

While Rule 10(c) is broadly worded, the Court notes that Wright & Miller states regarding incorporation of exhibits under Rule 10(c), ". . . [L]engthy exhibits containing extraneous or evidentiary material should not be attached to the pleadings." 5 Charles Alan Wright and Arthur R. Miller Federal Practice and Procedure § 1327, at 763 (West 1990). Hakala's Declaration, without its exhibits, is thirty-eight pages long. More importantly, it is the particular nature of the instrument at issue here that the Court finds incompatible to buttress the facts alleged in the complaint in the face of Rule 12(b)(6) motions. In essence it is "extraneous" to the complaint. Id. The Declaration, which was not prepared with personal knowledge of the relevant events, does not evidence any "fact" that Lead Plaintiff cannot or has not alleged in its Consolidated Complaint. It is not a public document warranting judicial notice that certain statements were

stock for his personal account, which at the end of that month had a total of 1,082,223.19 shares. Id.

Because in ruling on a motion to dismiss under the PSLRA, Rule 12(b)(6) and Rule 9(b), this Court must view the facts that are well pleaded by the plaintiff as true, at this stage of the litigation it is irrelevant what Lay argues and attempts to prove about the motive behind his exercise of stock options by documentary evidence.

made. Nor is the Declaration the basis of the dispute in this case nor integral to the complaint, and it does not appear that Lead Plaintiff relied upon it in bringing this suit. For purposes of a motion to dismiss, Lead Plaintiff's alleged causes of action cannot rest on the validity of the expert Hakala's statistical deductions, the accuracy of which this Court cannot determine at the pleading stage anyway; instead the continued viability of the claims rests on the pleaded facts underlying and supporting Lead Plaintiff's allegations of insider trading, which were also the starting point of the expert's analysis.

Furthermore, the expert's Declaration for purposes of 12(b)(6) motions cannot be considered for the truth of what it contains and his deductions thus may not be given probative weight. The purposes for which a "written instrument" appended to a complaint under Rule 10(c) for consideration of dismissal under 12(b)(6) are restricted. For example, the Second Circuit Court of Appeals in Gant v. Wallingford Bd. of Educ., 69 F.3d 669, 674 (2d Cir. 1995), in dealing with the misapplication of Rule 10(c), explained,

Both the district court and the defendants assume that Rule 10(c) requires a plaintiff to adopt as true the full contents of any document attached to a complaint or adopted by reference. This is not a proper reading of the rule. Courts have found that, "[i]f the appended document . . . reveals facts which foreclose recovery as a matter of law, dismissal is appropriate," Associate Builders, Inc. v. Alabama Power Co., 505 F.2d 97, 1000 (5th Cir. 1974)(prospectus attached to complaint alleging bond purchase based on material misrepresentations). An appended document will be read to evidence what it incontestably shows once one assumes that it is what the complaint says it is (or, in the absence of a descriptive allegation, that it is what it appears to be). For example, a written contract appended to the complaint will defeat invocation of the Statute of Frauds, and a document that discloses what the complaint alleges it concealed will defeat the allegation of concealment. By the same token, however, a libel plaintiff may attach the writing alleged in the complaint to be

libelous without risk that the court will deem true all libels in it. Similarly, a receipt for goods, alleged in the pleading to have been forged, may or may not evidence forgery on its face, but it does not concede delivery of goods for pleading purposes.

In the instant suit, Lay disputes the accuracy of both the facts and the conclusions set out in Hakala's Declaration. Certainly the conclusions cannot be used to establish scienter as a matter of law, and Hakala was dependent upon Lead Plaintiff to provide the facts.

"Insider trading in suspicious amounts or at suspicious times is, of course, presumptively probative of bad faith and scienter." Rubinstein v. Collins, 20 F.3d 160, 169 (5th Cir. 1994). Accord Stevelman v. Alias Research, Inc., 174 F.3d 79, 84-85 (2d Cir. 1999)("unusual insider trading activity during the class period . . . may permit an inference of bad faith or scienter"); Shaw v. Digital Equipment, 82 F.3d at 1224, 83 F.3d 1194, 1224 (1st Cir. 1996) (suspicious insider trading "may permit an inference that the trader . . . possessed material non-public information at the time"); Fecht v. Price Co., 70 F.3d 1078, 1084 (9th Cir. 1995)(insider stock sales "are circumstantial evidence that the defendants knew or had reason to know that the financial condition of the company was deteriorating well before they disclosed the problems"), cert. denied, 517 U.S. 1136 (1996). Key factors relating to insider sales that make them "unusual" or "suspicious" are (1) the amount and percentage of the shares sold; (2) the timing of the sales; (3) whether all of the defendants sold shares; (4) the amount of profits realized; and (5) whether the sales were consistent with the insider's prior trading history. Ronconi v. Larkin, 253 F.3d 423, 434 (9th Cir. 2001); Florida State Bd. of Admins. v. Green Tree Financial Corp., 270 F.3d 645, 659 (8th Cir. 2001); Stevelman, 174 F.3d at 85-86; In re Advanta Corp. Sec. Litig., 180 F.3d 525, 534-35 (3d Cir. 1999). See also Abrams v. Baker Hughes, Inc., 292 F.3d 424, 425 (5th Cir. 2002). It is Lead Plaintiff's burden to plead facts

that meet this standard, not to present an expert's statistical conclusion that insider trading was overwhelmingly probable. The Court observes that the Consolidated Complaint, with its specific allegations and accompanying graphs purportedly demonstrating some individual Defendants' trading patterns before and during the Class Period, makes such points as to those Defendants without reliance on Dr. Hakala's conclusions.

In sum, the Court agrees with Lay that the Declaration should not be considered in evaluating the sufficiency of the pleading, and the Court will disregard it for purposes of Rule 12(b)(6) motions. Nevertheless, the Court will not strike it from the record because Plaintiffs may wish to use it for other purposes in the course of the litigation.

Lead Plaintiff moves to strike (#838), as violative "of the letter and the spirit of Federal Rule of Civil Procedure 12(b)(6)," Certain Defendants' (Richard B. Buy, Richard A. Causey, Mark A. Frevert, Stanley C. Horton, Steven J. Kean, Mark E. Koenig, Michael S. McConnell, Jeffrey McMahon, Cindy K. Olson, Kenneth D. Rice and Lawrence Grey Whalley's) joint brief relating to Enron disclosures (#735, errata 824) because (1) it improperly alleges facts comprised of their "spin" on the evidence to contradict and challenge the merits of Plaintiff's well-pleaded allegations; (2) Defendants have improperly submitted non-public transcripts and Power Point slides⁸ that are neither referenced nor incorporated in the Consolidated Complaint; (3) in making their factual assertions,

⁸ The transcripts are represented to be from an analyst conference and a conference call, whereas the slides were allegedly shown at an analyst conference on January 20, 2000. Neither was referenced or incorporated into the Consolidated Complaint, and they have not been shown to be public documents and are not authenticated, and thus cannot properly be considered on a 12(b)(6) motion to dismiss nor be accorded judicial notice under Fed. R. Evid. 201 (a court may take judicial notice of "fact[s] . . . not subject to reasonable dispute in that [the fact] is either (1) generally known . . . or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned").

Defendants fail to cite to any evidentiary record; and (4) Defendants fail to demonstrate that their factual contentions, denials and submissions of non-public, unauthenticated documents should be judicially noticed or admitted because they generally are not permitted in a motion to dismiss. Lead Plaintiff requests the Court to strike Defendants' complete brief and the non-public documents, and disregard all argument or references to these documents, as well as not to make any factual determinations sought by Defendants.

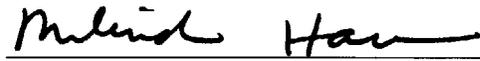
This Court, as noted, is aware of the standard of review on 12(b)(6) motions, specifically that it must "accept as true all well-pleaded allegations in the complaint" and "construe those allegations in the light most favorable to plaintiffs." Rubinstein, 20 F.3d at 166. It agrees that Defendants' attacks on the veracity of the complaint's allegations are generally improper for 12(b)(6) motions and that the Court should not be making findings on factual disputes. It further agrees that many of Defendants' contentions cannot be considered at this juncture. Nevertheless, Defendants also raise legal issues related to adequacy of pleadings, such as group pleading, allegations of violations of GAAP, lack of specificity in pleading, the bespeaks caution doctrine and the PSLRA's safe harbor for forward-looking statements, materiality, citations to SEC filings, restatements, etc., as well as disclosures made by Enron which the Court will be applying to the Consolidated Complaint in evaluating and resolving issues in the motions to dismiss. For these reasons, rather than strike the entire document, the Court can and will disregard what is improper at the pleading stage when it reviews the motions to dismiss.

Accordingly, for the reasons indicated above, the Court

ORDERS that Lay's motion to strike is DENIED but his request that Hakala's Declaration not be considered with respect to his motion to dismiss is GRANTED. The Court further

ORDERS that Lead Plaintiff's motion to strike Certain Defendants' joint disclosure brief is DENIED, but the Court will disregard improper factual argument, unauthenticated transcripts and slides.

SIGNED at Houston, Texas, this 9th day of August, 2002.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE