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United States Courts
Southern District of Texas
FILED
JAN 0 2 2004
Michael N. Milby, Clerk

December 31, 2003

BY MESSENGER
Mr. Michael N. Milby, Clerk
United States District Court
515 Rusk Street
Houston, Texas 77002

Re: Case No. H 01-3913; *In re ENRON CORPORATION SECURITIES AND ERISA LITIGATIONS; This Document Relates to: Mark Newby, et al v. Enron Corp., et al; The Regents of the University of California, et al v. Kenneth L. Lay, et al.; Pamela M. Tittle, et al. v. Enron Corp., et al;* In the United States District Court for the Southern District of Texas, Houston Division

Dear Mr. Milby:

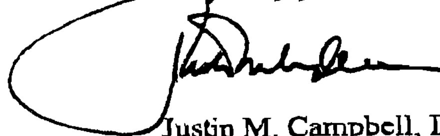
Enclosed are the original and two copies of the following:

Second Amended and Consolidated Complaint

Please file-stamp the enclosed copies to indicate the date and time of filing and return a file-stamped copy to this office with our messenger.

Thank you.

Very truly yours,



Justin M. Campbell, III

JMC/bjl
Enclosures

cc: All Attorneys (pursuant to Court's Service Order)
Courtesy copy to Honorable Melinda Harmon

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Southern District of Texas
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December 31, 2003

BY MESSENGER
Ms. Helen Tippin, Case Manager for
Hon. Melinda Harmon
United States District Judge
Southern District of Texas
515 Rusk, Rm. 9114
Houston, TX 77002

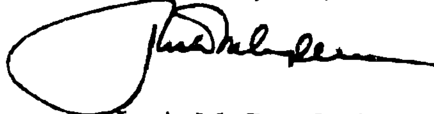
RE: Case No. H 01-3913; *In re ENRON CORPORATION SECURITIES AND ERISA LITIGATIONS; This Document Relates to: Mark Newby, et al v. Enron Corp., et al; The Regents of the University of California, et al v. Kenneth L. Lay, et al.; Pamela M. Tittle, et al. v. Enron Corp., et al;* In the United States District Court for the Southern District of Texas, Houston Division

Dear Ms. Tippin:

Enclosed please find a courtesy copy of the Second Amended and Consolidated Complaint for delivery to the Honorable Judge Melinda Harmon.

Thank you for your cooperation with regard to this matter.

Very truly yours,



Justin M. Campbell, III

JMC/bjl
Enclosure

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

PAMELA M. TITTLE; THOMAS O. PADGETT; GARY S. DREADIN; JANICE FARMER; JOHN L. MOORE; BETTY J. CLARK; PATRICK CAMPBELL; FANETTE PERRY; CHARLES PRESTWOOD; ROY RINARD; STEVE LACEY; CATHERINE STEVENS; ROGER W. BOYCE; WAYNE M. STEVENS; NORMAN L. YOUNG; MICHAEL L. MCCOWN; DAN SHULTZ, on behalf of themselves and a class of persons similarly situated, and on behalf of the Enron Corp. Savings Plan, the Enron Corp. Employee Stock Ownership Plan and the Enron Corp. Cash Balance Plan,

Plaintiffs,

v.

ENRON CORP., an Oregon corporation; ENRON CORP. SAVINGS PLAN ADMINISTRATIVE COMMITTEE; ENRON EMPLOYEE STOCK OWNERSHIP PLAN ADMINISTRATIVE COMMITTEE; CINDY K. OLSON;; JAMES S. PRENTICE; MARY K. JOYCE; SHEILA KNUDSEN; ROD HAYSLETT; PAULA RIEKER; TOD A. LINDHOLM; PHILIP J. BAZELIDES; KEITH CRANE; WILLIAM J. GULYASSY; DAVID SHIELDS; JOHN DOES NOS. 1-100 UNKNOWN FIDUCIARIES OF THE ENRON CORP SAVINGS PLAN OR THE ESOP; THE NORTHERN TRUST COMPANY; KENNETH L. LAY; JEFFREY K. SKILLING; ROBERT A. BELFER; NORMAN P. BLAKE, JR.; RONNIE C. CHAN; JOHN H. DUNCAN; WENDY L. GRAMM; ROBERT K. JAEDICKE; CHARLES A. LEMAISTRE; JOE H. FOY; KEN L. HARRISON;

SECOND AMENDED AND CONSOLIDATED COMPLAINT

CIVIL ACTION NO. H 01-3913 AND CONSOLIDATED CASES

JURY TRIAL DEMANDED

MDL 1446

REBECCA P. MARK-JUSBASCHE; ARTHUR ANDERSEN, LLP; DAVID B. DUNCAN; THOMAS H. BAUER; DEBRA A. CASH; ROGER D. WILLARD; D. STEPHEN GODDARD, JR.; MICHAEL M. LOWTHER; GARY B. GOOLSBY; MICHAEL C. ODOM; MICHAEL D. JONES; WILLIAM SWANSON; JOHN STEWART; JAMES A. FRIEDLIEB; ANDERSEN DOES NOS. 2 THROUGH 1800 UNKNOWN PARTNERS IN ANDERSEN LLP, Defendants.	

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TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Plaintiffs, individually and on behalf of all others similarly situated, by their undersigned attorneys, for their class action complaint, allege as follows. All allegations in this complaint are based upon the investigation of counsel and the limited discovery to date, except the allegations pertaining to the named plaintiffs, which are based upon personal knowledge. As of the date of this complaint, discovery is far from complete. As a result, it is possible that once the discovery process is completed, the roles of other unknown participants in the wrongdoing outlined below will be revealed, and Plaintiffs will seek leave to amend this complaint to add new parties and/or new claims.[1]

I. NATURE OF THE ACTION

1. Plaintiffs bring this action as a Class Action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the 24,000 Enron employees who were participants in the Enron Corp. Savings Plan, the Enron Corp. Employee Stock Ownership Plan, or the Cash Balance Plan.[2] As a direct result of the Defendants' failures to prudently and loyally manage and administer the Plans' investment in Enron stock, or comply with the Plan terms requiring diversification of the Plans' assets, the Plans lost hundreds of millions of dollars, and participants' and beneficiaries' retirement assets were largely wiped out.

2. Enron will be recorded in history as one of the greatest financial debacles in the United States and the world. The facts, even without the benefit of any discovery, now demonstrate that Enron was a company used by unscrupulous merchants of greed, arrogance and corruption of power to enrich themselves at the expense of many, including their own employees. At the direction of the Defendants named below, and with the active assistance of

---

[1] Based upon the Court's September 30, 2003 Order, the Plaintiffs have omitted in this Amended Complaint the claims in Counts VI, VII and XI of the First Amended and Consolidated Complaint. Plaintiffs reserve the right to assert those claims on appeal. *Wilson v. First Houston Inv. Corp.*, 566 F.2d 1235, 1237-38 (5th Cir. 1978), *vacated on other grounds*, 444 U.S. 959 (1979).

[2] These Plans are defined below in Section IV. All references to "the Plans" shall mean all three Plans unless the context indicates otherwise. All references to "Plan assets" or "Plan fiduciaries" shall also refer to all three Plans unless the context indicates otherwise. All references to "participants" shall mean participants and beneficiaries.

accounting firms, investment banking firms, and law firms, Enron engaged in extensive "off-book" transactions to hide and shift debt from its balance sheets, contrary to generally accepted accounting principles. As a high ranking official of Enron summed up the situation in a letter she wrote to Enron CEO and Chairman Kenneth Lay on August 14, 2001: "I am incredibly nervous that we will implode in a wave of accounting scandals." She was prophetic.

3. This Second Consolidated and Amended Complaint ("Complaint") alleges that the Enron Corporation Savings, ESOP, and Cash Balance Plan Administrative Committees (collectively referred to herein as the "Administrative Committee," the Northern Trust Company, and other persons responsible for safeguarding the assets of the employees' interests in the Savings Plan, ESOP and Cash Balance Plan are liable for breaching their fiduciary duties under the Employment Retirement Income Security Act of 1974 ("ERISA") § 404(a), 29 U.S.C. § 1104(a)(2). These Defendants breached their duties of prudence, care and loyalty by, *inter alia*: (i) imprudently permitting and/or causing the investment of Savings Plan assets in grossly overvalued Enron stock; (ii) failing to provide participants with complete and accurate information regarding the risks associated with investment in Enron stock; and (iii) encouraging ESOP and Savings Plan members to hold their artificially inflated Enron stock (and in some cases forcing them to do so through vesting and transfer rules imposed for that purpose) and then not allowing them to sell their stock by "locking down" the Plan assets while the stock price dropped precipitously as news of Enron's massive accounting irregularities reached the market, and the financially disastrous state of the company became known. These Defendants also breached their ERISA duties by failing to ensure diversification as required by governing documents for the Enron Corp. Savings Plan and the ESOP. The Complaint also alleges that the members of Enron's Board of Directors, who were responsible for oversight with respect to the retirement plans, breached their fiduciary duties by failing, among other things, to monitor the fiduciaries who allegedly were managing these plans but who were in fact grossly derelict in their duties.

4. Beginning on January 20, 1998, when Enron reported its financial results for the year ending December 31, 1997, the Company systematically misrepresented its reported financial results by entering into elaborate transactions with related parties to obscure its actual financial results.

5. Throughout the Class Period, Enron reported "strong" or "record" financial results for each successive year through 2000, but those results were only attained through the use of accounting trickery.

6. Because investors and employees were unaware of the improper accounting and financial reporting upon which the Enron enterprise relied, the market price of Enron stock rose rapidly. From August, 1998 through January, 2000, a mere eighteen months, the market price of Enron stock tripled, trading as high as $90.00 per share in December 2000. Participants in the Savings Plan, and the ESOP , having no knowledge of the accounting improprieties, and further encouraged by the statements of officers of Enron regarding the financial strength of the Company, continued to add more Enron stock to their accounts at prices typically between $50 and $80 per share, and/or continued to retain Enron shares instead of diversifying their holdings.

7. Throughout the Class Period, Defendants Lay, Skilling, Olson and other top Enron executives repeatedly encouraged Enron employees to contribute a portion of their base pay to the Savings Plan and to accept bonuses and/or compensation in the form of Enron stock. Lay, Skilling, Olson and other top Enron executives did so, in part, because by encouraging such an investment they, and the other Enron executives, could pay employees with inflated stock, as opposed to cash, thereby making cash available to pay themselves hundreds of millions of dollars in bonuses and compensation. In addition, keeping stock in the hands of company employees helped keep the stock price from dropping dramatically when the company announced bad news. With shares tied up in Savings Plans and the ESOP, where they could not be easily traded, fewer were sold by worried investors/employees. This allowed Lay and other

top executives to sell their shares, while the employees could not, or would not do so, due in part to the incessant hyping of Enron stock by Lay, Skilling, Olson and other top executives.

8. As a result of the promotional efforts undertaken by Lay and other top executives and their efforts to make the Enron enterprise appear legitimate and successful, by January 1, 2001, the Savings Plan contained more than $1.3 billion in Enron stock; at the same time, the ESOP contained approximately $1 billion in Enron stock.

9. On October 16, 2001, Enron made its first disclosure that something was awry with its financial reporting. In this press release, Enron announced that it would be forced to take a $1 billion charge against its third quarter results related to impairment of certain of its assets including "certain structured finance arrangements." This surprising announcement called into question Enron's financial reporting system and led to further investigation into these "structured finance arrangements."

10. Beginning somewhere between October 17, 2001 and October 26, 2001, certain of the Defendants orchestrated the commencement of a constructive and/or actual "Lockdown" of all assets in the Enron Corp. Savings Plan and the ESOP – including all of the participants' investments in Enron stock. Because of this maneuver, the participants were powerless to sell their shares of Enron.

11. Shortly before the Lockdown began, Enron executives – including Benefits Manager Mikie Rath, and Enron's Executive Vice President for Human Resources, Cindy Olson – debated whether or not the Lockdown should be postponed given the impending and inevitable decline in Enron's stock price. Nonetheless, those Defendants with authority to stop the Lockdown ordered that it proceed. Northern Trust, despite the fact that plan participants were complaining about the Lockdown in light of Enron's unraveling financial situation, proceeded with the Lockdown in breach of its fiduciary duty as the trustee to the plans.

12. From October 17, 2001 through November 7, 2001, news stories questioned Enron's financial reporting, and detailed the complex and improper nature of the off-balance

sheet partnerships. During this period, it came to light that these arrangements were with purportedly "independent" partnerships that were, in some instances, established and run by the Chief Financial Officer of Enron, Andrew S. Fastow, and his underling, Michael Kopper. The press was highly critical of these arrangements and questioned both Fastow's credibility and Enron's financial reporting in light of Fastow's involvement in the partnerships. During this time period, Enron shares sank to close at $11.17 per share on November 5, 2001. But the Savings Plan and ESOP participants – still subject to the Lockdown of their retirement plans – remained powerless to sell their shares and mitigate the continuing decline in Enron's share price. Meanwhile, public investors were free to trade their stock and did so freely, and those Defendants with fiduciary duties to participants in the Savings Plan and the ESOP did nothing to protect the Enron employees who were participants in these plans.

13. On November 8, 2001, Enron was finally forced to announce that all of its reported financial results since its December 31, 1997 annual financial statements were materially false and misleading. The Company announced the highly unusual step of restating all of the Company's annual financial statements for the previous four years – essentially admitting that the statements were materially misleading when they were issued.

14. The impact of this Restatement was enormous:

	1997	**1998**	**1999**	**2000**
Recurring Net Income Amount of Overstatement	$96,000,000	$113,000,000	$250,000,000	$134,000,000
Debt Amount of Understatement	$711,000,000	$561,000,000	$685,000,000	$628,000,000
Shareholders' Equity Amount of Overstatement	$313,000,000	$448,000,000	$833,000,000	$1,164,000,000

15. The stock market continued to react to Enron's disastrous news, causing Enron stock to sink as low as $10.00 per share on November 14, 2001. The participants of the Savings Plan and the ESOP, still powerless to sell their Enron shares because of the Lockdown, continued to watch in dismay as their investment in Enron stock plummeted.

16. On November 14, 2001 – after Savings Plan and ESOP participants had suffered substantial losses – the Lockdown was lifted. On November 19, 2001, Enron filed its Form 10-Q with the SEC for the quarter ending September 30, 2001. This Form 10-Q detailed the reasons for the restatement announced on November 8, 2001, and offered restatements that varied materially from those announced on November 8, 2001. Following this disclosure, Enron's shares continued to slide, closing at $4.11 per share on November 27, 2001. The share price only remained that high because of the hope of an acquisition of Enron by Dynegy, Inc. Enron stock is now virtually worthless.

17. The Class Period closes on December 2, 2001, when Enron filed for bankruptcy protection.

18. In the end, the employees lost a large portion of their retirement accounts and much of their life savings. Enron executives, on the other hand, made hundreds of millions of dollars.

19. Plaintiffs, on behalf of the Plans, seek to compel the fiduciary Defendants to make good to the Plans all losses resulting from these fiduciary and co-fiduciary breaches, to restore to the Plans all profits made through the use of the Plans' assets and to obtain such other equitable or remedial relief as the Court may deem appropriate pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), and ERISA § 409, 29 U.S.C. § 1109. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), on behalf of themselves and all others similarly situated, Plaintiffs also seek appropriate equitable relief from the fiduciary and non-fiduciary Defendants – including declaratory and injunctive relief, rescission, restitution and disgorgement – to remedy their fiduciary and co-fiduciary breaches, their knowing participation in such fiduciary and co-fiduciary breaches, and their violation, with respect to the Retirement Plan, of ERISA's anti-cutback rule, ERISA § 204(g)(1), 29 U.S.C. § 1054(g)(1) (*see* Count VI). Plaintiffs also seek, on behalf of themselves and all others similarly situated, all appropriate and available relief from

Andersen LLP and the Andersen Defendants for their negligence with respect to their auditing and consulting work for Enron and one or more of the Plans.

II. JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction over Counts I-VI of this action under ERISA pursuant to 29 U.S.C. § 1132(e)(1). The Court has supplemental jurisdiction over Count VII.

21. Venue is properly laid in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). Venue is also proper in this district under 28 U.S.C. § 1391(b) and (c) because substantial acts in furtherance of the alleged misconduct and/or its effects have occurred within this district, many of the plaintiffs are domiciled in this district, and many of the Defendants are domiciled and/or maintain offices in this district.

III. PARTIES

A. Parties

1. Plaintiffs

22. Plaintiff Pamela M. Tittle is a resident of Louisiana. For many years she worked for Portland General Corporation ("PGE"), and was a participant in its 401(k) plan, until PGE was acquired by Enron. She continued work with Enron until her employment terminated at the end of 1998. She was a "participant" in the Savings Plan, as described below, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). Since 1997, she has held approximately 2,000 shares of the Enron Corp. Stock Fund, representing a substantial portion of her total savings in the Plan. In 2001 alone, the value of her holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss to her retirement savings of approximately $150,000.

23. Plaintiff Thomas O. Padgett is a resident of Texas. He is an employee of EOTT Energy Corp. and has been a "participant" in the Enron Corp. Savings Plan, within the meaning of ERISA § 3(7), since 1992 and remains a participant today. He holds approximately 5,600

shares of the Enron Corp. Stock Fund, representing a substantial portion of his total savings in the plan. In 2001 alone, the value of his holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss to his retirement savings of approximately $440,000.

24. Plaintiff Gary S. Dreadin is a resident of Louisiana. He works for Florida Gas Transmission Company and is an employee of Enron and has been a "participant" in the Enron Corp. Savings Plan, within the meaning of ERISA § 3(7), since approximately 1991. He holds approximately 1,560 shares of the Enron Corp. Stock Fund, representing a substantial portion of his total savings in the plan. In 2001 alone, the value of his holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss to his retirement savings of approximately $123,000.

25. Plaintiff Janice Farmer is a resident of Florida. She worked for Florida Gas Transmission Company, which became part of Enron, for sixteen years until her retirement in 2000. She has been a "participant" in the Enron Corp. Savings Plan, within the meaning of ERISA § 3(7), since 1986 and remains a participant today. As of November 2001, she held approximately 6,200 shares and options on 1,700 additional shares, representing a substantial portion of her total savings in the plan. In 2001 alone, the value of her holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss to her retirement savings of approximately $500,000.

26. Plaintiff Charles A. Prestwood is a resident of Conroe, Texas. He worked for Houston Natural Gas, which became Enron in 1985, for approximately 33 years until his retirement in 2000. Mr. Prestwood has been a "participant" in the Enron Corp. Savings Plan, within the meaning of ERISA § 3(7), since 1985 and remains a participant today. Mr. Prestwood has been a "participant" in the Enron Employee Stock Ownership Plan since 1987 and remains a participant today. He holds approximately 2,275 shares of the Enron Corp. Stock Fund and 11,094 shares of the Enron Stock in the ESOP. In 2001 alone, the value of his holdings dropped

from approximately $80.00 per share to approximately $1.00 per share, representing a loss to his retirement savings of approximately $1,000,000.

27. Plaintiff Roy Rinard is a resident of Oregon. He is a twenty-two year employee of Portland General Electric ("PGE") and was a participant in its Savings Plan until PGE was acquired by Enron. He continues to work at Enron. He has been a "participant" in the Enron Corp. Savings Plan, within the meaning of ERISA § 3(7), since 1997. As of November 2001, Mr. Rinard held approximately 7,500 shares of the Enron Corp. Stock Fund. In 2001 alone, the value of his holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss to his retirement savings of approximately $600,000, nearly his entire retirement savings.

28. Plaintiff Steve Lacey is a resident of Oregon. He is a twenty-one year employee of PGE and was a participant in its Savings Plan until PGE was acquired by Enron. He has continued to work with Enron. He has been a "participant" in the Enron Corp. Savings Plan, within the meaning of ERISA § 3(7), since 1997. As of November 2001, Lacey held approximately 1,200 shares of the Enron Corp. Stock Fund. In 2001 alone, the value of his holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss to his retirement savings of approximately $100,000, his entire retirement savings.

29. Plaintiff Catherine Stevens is a resident of Oregon. She worked for PGE and was a participant in its Savings Plan, until it was acquired by Enron. She continues to work with Enron. Mrs. Stevens has been a "participant" in the Enron Corp. Savings Plan, within the meaning of ERISA § 3(7), since 1997 and remains a participant today. She holds approximately 2,179 shares of the Enron Corp. Stock Fund. In addition, Mrs. Stevens holds over 1,000 Enron stock options. In 2001 alone, the value of her holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss to her retirement savings of approximately $170,000.

30. Plaintiff Wayne Stevens is a resident of St. Helens, Oregon. He worked for PGE and was a participant in its Savings Plan, until it was acquired by Enron. Mr. Stevens continued work with Enron until his retirement in 2001. Mr. Stevens has been a "participant" in the Enron Corp. Savings Plan, within the meaning of ERISA § 3(7), since 1997 and remains a participant today. He holds approximately 2,085 shares of the Enron Corp. Stock Fund. In 2001 alone, the value of his holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss to his retirement savings of approximately $164,000.

31. Plaintiff Michael L. McCown is a resident of Illinois. He is a former employee of Enron Energy Services ("EES"). Mr. McCown worked for EES from June 2000 until his employment terminated in December 2001. McCown was a "participant" in the Enron Savings Plan within the meaning of ERISA § 3(7). In 2001, the value of his holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss to his retirement savings of approximately $15,000.

32. Plaintiff Dan Shultz is a resident of Sugar Land, Texas, and is a former employee of Enron Engineering and Construction Company. Mr. Shultz received compensation in the form of Enron stock in fiscal years 1999, 2000 and 2001. In 2001 alone, the value of his stock dropped from approximately $80.00 per share to approximately $1.00 per share, representing a significant loss.

33. Plaintiff John L. Moore is a resident of Texas. He worked for Northern Natural Gas Company, Enron Gas Supply, Florida Gas Transmission Company, Citrus Marketing Corp., Enron International, and Enron North America, all of which are Enron subsidiaries or were merged into Enron. At various times from 1985 until his employment terminated at the end of 2001, Mr. Moore was a "participant" in the Enron Corp. Savings Plan and the Enron ESOP. In 1996, 1997, 1999, 2000 and 2001, he also received bonus compensation in the form of Enron stock options. As of November 2001, Mr. Moore held approximately 10,000 shares of Enron stock. In 2001 alone, the value of his holdings dropped from approximately $80.00 per share to

approximately $1.00 per share, representing a loss of approximately $790,000 to his retirement savings.

34. Plaintiff Betty J. Clark is a resident of Florida. Ms. Clark has worked for Enron since 1986 and has participated in the Enron Corp. Savings Plan from 1986 to the present. She participated in the ESOP from 1987 to 1994. She participated in the Enron Cash Balance Plan from its inception to the present. She holds approximately 6,500 shares of Enron stock in the Enron Corp. Stock Fund and approximately 68 shares in her ESOP account. In 2001 alone, the value of her holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss of approximately $500,000 to Ms. Clark. In addition, as of November 12, 2001, Ms. Clark's ESOP offset loss was her annuity of $1,170.48 per month.

35. Plaintiff Norman L. Young is a resident of Texas. Mr. Young worked as the Director of Risk Management with EOTT Energy from 1992 to 1998. In 1987, he worked as a credit specialist with ELF, an Enron subsidiary. From 1995 to 1999, Mr. Young participated in the Enron Corp. Savings Plan. In the years 1987, 1992, 1993 and 1994, Mr. Young participated in the ESOP. Mr. Young participated in the Cash Balance Plan from its inception through 1999. In 2001 alone, the value of his holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss of approximately $66,000.

36. Plaintiff Patrick Campbell is a resident of Oregon. He worked for PGE and was a participant in its Savings Plan for many years, until it was acquired by Enron. He continued to work with PGE. He was a "participant" in the Enron Corp. Savings Plan from 1997 until the end of 2001. Mr. Campbell also received compensation in the form of Enron stock. As of October 2001, Mr. Campbell held approximately 8,000 shares of Enron stock in the Enron Corp. Stock Fund, representing a substantial portion of his total savings in the plan. In 2001 alone, the value of his holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss to his retirement savings of approximately $600,000.

37. Plaintiff Roger W. Boyce was a participant, as defined in ERISA § 3(7), 29 U.S.C. § 1002(7), in the Enron Corp. Retirement Plan and the Enron Corp. Employee Stock Ownership Plan who accrued benefits under the Retirement Plan between January 1, 1987 and December 31, 1994, and whose benefits have been, are or will be offset by the market price of one-fifth of the shares of the Enron stock in his ESOP Offset Account as of each January 1st over the five-year period 1996 to 2000.

38. Plaintiff Fanette Perry is a resident of Houston, Texas. From 1985 to 2001 she worked for Enron Corp. She participated in the Enron Corp. Savings Plan from 1993 until her employment terminated in 2001. She has been a "participant" in the plan since 1985 and remains a participant today. She holds approximately 1,700 shares of Enron stock in the Enron Corp. Stock Fund. In 2001 alone, the value of her holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss to her retirement savings of approximately $135,000.

2. Defendants

39. Enron Corp. ("Enron") is an Oregon corporation with its headquarters at 1400 Smith Street in Houston, Texas. At all relevant times, Enron was the Savings Plan, ESOP and Cash Balance Plan sponsor and a fiduciary under ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B). Enron is also a party in interest pursuant to ERISA within the meaning of 29 U.S.C. § 1002(14). Enron is sued herein both in its fiduciary and non-fiduciary capacities with respect to all three Plans, for breach of fiduciary and co-fiduciary duties, for knowingly participating in others' fiduciary and co-fiduciary breaches, and for amending the Retirement Plan to decrease participants' accrued benefits. Enron is named as a Defendant notwithstanding the fact that it filed for protection under Chapter 11 of the bankruptcy code on December 2, 2001, since, pursuant to the bankruptcy court's ruling, the stay against Enron will be lifted as of June 21, 2002.

a. Enron ERISA Defendants

40. At all times relevant to this action, Defendant Enron Corp. Savings Plan Administrative Committee (the "Administrative Committee") was the "named fiduciary," a fiduciary and administrator of the Savings Plan within the meaning of 29 U.S.C. § 1002(21)(A). The Administrative Committee's principal place of business was the same as Enron's at 1400 Smith Street, Houston, Texas 77002.

41. At all times relevant to this action, Defendant Enron Employee Stock Ownership Plan Administrative Committee ("ESOP Administrative Committee") was the "named fiduciary," a fiduciary and administrator of the ESOP within the meaning of 29 U.S.C. § 1002(21)(A). The ESOP Administrative Committee's principal place of business was the same as Enron's at 1400 Smith Street, Houston, Texas 77002. Enron's Employee Stock Ownership Plan is an ESOP within the meaning of 29 U.S.C. § 1107(d)(6).

42. At all times relevant to this action, Defendant Cash Balance Plan Administrative Committee ("Cash Balance Plan Administrative Committee") was the "named fiduciary," a fiduciary and administrator of the ESOP within the meaning of 29 U.S.C. § 1002(21)(A). The Cash Balance Plan Administrative Committee's principal place of business was the same as Enron's at 1400 Smith Street, Houston, Texas 77002.

43. Defendant Cindy K. Olson ("Olson") was Enron's executive vice-president for human resources, and a member of the Administrative Committee. As such, she was a fiduciary of the Savings Plan and the ESOP. During the Class Period, while she was a fiduciary, and while Defendants were issuing false statements concerning Enron, she sold 83,183 shares of Enron stock for insider trading proceeds of $6,505,870.

44. Defendant James S. Prentice ("Prentice") was the Chairman of the Administrative Committee. As such, he was also a fiduciary of the Savings Plan within the meaning of ERISA § 3 (21)(A), 29 U.S.C. § 1002(21)(A).

45. Defendant Mary K. Joyce ("Joyce") was vice-president of Compensation and Benefits for Enron. Defendant Joyce was also a member of the Administrative Committee. Defendant Joyce signed the Savings Plan's Internal Revenue Service Form 5500 for the year ending December 31, 1998 in her capacity as both Plan sponsor and a Plan administrator. As such, she was also a fiduciary of the Savings Plan within the meaning of ERISA § 3 (21)(A), 29 U.S.C. § 1002(21)(A).

46. Defendant Sheila Knudsen ("Knudsen") was a member of the Administrative Committee. As such, she was also a fiduciary of the Savings Plan within the meaning of ERISA § 3 (21)(A), 29 U.S.C. § 1002(21)(A).

47. Defendant Rod Hayslett ("Hayslett") was a member of the Administrative Committee. As such, he was also a fiduciary of the Savings Plan within the meaning of ERISA § 3 (21)(A), 29 U.S.C. § 1002(21)(A).

48. Defendant Paula Rieker ("Rieker") was a member of the Administrative Committee. As such, she was also a fiduciary of the Savings Plan within the meaning of ERISA § 3 (21)(A), 29 U.S.C. § 1002(21)(A).

49. Defendant Tod A. Lindholm ("Lindholm") was a member of the Administrative Committee. As such, he was also a fiduciary of the Savings Plan within the meaning of ERISA § 3 (21)(A), 29 U.S.C. § 1002(21)(A).

50. Defendant Philip J. Bazelides ("Bazelides") was Chairman of the Administrative Committee and Vice President in Charge of Employee Benefits through 1998. As such, he was also a fiduciary of the Savings Plan, the ESOP and the Cash Balance Plan within the meaning of ERISA § 3 (21)(A), 29 U.S.C. § 1002(21)(A).

51. Defendant Keith Crane ("Crane") was a member of the Administrative Committee. As such, he was also a fiduciary of the Savings Plan within the meaning of ERISA § 3 (21)(A), 29 U.S.C. § 1002(21)(A).

52. Defendant William J. Gulyassy ("Gulyassy") was a member of the Administrative Committee. As such, he was also a fiduciary of the Savings Plan within the meaning of ERISA § 3 (21)(A), 29 U.S.C. § 1002(21)(A).

53. Defendant David Shields ("Shields") was a member of the Administrative Committee. As such, he was also a fiduciary of the Savings Plan within the meaning of ERISA § 3 (21)(A), 29 U.S.C. § 1002(21)(A).

54. Defendants John Does Nos. 1-100 ("Does") were at all relevant times members of the Administrative Committee(s) of the Savings Plan, ESOP and/or the Cash Balance Plan. As such, they were fiduciaries of the Plans within the meaning of ERISA § 3 (21)(A), 29 U.S.C. § 1002(21)(A).

55. The Defendants identified above in paragraphs 40-54 are collectively referred to herein as the "Enron ERISA Defendants." The Enron ERISA Defendants were fiduciaries with respect to the Savings Plan, the ESOP and the Cash Balance Plan in that they each exercised control respecting management of the assets of the Savings Plan, the ESOP and/or the Cash Balance Plan, rendered investment advice for a fee or other compensation or had authority to do so, and had discretionary authority or responsibility in the administration of the Savings Plan, the ESOP and/or the Cash Balance Plan. 29 U.S.C. § 1002(21)(A).

b. Northern Trust

56. Defendant The Northern Trust Company ("Northern Trust") is a multi-bank holding company headquartered in Chicago with approximately $35 billion in banking assets and over $1.6 trillion in trust assets. Northern Trust's assets under management are over $300 billion, ranking Northern Trust among the 20 largest U.S. money managers. Over two-thirds of corporate revenue is derived from fees, the majority of which are from fiduciary, asset custody, and investment management services. Northern Trust was a trustee and fiduciary of the Savings Plan and the ESOP within the meaning of ERISA § 1103(a), 29 U.S.C. § 1003(a), as well as within the meaning of ERISA § 3(21)(A)(i) & (iii), 29 U.S.C. § 1102(21)(A)(i) & (iii).

c. Enron Director Defendants

57. Defendant Kenneth L. Lay ("Lay") was, at all relevant times, Chairman of the Board of Directors of Enron. Defendant Lay also served as Enron's Chief Executive Officer from 1986 through February 2001, and then again from August 2001 until he resigned in January 2002. Because of Defendant Lay's positions with the Company, he had access to material, adverse, non-public information about Enron's internal control structure, as well as the Company's finances, and had access to internal corporate documents (including the Company's operating plans, budgets and forecasts, and reports of actual operations compared thereto). As described below, Lay also was and acted as a fiduciary of the Savings Plan, the ESOP and the Cash Balance Plan. During the Class Period, while Defendants were causing Enron to make false statements and issue false financial results, Lay sold 4,002,259 shares of his Enron stock for insider trading proceeds of $184,494,426. Lay also received bonus payments of $14.1 million, in addition to his salary, for 1998, 1999 and 2000 based on Enron's false financial reports. Lay, after receipt of the Sherron Watkins memorandum described below, embarked on the following $25.5 million selling frenzy:

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
Lay, Kenneth	Sold	08/21/01	$36.250	110,706	$ 4,013,093
	Sold	08/23/01	$36.950	108,254	$ 3,999,985
	Sold	08/24/01	$36.350	110,041	$ 3,999,990
	Sold	08/30/01	$35.500	112,706	$ 4,001,063
	Sold	09/04/01	$35.000	114,346	$ 4,002,110
	Sold	10/23/01	$19.790	76,995	$ 1,523,731
	Sold	10/24/01	$16.410	103,614	$ 1,700,306
	Sold	10/25/01	$16.350	33,672	$550,537
	Sold	10/26/01	$15.400	147,770	$ 2,275,658
				918,104	$26,066,473

Lay was and is a party in interest to the Plans within the meaning of ERISA § 3(14)(A) & (H), 29 U.S.C. § 1002(14)(A) & (H).

58. Defendant Jeffrey K. Skilling ("Skilling") was a director of Enron at all times relevant hereto. Defendant Skilling also served as Chief Executive Officer from February of 2001 through August 14, 2001, when he resigned, citing only "personal reasons." Because of Defendant Skilling's position with the Company, he had access to the material, adverse, non-public information about Enron's internal control structure, as well as the Company's finances, and had access to internal corporate documents (including the Company's operating plans, budgets and forecasts, and reports of actual operations compared thereto). As described below, Skilling also was and acted as a fiduciary of the Savings Plan, the ESOP and the Cash Balance Plan. During the Class Period, while Defendants were causing Enron to make false statements and issue false financial results, Skilling sold 1,307,670 shares of his Enron stock for insider trading proceeds of $70,687,199, based on Enron's false financial results. Skilling also received bonus payments of $10.8 million, in addition to his salary, for 1998, 1999 and 2000. Skilling was and is a party in interest to the Plans within the meaning of ERISA § 3(14)(A) & (H), 29 U.S.C. § 1002(14)(A) & (H).

59. Defendant Robert A. Belfer ("Belfer") was, at all relevant times, a director of the Company. During the Class Period, while Defendants were causing Enron to make false statements and issue false financial results, Belfer sold 2,065,137 shares of his Enron stock for insider trading proceeds of $111,941,200. Belfer was and is a party in interest to the Plans within the meaning of ERISA § 3(14)(A) & (H), 29 U.S.C. § 1002(14)(A) & (H).

60. Defendant Norman P. Blake, Jr. ("Blake") was, at all relevant times, a director of the Company. During the Class Period, while Defendants were causing Enron to make false statements and issue false financial results, Blake sold 21,200 shares of his Enron stock for insider trading proceeds of $1.7 million. Blake was and is a party in interest to the Plans within the meaning of ERISA § 3(14)(A) & (H), 29 U.S.C. § 1002(14)(A) & (H).

61. Defendant Ronnie C. Chan ("Chan") was, at all relevant times, a director of the Company. During the Class Period, while Defendants were causing Enron to make false statements and issue false financial results, Chan sold 8,000 shares of his Enron stock for insider trading proceeds of $337,200. Chan was and is a party in interest to the Plans within the meaning of ERISA § 3(14)(A) & (H), 29 U.S.C. § 1002(14)(A) & (H).

62. Defendant John H. Duncan ("Duncan") was, at all relevant times, a director of the Company. During the Class Period, while Defendants were causing Enron to make false statements and issue false financial results, Duncan sold 35,000 shares of his Enron stock for insider trading proceeds of $2.0 million. Duncan was and is a party in interest to the Plans within the meaning of ERISA § 3(14)(A) & (H), 29 U.S.C. § 1002(14)(A) & (H).

63. Defendant Wendy L. Gramm ("Gramm") was, at all relevant times, a director of the Company. During the Class Period, while Defendants were causing Enron to make false statements and issue false financial results, Gramm sold 10,328 shares of her Enron stock for insider trading proceeds of $278,892. Gramm was and is a party in interest to the Plans within the meaning of ERISA § 3(14)(A) & (H), 29 U.S.C. § 1002(14)(A) & (H).

64. Defendant Robert K. Jaedicke ("Jaedicke") was, at all relevant times, a director of the Company. During the Class Period, while Defendants were causing Enron to make false statements and issue false financial results, Jaedicke sold 13,360 shares of his Enron stock for insider trading proceeds of $841,438. Jaedicke was and is a party in interest to the Plans within the meaning of ERISA § 3(14)(A) & (H), 29 U.S.C. § 1002(14)(A) & (H).

65. Defendant Charles A. LeMaistre ("LeMaistre") was, at all relevant times, a director of the Company. During the Class Period, while Defendants were causing Enron to make false statements and issue false financial results, LeMaistre sold 17,344 shares of his Enron stock for insider trading proceeds of $841,768. LeMaistre was and is a party in interest to the Plans within the meaning of ERISA § 3(14)(A) & (H), 29 U.S.C. § 1002(14)(A) & (H).

66. Defendant Joe H. Foy ("Foy") was, at all relevant times, a director of the Company until June 2000. During the Class Period, while Defendants were causing Enron to make false statements and issue false financial results, Foy sold 38,160 shares of his Enron stock for insider trading proceeds of $1,639,590. Foy was and is a party in interest to the Plans within the meaning of ERISA § 3(14)(A) & (H), 29 U.S.C. § 1002(14)(A) & (H).

67. Defendant Ken L. Harrison ("Harrison") was, at all relevant times, Chief Executive Officer of Portland General Electric (a subsidiary of Enron) until March 31, 2000, and a director of Enron. During the Class Period, while Defendants were causing Enron to make false statements and issue false financial results, Harrison sold 1,011,436 shares of his Enron stock for insider trading proceeds of $75,416,636. Harrison was and is a party in interest to the Plans within the meaning of ERISA § 3(14)(A) & (H), 29 U.S.C. § 1002(14)(A) & (H).

68. Defendant Rebecca P. Mark-Jusbasche ("Mark-Jusbasche") was a director of Enron until August 2000. During the Class Period, while Defendants were causing Enron to make false statements and issue false financial results, Mark-Jusbasche sold 1,895,631 shares of her Enron stock for insider trading proceeds of $82,536,737. Mark-Jusbasche was and is a party in interest to the Plans within the meaning of ERISA § 3(14)(A) & (H), 29 U.S.C. § 1002(14)(A) & (H).

69. The Defendants named in ¶¶ 57-68 are referred to as the Enron Director Defendants.

70. The Enron Director Defendants, collectively and individually, had the power to and did control the conduct of Enron, and participated in, guided and/or controlled the activities of Enron. As described below, they were fiduciaries with respect to the Enron Corp. Savings Plan and the ESOP. The Enron Director Defendants breached their fiduciary and co-fiduciary duties, and knowingly participated in others' fiduciary and co-fiduciary breaches, in a manner set forth more fully below.

d. Andersen Defendants

71. Defendant Andersen LLP ("Andersen") is a limited liability partnership and a member of "the Andersen global client service network" which does business and is found in Houston, Texas, and was one of the most sophisticated international accounting, auditing, and management consulting firms in the United States and the world, with expertise in all areas of Enron's business. Throughout its long history, prior to its fairly recent transformation as outlined in Section VII of this Complaint, *infra*, Andersen LLP enjoyed an excellent reputation. Andersen LLP's involvement with auditing, SEC filings, and securities offerings bestowed the imprimatur of legitimacy, confidence, and stability on its clients, including Enron. Andersen LLP is sued herein for its failure to exercise the degree of care, skill and competence exercised by competent members of the accounting profession.

72. Defendant David B. Duncan ("Duncan") is a resident of Houston, Texas, and was at all relevant times the lead Andersen auditor or engagement partner on the Enron account.

73. Defendant Thomas H. Bauer ("Bauer") is a resident of Katy, Texas, a partner in Andersen, and was at all relevant times an auditor, accountant, and/or management consultant on the Enron account who focused on Enron's commodity trading business.

74. Defendant Debra A. Cash ("Cash") is a resident of Humble, Texas, a partner in Andersen, and was at all relevant times an auditor, accountant, and/or management consultant on the Enron account.

75. Defendant Roger D. Willard ("Willard") is a resident of Houston, Texas, a partner in Andersen, and was at all relevant times an auditor, accountant, and/or management consultant on the Enron account.

76. Defendant D. Stephen Goddard, Jr. ("Goddard") is a resident of Houston, Texas, and was at all relevant times the managing partner of Andersen's Houston office.

77. Defendant Michael M. Lowther ("Lowther") is a resident of Houston, Texas, and was at all relevant times an Andersen partner based in Andersen's Houston office. Lowther was the concurring partner of Andersen's audits of Enron for the years 1998 – 2001.

78. Defendant Gary B. Goolsby ("Goolsby") is a resident of Katy, Texas, and was at all relevant times an Andersen partner based in Andersen's Houston office.

79. Defendant Michael C. Odom ("Odom") is a resident of New Orleans, Louisiana, a partner in Andersen, and was during all relevant times a risk manager based in and responsible for Andersen's Houston office and/or the Audit Practice Director of the Gulf Coast Market, including Houston. As such, he regularly consulted with other auditors concerning any practice related issues.

80. Defendant Michael D. Jones ("Jones") is a resident of Houston, Texas, a partner in Andersen, and was during all relevant times an auditor, accountant, and/or management consultant on the Enron account. Prior to August 2001, Jones transferred to Andersen's London office, where he then directed the destruction of Enron related materials as part of the firm's efforts to conceal its culpability.

81. Defendant William Swanson ("Swanson") is a resident of Houston, Texas, was at all relevant times the head of the Audit and Business Advisory practice in Andersen's Houston office and the partner-in-charge of assurance for the southwest region, where he worked on the Enron account.

82. Defendant John E. Stewart ("Stewart") is a resident of Chicago, Illinois, was at all relevant times a partner in Andersen's Chicago office, and consulted on the Enron account.

83. Defendant James A. Friedlieb ("Friedlieb") is a resident of Glenview, Illinois, was at all relevant times a partner in Andersen's Chicago office, and consulted on the Enron account.

84. On information and belief, Defendant Andersen Does Nos. 2 through 1800 are past or present partners, principals, officers, managing agents, and/or other employees or agents of Andersen LLP, whose identities are currently unknown, but who participated in, and/or

furthered the conduct set forth below Plaintiffs will seek leave of court to identify these Does by their true names and capacities when ascertained.

85. Defendants Arthur Andersen LLP, Duncan, Bauer, Cash, Willard, Goddard, Lowther, Goolsby, Odom, Jones, Swanson, Stewart, Friedlieb, and Andersen Does Nos. 2 through 1800 are referred to collectively herein as the "Andersen Defendants."

86. An extremely close relationship has existed for many years between Andersen and Enron at the business level, and between the partners or principals of Andersen and the key management personnel of Enron on a personal and social level. On information and belief, several former partners or principals of Andersen have become directors or officers of Enron.

87. Andersen was continuously engaged by Enron for many years, until January 2002, to provide "independent" accounting, auditing, and management consulting services, tax services, examination and review of SEC filings, audits, and reviews of financial statements included in Enron's SEC filings, including audited and unaudited information, and annual reports.

88. Andersen had personnel permanently stationed in Enron's corporate headquarters in Houston, Texas, for the purpose of continuously monitoring Enron's accounting, communicating with Enron's personnel and its in-house and retained counsel, and working directly with Enron's personnel and its in-house and retained counsel to help structure, organize, and/or account for the operations and ventures of Enron, including *inter alia* the structuring and organizing of an accounting for the hundreds or thousands of partnerships that were euphemistically called "special purpose entities" (collectively, the "SPEs").

89. The wrongful acts set forth below included *inter alia* the use of SPEs to understate Enron's liabilities and overstate its income and assets. Andersen rendered extensive internal and external accounting, auditing, consulting, general advisory, and other services to Enron relating *inter alia* to formation, structuring, accounting, auditing, use, reporting, and/or disclosure of SPEs and transactions effected through SPEs. According to a February 6, 2001,

written memorandum from Jones to B. Duncan and Bauer, one of the many services that Andersen rendered to Enron in connection with SPEs and transactions accomplished through SPEs was "to focus on timely documentation of final transaction structures to ensure consensus is reached on the final structure."

90. As a result of the myriad of services rendered to Enron, Andersen had personnel in Enron's corporate offices and operations continuously from 1997 to the end of 2001 or the beginning of 2002, and had continual access to and knowledge of Enron's inside corporate and business information, including *inter alia* the relevant facts concerning the SPEs at the heart of the wrongdoing set forth below and related fraudulent accounting practices.

91. As a result of Andersen's expertise, extremely close working relationship and constant interaction with Enron (and retained counsel), consensus-building, and detailed knowledge of and access to all relevant documents and information at all relevant times, Andersen knew or should have known that its audits of Enron's financial statements and of the Savings Plan and ESOP seriously misrepresented the financial condition of Enron and of the Savings Plan. Moreover, Andersen knew that its audits would be relied upon by Enron's employees, including the participants and beneficiaries of the Savings Plan and ESOP.

92. Andersen received over $100 million in accounting, audit, management consulting, and advisory fees in the period leading up to the Enron bankruptcy.

IV. THE ENRON PLANS

93. As detailed herein, Defendants' egregious violations of their ERISA fiduciary duties and other legal duties pertain to three Enron retirement benefit plans: the Savings Plan, ESOP Plan, and Cash Balance Plan. Relevant details of the three Plans are provided below.

A. The Enron Corp. Savings Plan

94. The Enron Corp. Savings Plan (the "Savings Plan") was an eligible individual account Plan within the meaning of ERISA § 407, 29 U.S.C. § 1107, and was also a qualified cash or deferred arrangement within the meaning of I.R.C. § 401(k), 26 U.S.C. § 401(k).

1. Participant Contributions

95. Participants in the Savings Plan may contribute from 1% to 15% of their eligible base pay in any combination of before-tax salary deferrals or after-tax contributions subject to certain limits prescribed by the Code. Participants may also roll over amounts representing distributions from other qualified Plans. During 2000, participants in the Savings Plan transferred approximately $56 million as direct rollovers from the Enron Corp. Employee Stock Ownership Plan (the "ESOP") to the Savings Plan.

2. Company Contributions

96. Enron matches 50% of all participant before-tax contributions, with the exception of field hourly construction workers and certain of Portland General Electric's eligible bargaining unit employees, up to a maximum of 6% of base pay. PGE's eligible bargaining unit employees who were born before 1957 and were employed before January 1, 1999, may participate in either retirement program A or B, while bargaining unit employees employed after January 1, 1999, may participate in program B only. For those participants in program A, the Company matches 100% of before-tax contributions up to a maximum of 6% of eligible base pay. For those participants in program B, the Company matches 100% of before-tax contributions in excess of 5%, but not in excess of 10% of eligible base pay, and the Company contributes an additional 5% of base pay. Company contributions are not made for field hourly construction workers.

97. All Company contributions, except the additional 5% contribution for PGE participants in retirement program B, are invested in the Enron Corp. Stock Fund, which consists primarily of Enron stock. This is beneficial to Enron because a large number of Enron shares may be voted according to management's discretion. Moreover, the Company also received tax deductions for its contributions because they were made in its stock. At age 50, participants may elect to reallocate their Company contributions among the other investment options.

3. Vesting

98. Participants are immediately 100% vested in their voluntary contributions plus actual earnings thereon. Eligible employees hired prior to July 1, 1999 are 100% vested in their Company contributions and actual earnings thereon. Eligible employees hired on or after July 1, 1999 become 100% vested in their Company contributions after completing one year of service. Participants automatically become 100% vested regardless of length of service (i) upon reaching age 65; (ii) becoming totally and permanently disabled; or (iii) upon death while an employee. Forfeited amounts of nonvested accounts are used to reduce future Company matching contributions or administrative expenses of the Savings Plan.

4. Investment Options

99. At all relevant times, the participants and beneficiaries of the Savings Plan were presented with alternative investments represented to them as suitable for their retirement contributions. At all relevant times, one of the alternative investments presented to the participants and beneficiaries of the Savings Plan was Enron stock.

5. Assets

100. As of December 31, 2000, the Enron Corp. Savings Plan's assets included $1,157,515,958 of Enron Corp. Common Stock and $158,875,150 of Enron Corp. Cumulative Second Preferred Convertible Stock.

B. The Enron Corp. ESOP

101. Enron's Employee Stock Ownership Plan ("ESOP") is an ESOP within the meaning of ERISA 407(d)(6), 29 U.S.C. § 1107(d)(6), in that it is "an individual account plan … which is designed to invest primarily in qualifying employer securities."

102. ESOPs are attractive to publicly traded companies such as Enron for a variety of reasons. An ESOP cuts the cost of raising capital because the company is able to take a federal income tax deduction for principal payments on the loan as well as interest. Dividends are also

tax deductible on ESOP stock when they are passed through to participants as they were in the Enron ESOP.

103. According to Department of Labor ("DOL") rules concerning ESOPs, employees who turn 55 and have had ten years of service with their employer must be allowed to diversify up to 25% of their holdings. When employees with ten years of service turn 60 years old, they must be allowed to diversify up to 50% of their holdings. These diversification requirements can be satisfied by distributing the stock or allowing transfer to another plan.

104. All full-time employees of Enron from January 1, 1987 through December 31, 1994 received part of their compensation as shares of Enron stock held by the ESOP.

105. Each ESOP participant had two accounts: the Savings Subaccount (to which shares were allocated in the amount of 10% of the employee's base pay for the year), and the Retirement Subaccount (to which shares were allocated based on length of service, age and base pay). The shares held in the Retirement Subaccount are at issue in this lawsuit. As discussed more fully below, significant changes were made to the operation and calculation of the offset in 1994, effective as of January 1, 1995. Also in 1994, Enron ceased making new allocations of Enron shares to participants' ESOP accounts.

106. After Enron stopped allowing new employees to participate in the ESOP at the end of 1994, small allocations were made to existing ESOP participants in 1995 and 1996.[3]

107. ESOP participants had access to all vested shares in the Retirement Subaccount. Participants who were at least 50 years old and had at least 5 years of accrued service became fully vested as of January 1, 1996. The shares of the remainder of the ESOP participants became vested in 20% annual increments beginning on January 1, 1996. Hence, by January 1, 2001, all ESOP participants were fully vested in all their remaining shares.

[3] The ESOP was amended and merged into the Savings Plan effective August 30, 2002.

108. ESOP participants had several options with respect to their vested shares. They could (a) roll Enron stock into the Savings Plan or an IRA; (b) receive Enron stock certificates; or (c) apply proceeds of the sales of their stock to an annuity.

109. As of January 31, 1994, the ESOP held 32,486,545 shares of Enron stock, or approximately 13% of Enron's equity.

110. On December 31, 1995, the ESOP held 20,895,553 shares of Enron stock with a total value of $152 million. By December 31, 1996, the number of shares held had dropped to 15,976,195 with a total value of $137 million.

111. By 1998, the value of the ESOP Enron stock holdings was $561,459,251.

112. As of December 31, 2000, the ESOP held 12,600,271 shares of Enron stock, which traded at $83.125 per share for a total value of more than $1 billion.

113. Like Savings Plan participants and beneficiaries, ESOP participants were encouraged to hold their over-valued Enron stock by the conduct of Andersen, Lay, Skilling, and the other individuals named in this Complaint.

114. Many current and former employees were ESOP participants who lost much of their retirement savings during the administrative Lockdown that prevented them from selling their Enron shares while the stock price plummeted.

115. Indeed, ESOP participants were especially harmed by the Lockdown given the rules for transfer created and enforced by the Enron ERISA Defendants and The Northern Trust Company.

116. Pursuant to these rules, any request for the sale of ESOP Enron stock had to be made by the 20th of a given month. Based on all such requests received during that month, the ESOP would sell the shares over a number of days beginning on the 30th of that month. Each ESOP participant who sold their shares in that month would receive the average price of each share sold over a period of days commencing on the 30th of that month.

117. Hence, each ESOP participant who did not provide a written distribution request to Northern Trust by October 20, 2001 was forced to hold onto the stock until November 14, 2001, when Hewitt announced that the Lockdown was over and Hewitt allowed immediate electronic transfers of Enron shares held in the ESOP.

C. Enron Corp. Cash Balance Plan

118. The Enron Corp. Retirement Plan (the "Retirement Plan"), and its successor, the Enron Corp. Cash Balance Plan (the "Cash Balance Plan"), were at all relevant times "defined benefit plans" within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35).

119. Until January 1, 1996, the Retirement Plan's benefit formula was a final average pay formula under which participants with five years or more of service were entitled to benefits based upon the sum of different percentages of final average pay multiplied by levels of years of accrued service, based in part on final average pay in excess of 125% of Social Security covered compensation. Benefits accrued under the Retirement Plan were offset by the annuity value of a portion of individual participants' accounts in the ESOP ("Offset Accounts") as of certain determination dates – generally the date of commencement of the Retirement Plan benefit payments, or, if earlier, the date(s) of distribution(s) from Offset Accounts.

120. Effective January 1, 1996, the Retirement Plan was amended, restated and renamed "the Enron Corp. Cash Balance Plan," and the benefit formula was changed from a final average pay formula to a cash balance formula.

121. Additionally, the Retirement Plan was improperly amended on or about January 1, 1995 to terminate the offset arrangement between the Plan and the ESOP over a five-year period, January 1, 1996 to January 1, 2000, and continue the Retirement/Cash Balance Plan and the ESOP as ongoing, independent plans.

122. Under the amended, terminating offset arrangement, each January 1st over the five-year period from 1996 to 2000, the value of one-fifth of the shares of Enron stock credited to each participant's Offset Account was to be computed based on the then-current market price

for the stock, permanently fixing that component of the offset. At the time that the value of each component was fixed, and periodically thereafter, ESOP participants were supposed to have the right to withdraw the fixed portion of their Offset Accounts, to leave it in the ESOP, or to roll it over either to an individual retirement account or to the Enron Corp. Savings Plan.

123. According to the Summary Plan Description, "Enron pays the full cost of the plan."

124. Notwithstanding this representation, however, Enron's funding obligation to provide a defined retirement benefit for the Participants was reduced by offsetting the value of each Participant's ESOP account.

125. On or about each January 1, over the three-year period 1998 to 2000, the Defendants knew or should have known that the market price of the Enron stock in participants' Offset Accounts was not its true value. Under those circumstances, the Defendants had a fiduciary duty to compute each component of the offset according to the true value as opposed to its artificially inflated market price; a duty to refuse to permanently fix a component of the offset on a basis that did not reflect the stock's true value on the relevant dates; and/or a duty to disclose to participants and beneficiaries that the price at which components of the offset would be fixed were artificially inflated or otherwise not reflective of the true value of the stock on the relevant dates.

126. Participants in the Cash Balance Plan whose benefits are offset by amounts in the ESOP according to the terms of the Cash Balance Plan and the Retirement Plan have been severely damaged in that accrued benefits under the Cash Balance Plan have been sharply reduced as a result of the crash in the value of Enron stock subsequent to the last access date.

127. As of December 31, 2000, the Enron Corp. Cash Balance Plan had assets of $269,977,803.

V. FACTUAL ALLEGATIONS

A. Background Information

128. Enron provides products and services related to natural gas, electricity and communications to wholesale and retail customers. Enron's operations are conducted through its subsidiaries and affiliates, which are principally engaged in: the transportation of natural gas through pipelines to markets throughout the United States; the generation, transmission and distribution of electricity to markets in the northwestern United States; the marketing of natural gas, electricity and other commodities and related risk management and finance services worldwide; the development, construction and operation of power plants, pipelines and other energy related assets worldwide; the delivery and management of energy commodities and capabilities to end-use retail customers in the industrial and commercial business sectors; and the development of an intelligent network platform to provide bandwidth management services and the delivery of high bandwidth communication applications.

129. Between 1993 and 1997, Enron's stock did not appreciate significantly as it was mainly seen as an energy company focused on the production and distribution of natural gas. The Company began a diversification program in 1997 which included making acquisitions and entering new business. As Defendants promoted these opportunities and reported favorable financial results, Enron's stock price began to increase, reaching $40 per share by mid-1999. Throughout fiscal year 2000, the price of Enron stock substantially increased – rising from $43.4375 per share on January 3, 2000, to $83.125 per share on December 29, 2000. Analysts attributed the price rise to, among other things, interest and expectations for Enron's Broadband Services Division, which had been created to trade bandwidth and, as described by the Company, to "deploy a global network for the delivery of comprehensive bandwidth solutions and high bandwidth applications." Unbeknownst to the public, however, the Broadband Services Division was not performing as Defendants had employees and others believed.

130. The Enron Director Defendants diversification plan for Enron was extremely capital intensive and necessitated raising billions of dollars from debt and equity issuances. To make Enron appear more attractive to employees and investors and to secure better credit ratings to decrease the cost of capital, Defendants caused Enron to falsify its financial statements, eliminating unprofitable and debt-ridden subsidiaries from Enron's financial statements.

131. Exacerbating the problems at the Broadband Services Division, the Enron Director Defendants had caused Enron to enter into a series of complicated financial hedge transactions with two limited partnerships, which were controlled by Enron's Chief Financial Officer, Defendant Fastow. These transactions, which Defendants did not fully detail for employees, purportedly involved hedging transactions in the broadband market and exposed the Company to increased risk and uncertainty given the weakening market for bandwidth. Moreover, Enron's financial statements did not consolidate the results of these partnerships, nor of other subsidiaries, such that Enron's financial statements were materially misstated.

132. As the diversification program continued throughout 1997, 1998, 1999, 2000 and most of 2001, Enron's share price rose significantly in response to the Company's promotion of its new business opportunities and its public reports of extremely favorable and dramatically increasing financial results. By April 2001, Enron was ranked as the seventh largest company in the United States based on revenues in the annual list of "Fortune 500" companies. Enron's share price rose to as high as $90 per share in August 2000. But these huge revenues and excellent reported financial results were only generated through the use of accounting trickery that would unravel in November 2001, as described more fully below.

133. By setting up partnerships, partly owned by the Company, Enron could draw in capital from outside investors, such as banks, insurance companies, pension funds and even wealthy individuals. The partnerships were kept separate from Enron. As a result, any debt incurred by the partnerships was kept off the Company's balance sheet. This was an important consideration for a fast-growing energy-trading company that feared too much debt would

damage its credit rating. Another, more personal incentive arose over time as Enron executives headed and partly owned some of the partnerships, which provided a lucrative source of outside income for those involved.

134. To facilitate the appearance of Enron's financial success, many hundreds, and perhaps even thousands, of illicit partnerships were formed. In all, Enron had about 3,500 subsidiaries and affiliates, many of them limited partnerships and limited-liability companies. The Andersen Defendants participated in the formation and creation of these partnerships.

135. As time went on, Enron parked assets in these partnerships that were troubled and falling in value, such as certain overseas energy facilities or stock in companies or partnerships that had been spun off to the public by Enron. Putting the assets in the partnerships hid losses that Enron otherwise would have had to report. Enron in some cases promised to compensate partnership investors down the road, often by issuing them Enron stock. As the value of the assets in the partnerships fell, the burden of meeting these down-the-road obligations became ever larger. Compounding the problem, Enron's stock price was falling as part of the broad stock market retreat over much of last year.

136. Conversely, some of the partnerships were used to produce large bursts of earnings for Enron through the use of complex financial transactions. In one case, involving the partnership Braveheart, Enron booked more than $100 million of income over a six-month period from a venture that never really got off the ground. Braveheart was part of a plan to deliver movies to homes over Enron's high-speed fiber-optic network, but the venture was in its infancy and never made it beyond the test phase. Enron later had to remove those earnings from income. Recently, Enron has had to take hundreds of millions of dollars in charges to earnings from other partnerships that it had previously added to the Company's reported income.

B. Enron's False and Misleading Financial Results are Reported to Unsuspecting Employees and the Market

137. On January 20, 1998, Enron announced its operating results for the year ending December 31, 1997 over the PR NEWSWIRE. The Company reported net income of $105 million for the year ($0.32 per share). Enron's Chairman and CEO, Kenneth Lay, commented that "[o]ur 1997 results reflected extremely strong operating performance in all of our business units, offset to a significant degree by a number of non-recurring charges…. These charges allow us to clear the decks for future growth." This press release was false and misleading when made because the net income figures disseminated by Enron were materially overstated and were not prepared in accordance with Generally Accepted Accounting Standards ("GAAP"), as detailed more fully in Sections V(E), (F), (G) and VII, *infra*.

138. On March 31, 1998, Enron filed its annual report on Form 10-K with the SEC. This Form 10-K contained the same false and misleading financial information as the January 20, 1998 press release, and was false and misleading for the same reasons.

139. On February 23, 1998, Andersen issued its audit report with respect to the financial statements of Enron for the year ending December 31, 1997. The audit report was false and misleading, did not comply with GAAP and was not prepared in accordance with GAAP, as detailed more fully in Sections V(E), (F), (G) and VII, *infra.* Andersen consented to the inclusion of such audit report in Enron's Form 10-K, as well as its incorporation in the Form S-8 Registration Statements on file with respect to Enron, including Registration Statements Nos. 33-13397, 33-34796 and 33-52261 pertaining to stock to be issued to the Savings Plan. The audit report was included in Enron's Form 10-K and Form S-8.

140. On January 19, 1999, Enron issued a press release over the PR NEWSWIRE announcing its earnings for the year ending December 31, 1998:

> Enron Corp. (NYSE: ENE) announced today a 16 percent increase in 1998 earnings per diluted share to $2.01 from $1.74 in 1997. Corresponding net

> income increased 36 percent to $698 million from $515 million during the year.
>
> * * *
>
> "Across Enron, 1998 was an excellent year," said Kenneth L. Lay, Enron Corp. chairman and chief executive officer.

This press release was false and misleading when made because the net income figures disseminated by Enron were materially overstated and were not prepared in accordance with GAAP, as detailed more fully in Sections V(E), (F) and VII, *infra*.

141. In fact, these 1998 results were materially false and misleading due to Defendants' failure to cause Enron to include $107 million in losses of partnerships which had improperly not been consolidated. Defendants have now caused Enron to admit it was improper not to include these losses and restate its results.

142. Subsequent to issuing its results, Defendants, including Lay and Skilling caused Enron to host a conference for analysts and large investors at which it discussed Enron's 1998 results, its business and prospects. Prudential Securities later reported on the conference in a January 25, 1999 report by C. Coale:

> At the conference, management stressed that 1999 would be a "momentum" year for the company, whereas 1998 was a "break out" year and 1997 a "transition" year. In its wholesale energy trading and financing subsidiary, Enron Capital & Trade (ECT), growth in the European markets is expected to continue to be exponential in gas and power marketing sales.
>
> * * *
>
> International Projects Not Threatened By Brazilian Currency Devaluation. Enron's international effort is centered on building a regional focus in countries where it can offer its unique capabilities through its integrated approach in providing total packaged services from the supply source to the developer to the project manager. Management stressed that Enron is a long-term player in each of its markets, and is positioned to transition from a project-based company to a "business" company, operating in the core markets of the southern cone of South America and India. Management also described Enron International as "battle tested" from its

> fight to save its Dahbol project in India, and is prepared to weather the devaluation trend in foreign currencies.

143. CIBC Oppenheimer also repeated Defendants' statements in a January 25, 1999 report by William Hyler:

> Management appears to have the systems, personnel and, importantly, customer relationships, in place to maintain its leadership role in energy marketing, namely gas and power, for the foreseeable future.
>
> * * *
>
> Enron management sees greater profit opportunities in energy management outsourcing for commercial and industrial customers. To date management has indicated that strong market response is resulting in significant contract success. At year end 1998 total retail contracts stood at $3.8 billion. Management is targeting $8 billion by year-end 1999, a number which could prove conservative. Backing of potential prospects now stands at $18 billion. Importantly, EES is expected to turn profitable by the fourth quarter.

144. On February 3, 1999, Defendants caused Enron to file a form S-3/A Registration Statement pursuant to the offering of $1 billion in Debt Securities, Preferred Stock and Depositary Shares, and 27.6 billion shares of its common stock. The Form S-3/A included Enron's recently reported results for 1998, including net income of $105 million and $703 million for 1997 and 1998, respectively. Enron has now admitted these results were materially false and misleading as described in Section V(G). The Form S-3/A was signed by (or on behalf of) Lay, Belfer, Blake, Chan, Duncan, Foy, Gramm, Harrison, Jaedicke, LeMaistre and Skilling.

145. On March 5, 1999, Andersen issued its audit report with respect to the financial statements of Enron for the year ending December 31, 1998. This audit report was false and misleading, did not comply with GAAP and was prepared not in accordance with GAAP, as detailed more fully in Section VII, *infra.* Andersen consented to the inclusion of this audit report in Enron's Form 10-K, as well as its incorporation in the Form S-8 Registration Statements on file with respect to Enron, including Registration Statements Nos. 33-13397, 33-34796 and

33-52261 pertaining to stock to be issued to the Savings Plan. The audit report was included in Enron's Form 10-K and Form S-8.

146. On March 31, 1999, Enron filed its annual report on Form 10-K with the SEC. This Form 10-K contained the same false and misleading financial information as the January 19, 1999 press release, and was false and misleading for the same reasons. Further, the assets and shareholders' equity figures were materially overstated and the amount of debt carried by Enron was materially understated, as detailed more fully in Section V(E), *infra*.

147. On June 9, 1999, J.P. Morgan initiated coverage of Enron with a report entitled "Initiating Coverage With A Buy: Size And Savvy Seize The Day." The report stated:

> We see no other company in our universe that offers such impressive, sustainable, and controlled growth as Enron. Enron's core strengths include scale and scope, financial expertise, technological know-how, intellectual capital, and global presence and reach. In short, the company has the necessary skillset to compete and win in the global marketplace. Enron has become a builder of companies and markets.

148. On July 13, 1999, Enron announced its second quarter 1999 results in a release which stated in part:

> Enron Corp. announced today a 29 percent increase in earnings for the second quarter of 1999 to $[0.27] per diluted share compared to second quarter 1998 results of $[0.21] per diluted share. Net income in the current quarter increased 53 percent to $222 million compared to $145 million in the prior year's quarter. Revenues were also up significantly in the second quarter of 1999 to $9.7 billion compared to $6.6 billion in the same period of 1998, a 47 percent increase.
>
> * * *
>
> Enron's consistent earnings growth reflects the very strong market positions in all of our businesses. We have established unique networks in natural gas, electricity and, most recently, communications, that each have distinct advantages of scale and scope. Combining this strong market presence with our core skills and market knowledge, we are positioned to be the leading player in the largest and fastest growing markets in the world," said Kenneth L. Lay, Enron chairman and chief executive officer.

149. On July 23, 1999, Defendants caused Enron to file a Form S-3 Registration Statement pursuant to the offering of $225 million in exchangeable notes. The Form S-3 represented that Enron had net income on common stock of $122 million in the first quarter 1999, $203 million in 1998 and $105 million in 1997. Enron has now admitted these results were materially false and misleading. The Form S-3 was signed by (or on behalf of) Lay, Belfer, Blake, Chan, Duncan, Foy, Gramm, Harrison, Jaedicke, LeMaistre, Mark-Jusbasche and Skilling.

150. On October 12, 1999, Defendants caused Enron to announce its results for the third quarter of 1999 in a press release which stated in part:

> Enron Corp. announced today a 33 percent increase in net income to $223 million for the third quarter of 1999, compared to $168 million in the third quarter of 1998. Enron also announced a 13 percent increase in earnings per diluted share to $0.27 for the most recent quarter, compared to $0.24 a year ago…
>
> "The scale and scope of Enron's wholesale businesses provide tremendous competitive advantages in the rapidly growing, deregulating energy markets, enabling Enron to consistently achieve strong earnings growth. Our new retail energy network has similar operating advantages and continues to exceed our own expectations both for signing long-term outsourcing contracts and for profitability," said Kenneth L. Lay, Enron chairman and chief executive officer.

151. In late December 1999, Enron announced it would host an analyst conference on January 20, 2000 in Houston. As CIBC World Markets Corp. noted:

> Management to Highlight Communications Efforts at January analyst meeting. Enron's annual analyst meeting is scheduled for 1/20/2000 in Houston, TX. At the full-day presentation management is expected to provide further clarification and details on its strategy to operate a dominant platform for delivery of broadband communication services. Based on publicly traded valuations for competing strategies, management has hinted its business model could, in time, be valued at $15-$30 per ENE share. We estimate the current share price incorporates only $4-5 per share for communication initiatives; accordingly, we expect the meeting to represent a potential strong catalyst for ENE shares and recommend accumulation prior to the meeting.

152. Enron's stock began climbing in anticipation of this meeting, as news leaked out about the Company's entry into broadband, increasing from $37 on December 16, 1999 to $56.375 on January 14, 2000.

153. In fact, Defendants have now caused Enron to admit that its 1999 results were false and misleading since it failed to include $153 million in losses from its JEDI and Chewco partnerships and $95 million in losses from a subsidiary (LJM Cayman LP ("LJM1")), which, pursuant to GAAP, should have been consolidated into Enron's financial statements, as described in Sections VI-VII, *infra*.

154. On January 20, 2000, Enron hosted its annual analyst conference in Houston. With respect to the Broadband Services Division, the press release announcing the conference stated in pertinent part as follows:

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

155. This announcement and comments made at the conference were viewed extremely favorably by the market and Enron's stock increased to $67.375 on January 20, 2000 and to $71.625 on January 21, 2000.

156. On January 18, 2000, Enron issued a press release over the PR NEWSWIRE announcing its earnings for the year ending December 31, 1999:

> HEADLINE: Enron Continues Strong Earnings Growth; Reports Fourth Quarter 1999 Earnings of $0.31 Per Diluted Share
>
> DATELINE: HOUSTON, Jan. 18
>
> BODY:
>
> Enron Corp. (NYSE: ENE) announced today very strong financial and operating results for the full year 1999, including:
>
> - a 28 percent increase in revenues to $40 billion;

- a 37 percent increase in net income to $957 million;
- an 18 percent increase in earnings per diluted share to $1.18

This press release was false and misleading when made because the net income figures disseminated by Enron were materially overstated and were not prepared in accordance with GAAP, as detailed more fully in Sections V(F)-VII, *infra*.

157. On March 13, 2000, Andersen issued its audit report with respect to the financial statements of Enron for the year ending December 31, 1999. This audit report was false and misleading, did not comply with GAAP and was not prepared in accordance with GAAP, as detailed more fully in Sections V(F)-VII, *infra.* Andersen consented to the inclusion of the audit report in Enron's Form 10-K, as well as its incorporation in the Form S-8 Registration Statements on file with respect to Enron, including Registration Statements Nos. 33-13397, 33-34796 and 33-52261 pertaining to stock to be issued to the Savings Plan. The audit report was included in Enron's Form 10-K and Form S-8.

158. On March 30, 2000, Enron filed its annual report on Form 10-K with the SEC. This Form 10-K contained the same false and misleading financial information as the January 18, 2000 press release, and was false and misleading for the same reasons. Further, the assets and shareholders' equity figures were materially overstated and the amount of debt carried by Enron was materially understated, as detailed more fully in Sections V(F)-VII, *infra.*

159. On July 19, 2000, Defendants caused Enron to file a Form S-3 Registration Statement pursuant to the offering of $1 billion in Debt Securities, Preferred Stock and Depositary Shares. The Form S-3 incorporated by reference Enron's 1999 Form 10-K containing its 1999 results. Defendants have now admitted these results were materially false and misleading as described in Sections V(F) and (G), *infra*. The Form S-3 was signed by (or on behalf of) Lay, Belfer, Blake, Chan, Duncan, Gramm, Harrison, Jaedicke, LeMaistre, Mark-Jusbasche and Skilling.

160. On July 24, 2000, Defendants caused Enron to issue a press release announcing its financial results for the second quarter of 2000, the period ending June 30, 2000. The Company reported net income of $289 million, or $0.34 per share, and revenues of $16.9 billion for the second quarter. Defendant Lay described these results as "another excellent quarter" and highlighted that Enron broadband had recently executed "an exclusive, 20-year, first-of-its-kind contract with Blockbuster to stream on-demand movies." The press release further reported that Enron broadband had executed $19 million of new contracts.

161. Subsequent to this announcement, Enron's stock increased to above $80 per share.

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

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

With respect to the Broadband Services Division, the press release reported, among other things, that "Enron delivered 1,399 DS-3 months equivalents of broadband capacity, which was a 42 percent increase over the previous quarter."

163. On January 22, 2001, Enron issued a press release over the PR NEWSWIRE announcing "record" earnings for the year ending December 31, 2000:

> Enron Corp. (NYSE: ENE) announced today record financial and operating results for the full year 2000, including:
>
> - a 25 percent increase in earnings per diluted share to $1.47;

- a 32 percent increase in net income to $1.3 billion;

* * *

> "Our strong results reflect breakout performances in all of our operations," said Kenneth L. Lay, Enron's chairman and CEO.

This press release was false and misleading when made because the net income figures disseminated by Enron were materially overstated and were not prepared in accordance with GAAP, as detailed more fully in Sections V(E)-(G), *infra*.

164. On February 23, 2001, Andersen issued its audit report with respect to the financial statements of Enron for the year ending December 31, 2000. Such audit report was false and misleading, did not comply with GAAP and was not prepared in accordance with GAAP, as detailed more fully in Section VI-VII, *infra.* Andersen consented to the inclusion of such audit report in Enron's Form 10-K, as well as its incorporation in the Form S-8 Registration Statements on file with respect to Enron, including Registration Statements Nos. 33-13397, 33-34796 and 33-52261 pertaining to stock to be issued to the Savings Plan. The audit report was included in Enron's Form 10-K and Form S-8.

165. On April 2, 2001, Enron filed its annual report on Form 10-K with the SEC. This Form 10-K contained the same false and misleading financial information as the January 22, 2001 press release, and was false and misleading for the same reasons. Further, the assets and shareholders' equity figures were materially overstated and the amount of debt carried by Enron was materially understated, as detailed more fully in Section VI-VII, *infra*.

166. On April 17, 2001, Enron issued a press release over the PR NEWSWIRE announcing "record" financial results and "increasing earnings expectations for 2001":

> HEADLINE: Enron Reports Record First Quarter Recurring Earnings of $0.47 Per Diluted Share; Increases Earnings Expectations For 2001
>
> DATELINE: HOUSTON, April 17

> BODY: Enron Corp. announced today an 18 percent increase in diluted earnings per share to $0.47 for the first quarter of 2001 from $0.40 a year ago. Results for the quarter include:
>
> * a 281 percent increase in revenues to $50.1 billion;
>
> * a 20 percent increase in net income to $406 million;
>
> * * *
>
> "Enron's wholesale business continues to generate outstanding results. Transaction and volume growth are translating into increased profitability," said Jeff Skilling, Enron's president and CEO. "In addition, our retail energy services and broadband intermediation activities are rapidly accelerating."

But these "record" financial results were materially overstated and were not prepared in accordance with GAAP, as detailed more fully in Sections VI-VII, *infra*.

167. On June 1, 2001, Defendants caused Enron to file a Form S-3 Registration Statement pursuant to the registration of $1.9 billion in zero coupon convertible notes due 2021. The Form S-3 incorporated by reference Enron's 2000 Form 10-K containing Enron's 2000 results. Defendants have now caused Enron to admit these results were materially false and misleading as described in Section V(G). The Form S-3 was signed by (or on behalf of) Causey, Lay, Fastow, Belfer, Blake, Chan, Duncan, Gramm, Jaedicke, LeMaistre and Skilling.

168. On July 12, 2001, Enron issued a press release over the PR NEWSWIRE announcing excellent financial results, and predicting even better results in the rest of 2001 and 2002:

> HEADLINE: Enron Reports Second Quarter Earnings of $0.45 Per Diluted Share; Confirms 2001 EPS Estimate of $1.80 and Announces 2002 Target
>
> DATELINE: HOUSTON, July 12
>
> BODY: Enron Corp. announced today a 32 percent increase in diluted earnings per share to $0.45 for the second quarter of 2001 from $0.34 a year ago.

* * *

> "Enron completed another quarter of exceptional performance. Our wholesale and retail energy businesses continue to dramatically expand business activity and increase profitability. In addition, Enron is distinct in developing a leading role in the European energy markets and in other high potential wholesale markets," said Jeff Skilling, Enron president and CEO.

* * *

> Enron also announced both confidence in achieving $1.80 of recurring earnings per diluted share for the full year 2001 and new guidance for 2002 of $2.15 per diluted share.

But these financial results were materially overstated and were not prepared in accordance with GAAP, as detailed more in Sections VI-VII, *infra*. Additionally, the projections of future profitability were based on an extension of the current financial results, which Enron knew were materially false and misleading and not prepared in accordance with GAAP or SEC regulations.

169. With respect to the Broadband Services Division, the press release stated, among other things, that:

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

170. In May 2001, THE WALL STREET TRANSCRIPT published an interview with Defendant Frevert. During this interview, Frevert said:

> Analysts have also cited concern about unpaid power bills by Enron customers in California and India, and losses by Enron's broadband trading unit, which may hurt Enron's profits.
>
> 'All of these are bunk,' Frevert said. 'These are not issues for this stock.'

171. On August 14, 2001, Defendants caused Enron to issue a press release announcing that Defendant Skilling had resigned his positions at the Company. This

announcement surprised investors and the price of Enron common stock dropped in response. According to a report carried by BLOOMBERG BUSINESS NEWS, on August 17, 2001, after the announcement of Defendant Skilling's resignation, Defendant Lay met with investors and analysts "to calm fears that the Company may be hiding dire financial news." The article quoted an analyst from UBS Warburg as stating: '"Ken met with us to reassure us that there is nothing wrong with the company....There is no other shoe to fall, and no charges to be taken.'"

172. Then, on August 29, 2001, Defendant Lay provided an interview to BLOOMBERG BUSINESS NEWS which was carried on the newswires. Defendant Lay portrayed the Broadband Services Division in highly positive terms. The following question/answer is illustrative:

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

C. False and Misleading Statements Issued Directly to Savings Plan Beneficiaries and ESOP Participants

173. In addition to the above referenced disclosures, Enron and certain of its officers, regularly communicated with Enron employees, including participants in the Savings Plan and the ESOP plan, about Enron's financial performance, stock price and its future financial and business prospects. One of the forums in which these communications occurred was the in-house publication called "Enron Business." These communications also occurred during "All-Employee Meetings," that were attended by employees throughout the world, either in person or by video conference. At these "All Employee Meetings," Defendants Lay, Skilling, Olson and

other top executives consistently represented to employees that Enron's financial situation was strong and improving and that Enron's stock price was likely to increase.

174. These promotional statements were made by Lay, Skilling and other Enron officers for the purpose of encouraging Savings Plan participants to invest in Enron stock, and to discourage Savings Plan and ESOP participants from liquidating the amounts they already had invested in Enron stock. Defendants made such statements for several reasons, including the fact that shares owned indirectly by the Savings Plan through its investment in the Enron Corp. Stock Plan consisted of a large block of stock that was likely to be voted in accordance with Enron's management's wishes. Additionally, participants' purchase of the Savings Plan stock created extra demand for Enron stock and thus helped increase the market price for Enron stock, which was another objective of the Enron Director Defendants.

175. These representations were made in the context of a company which had told its employees that the conduct of Enron employees was to be guided by principles of "honesty, candor and fairness." This mandate was set forth in the Enron "Ethics" handbook, provided to all employees, in which the Enron Director Defendants represented to all Enron employees that all business would be conducted with "honesty, candor and fairness":

> Relations with the Company's many publics – customers, stockholders, governments, employees, suppliers, press, and bankers – will be conducted in honesty, candor, and fairness.
>
> * * *
>
> Laws and regulations affecting the Company will be obeyed. Illegal behavior on the part of any employee in the performance of Company duties will neither be condoned nor tolerated.

176. Further, the Enron Director Defendants, in a blatant lie, represented in the Enron Ethics manual that they and others would not engage in transactions that resulted in conflicts of interest:

> (b) [Enron officers will not] make investments or perform services for his or her own related interest in any enterprise under any circumstances where, by reason of the nature of the business conducted by such enterprise, there is, or could be, a disparity or conflict of interest between the officer or employee and the Company.

177. Employees thus reasonably expected that the Enron officers who were urging them to have confidence in the Company and its stock price were being candid, honest and fair in the statements made to them about Enron, its finances and Enron stock.

178. After setting the rules that the Company would be honest and obey all laws, Lay, Skilling and other of the Enron Director Defendants continuously recommended to employees that they invest in Enron, as described below.

179. At the May 18, 1999 "All-Employees Meeting," Lay and Skilling gave presentations that emphasized Enron stock price and financial performance:

> LAY: And, of course, that has led to good return to our shareholders during this decade. Even without reinvesting dividends, with just the increased stock price, ***our shareholders got a total return of over 600 percent, about a sevenfold increase in their investment during this decade. And that's one-and-a-half times the return for the S&P 500 in what is now viewed as the largest or the strongest bull market in our history.***
>
> * * *
>
> ***Total net income continues to grow at a very strong rate for the company.*** First quarter was a good quarter, good momentum building up for this year, continuing the growth of the last few years. For the first quarter this year, for the first time in the company's history, our after-tax net income exceeded a quarter of a billion dollars. Strong growth from first quarter last year.
>
> ***Earnings per share was also up***, but again, since we had a very large equity issue during the quarter, that increase, on a percentage basis, was much less than it was in total net income, but again exceeded the expectations of Wall Street, and again indicated that we continue to show good growth, and good momentum in all of our business activities.
>
> * * *

> ***So the Street, and the portfolio managers are continuing to recognize what, what's happening here*** and give us good price appreciation for our shareholders for it.
>
> Now, with that, I would like to turn it over to Jeff and let Jeff take up some of the operating highlights and the SAP update.
>
> SKILLING: Thanks, Ken. What I'll do is go through each of our business areas so you can see how all of the businesses are doing right now, if I could just find it on the page here.
>
> * * *
>
> ***So, overall, the company is in great shape. I think that's why the stock price is doing as well as it is.***[4]

180. At a July 13, 1999 "All-Employees Meeting," Lay, Skilling and others continued to represent that the Company's financial performance was "very strong":

> LAY: And I think Jeff has to leave a little early to meet a schedule in New York tonight. So he's going to be bailing out on us a little early, and that will just give Joe that much more opportunity.
>
> But let's get in to this. First, let's talk a little bit about the second quarter performance. ***Of course, obviously, our stock has been doing very well, about 50 percent thus far this year after a really strong performance last year and really a strong performance for the last decade…. Second quarter financial performance was very strong***, very strong.
>
> * * *
>
> Net income, up 53 percent from 145 million to 222 million, and, of course, earnings per share up 29 percent, as I said, from 42 cents to 54 percent.
>
> * * *
>
> Let me say, we received, as you'd expect, a number of questions about future growth prospects and about the stock price and whether, in fact, it can keep going and all the rest of that.
>
> ***Let me say, certainly, we're pleased with the growth that we've had in the stock price over the last 18 months or so, but, indeed, we think, in fact, it can go quite a bit further, and not long term, but near term.***

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[4] Unless otherwise indicated, all emphases are added.

> You saw the story that Jeff laid out in his presentation as to the growth in the company, and we have tremendous growth throughout the company.
>
> And if you look at even a company like Williams Company which has about a 50 PE – and Williams, first of all, on the pipeline side, as Joe also said, we'll stack up Stan and his team and our pipeline group against any pipeline if we execute – and, again, the people in this room will determine that, and I've got a lot of confidence in you, just like Joe does – ***if we keep performing, in fact, we will see this stock price quite a bit higher even over the next year to 18 months.***

181. On December 1, 1999, at an Enron All-Employees Meeting, Lay touted Enron's performance:

> Indeed, 1999 has turned out to be another great year for Enron. Thus far this year our revenues are up about 24 percent to just a little bit less than $30 billion in the first three quarters.
>
> * * *
>
> And, of course, net income has grown very strongly this year, up about 32 percent.
>
> * * *
>
> And let me say we're well into the fourth quarter now, and the fourth quarter's looking good. We'll end up the year in good shape, will certainly meet the street's expectations and again it will be a great year for Enron and Enron's shareholders. And, of course, all of you in this room are also Enron shareholders.
>
> * * *
>
> So, in conclusion, as I mentioned, our businesses are unique. Enron's got a great set of businesses here. ***We've constructed something very, very special over the last decade***, a knowledge-based network supported by very strong asset positions. Scale and scope, we dominate those markets that we compete in. We have innovative people which create innovative products and customize solutions, but at the same time we have been effective and continue to focus a lot on the managing of risk in the system to ensure that we're not taking on risks that we can't handle.

182. He was joined by Defendant Joseph Sutton, who also made positive statements about Enron's stock price:

> "Why has our stock price decreased over the past several weeks, and what is management doing to get it back up?"
>
> As I said, I think we sometimes lose our perspective here. We still had a good year as far as total return to our shareholders, had a good two years. We're never satisfied, and I don't want us to ever be satisfied with a stock price; it should always be higher. And, certainly, Jeff and Joe and I believe it should be higher. Indeed, we still think even over the next several months that there's a good chance that the stock price could be up as much as 50 percent, ***and I think there's no reason to think that over the next two years that we can't double it again, at least double it.***

183. Defendant Cindy Olson, an Enron Vice President and fiduciary of the Savings Plan and ESOP, at the same meeting, flat out told employees, in response to a question, that investing in Enron stock was the right decision:

> OLSON: "Should we invest all of our 401(k) in Enron stock?" Absolutely. Don't you guys agree?
>
> SKILLING: You're doing good.
>
> OLSON: …***We're having a great year***…. We expect to finish it up in very fine fashion here over the next few weeks and, of course, enter the new millennium, the year 2000, in very strong shape. …But if we do the right things, there's no reason to think that we couldn't see a $15, $20, $25 increase in stock price over the next 12 months or so.

184. In direct contradiction to her statement above, Olson testified, under oath before a Congressional subcommittee, that she was legally prevented from providing employees with investment advice.

185. On February 28, 2000, at an "All-Employees Meeting," Lay, Skilling and other Enron officers continued to promote all aspects of Enron's business:

> LAY: ***We are all very pleased with the performance of the Enron stock price since the beginning of the year.*** This appears to have been fueled by the announcement of the link-up with Sun on the use of Enron's wideband data capabilities.

* * *

Another question on the stock price, and this, again, is E-Speak. Where do you see growth in the stock price coming from over the next 12 to 18 months? What things are going to get the analysts excited?

I think we've got a lot of things. Let me first say that, virtually, all of the analysts that follow us closely, all of the financial analysts that follow up closely have a target price of between $75 and $100 a share for our stock price over the next 12 months or, in some cases, less than that, and I think the three of us would totally agree that that is very doable, including the upper end of that range.

That if, in fact, we execute well this year, we could see a stock price considerably higher than it is today. Now – obviously absent a real serious adjustment in the stock market which on any given day is anybody's guess, but as we look at the company, I mean, first of all, I might say execute; that is, execute in all of our businesses, really hit our financial targets, really continue to perform consistently as we have the last couple of years, but, secondly, certainly executing in our Enron energy services business and our broadband services business where I would expect that we will have – continue to have some pretty exciting announcements coming along as to individual contracts or new relationships or new businesses, which will further strengthen the value of those businesses in the eyes of the analysts and, more importantly, the portfolio managers.

Now, we do have some other – some other businesses that we are working on, not of the size of broadband or Enron energy services, but some other businesses that may be rolled out during the year, but for all kinds of reasons, I think you'd find all three of us very optimistic, and that was, in part, my earlier answer to the stock option question.

I suspect that those people who took, again, this year stock options in lieu of cash – and, of course, I think you get a little premium doing that, too, a little more than 100 cents on the dollar as far as the number of stock options you get – you will – you will not be disappointed in the results from that, probably even before this year is over.

* * *

The second question I have is: Dear Jeff, Joe and Ken, Equity analysts are starting to talk about the stock market Internet bubble drawing to a close over the next few months. Money Central has downgraded us, December 2001 estimate, from over $200 to $96. In your opinion, what would be the likely impact here on Enron?

> Well, as Jeff pointed out earlier, Enron is – Enron is a different type of company. Enron is not an Internet company. Enron is a company that has – that deals in infrastructure and intelligent networks and as a result of that has put together a business we think makes sense.
>
> Unlike most of those companies, our company actually makes money, too. So, therefore, we have an advantage there as well. So I think our approach to the business makes sense. ***I would think we would do very well, regardless of what happens to the Internet stocks.***

186. While he was encouraging employees to have confidence in Enron's stock, Lay had recently sold 200,000 of his shares realizing proceeds of approximately $6,423,000. He did not tell employees he was doing so, when speaking at the All-Employee Meeting where he encouraged their investment in Enron stock.

187. On April 27, 2000, Defendant Mary Joyce sent out the following interoffice memorandum emphasizing the strength of Enron stock:

> As you know, one component of Enron's compensation and benefits package is the All-Employee Stock Option Program. The Program is designed to allow you a greater opportunity to share in the ownership of Enron and profit from future increases in the value of Enron's common stock.
>
> * * *
>
> ***We believe an Enron stock option has tremendous growth potential. Enron's stock has enjoyed outstanding growth over the past ten years. From January 1, 1990 to December 31, 1999, the stock price has increased 19.96% annually on a compounded basis.***

188. On June 29, 2000, the following memorandum was sent from "Office of the Chairman":

> ***It is amazing and yet not surprising how much Enron has accomplished in the first six months of this year. You continue to make it happen.*** We recognize that you work hard every day to accomplish Enron's business goals, and we are pleased that many of you have shared in the company's financial success through Enron stock options.
>
> As you may know, the current employee stock option program (also known as the All Employee Stock Option Program or AESOP) began in

> 1994 and provided value to participants through 2000. Employees who have participated in this program from its inception have realized a 1.119% increase in the value of their stock options (assuming a stock price of $70) over the life of the program.
>
> ***Enron stock options are a valuable part of your total compensation package and a contributing factor to your performance and to Enron's continued success.*** Therefore, the Enron Executive Committee and the Compensation and Management Development Committee of the Enron Board of Directors have decided to continue to offer stock options as a part of your compensation package.
>
> * * *
>
> ***Why commit your talent and energy to Enron? EnronOptions – Your Stock Option Program, among other good reasons … that's why.***

(emphasis in original).

189. What employees were not told by Lay is that shortly before this letter was sent, on May 4, 2000, Lay sold 154,300 of his shares for proceeds of $11,529,296, the largest single sale of Enron stock he had engaged in.

190. At an All-Employees Meeting held after the second quarter of 2000, Lay informed employees that the Company's performance had been "stellar":

> MR. LAY: We're going to talk about the financial performance of the company, some of the recent developments, some very exciting recent developments to continue to set us up for really strong future growth, the operating highlights and global strategy, and then some recent things, both internally and externally, that we think we'd like to share with you, in case you haven't seen it. And, again, today ***Jeff, Joe*** and ***I*** will kind of split up the presentation, and also, of course, share in answer the various questions.
>
> ***For the second quarter this year, we again had an outstanding quarter, as most of you know.*** Our revenues were up about 75 percent, net income up about 30 percent, earnings per share up about 26 percent. ***By every measure***, and of course even more so if we start looking at some of the physical volumes and some of the underlying activity in the companies, which we will do this morning, ***it was a great, a great quarter for Enron***.

And, of course, now we've just completed our third quarter, and we'll be announcing those results in about two weeks. Again, we had a great third quarter. Obviously, all of the final numbers aren't in, ***but everything we're looking at would indicate that it, again, will be another stellar quarter performance for the company.***

* * *

But, each of the businesses had a good quarter.

* * *

MR. LAY: This is probably one of my most favorite slides, but it does – but it does show how the performance for our shareholders has been over the last 10-plus years.

Starting early in 1990 and going through September of this year, as you can see in that upper left-hand quarter, Enron Corp shareholders have had over a 1,400-percent or over 15-fold, if you want to put it that way, increase in their investment over that period of time. Obviously, well over three times what the average has been for the S&P 500. They're in a really strong bull market, the S&P 500, and over three times what the average for the pipeline group is, and of course much stronger than the utility average or the ENP. So, certainly, Wall Street is recognizing the performance that we're having.

* * *

And, again, just reflecting the expectations on Wall Street that we will continue to have very strong earnings growth, and let me say those of us in management have every reason to believe that those expectations will not be disappointed. So, again, a good performance leading to good results.

A few recent developments which, again, are very exciting for the company. Most of these you very much know about, certainly, ***the Blockbuster deal, but this is truly a great transaction for Enron broadband services.*** It is a 20-year exclusive deal with Blockbuster.

Blockbuster will provide the content, the movie. We will be the wholesale providers or deliverers of those videos to the last-mile people, which are listed there on the right – the Verizons, the Qwests, the SBCs, the Teluses, the Covads, the Reflexes.

But probably most importantly – and ***it's a big contract, it's about a billion-dollar contract, and we really had to constrain it somewhat to***

> ***keep it to that level.*** It's really probably a several-billion contract – but it did confirm, I think in the eyes of many, the fact that we have superior technology in broadband services.
>
> * * *
>
> So big, big growth opportunities, and in each of our markets we're in good shape.

191. As it was later disclosed, and is detailed in the description of Project "Braveheart" in Section V(F)(2) of this Complaint, the Blockbuster deal was based on wildly inaccurate projections, the contract was not "a great transaction for Enron broadband services" and Enron had to reverse profits it had booked on the Blockbuster deal.

192. At the "All-Employees Meeting" of October 3, 2000, Lay, Skilling and other Enron officers again represented that the Company faced a positive future, and again touted the sham Blockbuster deal, among others:

> LAY: This is probably one of the most favorite slides, but it does – but it does show how the performance for our shareholders has been over the last 10-plus years.
>
> * * *
>
> A few recent developments which, again, are very exciting for the company. Most of these you very much know about, certainly, the ***Blockbuster deal, but this is truly a great transaction for Enron broadband services. It is a 20-year exclusive deal with Blockbuster***.
>
> Blockbuster will provide the content, the movie. We will be the wholesale providers or deliverers of those videos to the last-mile people, which are listed there on the right – the Verizons, the Qwests, the SBCs, the Teluses, the Covads, the Reflexes.
>
> ***But probably most importantly – and it's a big contract, it's about a billion-dollar contract, and we really had to constrain it somewhat to keep it to that level.***
>
> * * *
>
> ***So, overall, business is doing great***. In every one of our businesses, we have market-leading positions. We have a solid core of business, and

> we're providing consistent, sustainable earnings growth, and the Street likes it. That's why the stock price has responded the way it has.
>
> At the same time, though, we have shown an ability to develop new businesses. We have created a number of new businesses that have been very, very successful, and these new businesses tend to have a high-technology content, which the Street also likes. But we are differentiating ourselves from the other players in the business. Enron is really the class act.

193. At the same meeting, Skilling actually defended against a criticism of Enron's accounting that had appeared in the WALL STREET JOURNAL:

> SKILLING: They're trying, but they won't match us. But business is doing great. Thank you so much for your time and all of the hard work you're putting into it. The performance shows that you're doing a great job.
>
> And the Journal article, I, you know, quite honestly, it had a couple of guys in there I think their major beef was that we were not more open in disclosing the methodology we use for mark-to-market accounting. ***And quite frankly, we provide more data in our annual report than anyone else in our industry and more data than anyone in any transaction-based industry.*** We provide VAR limits, average VAR, what the limits are, and other people don't do that. We give more information than anyone else.
>
> To provide additional information, we would probably have to go through and give the methodology by individual book, and we have I think now 2,900 books around the company. You just can't do that in an annual report. It would be this, you know, it would be this tall.
>
> ***So I think the entire article was just, you know, it was just one of these things that gets dredged up every couple of years. It has absolutely no merit, no substance. Our accounting policies are not only appropriate, in my opinion, they're conservatively executed. So we're in a strong position from an accounting basis.***

194. What employees weren't told is that during the preceding eight months, Lay had sold Enron shares netting him proceeds of over $32 million and Pai, who at the time was one of the highest ranking officers, had sold millions of his Enron stock.

195. At a January 2001 Houston investor meeting, attended by many Enron employees, Enron officers continued to falsely portray the financial condition of Enron:

> **Key Messages at <u>This Year's Meeting</u>**
>
> Enron Has Built Uniquely Strong Franchises With Sustainable High Earnings Power
>
> * * *
>
> **2001 Enron Strategic Goals – Enron Energy Services**
>
> - Grow revenues to $10 billion
> - Sign contracts representing $30 billion of total contract value
> - Achieve 15% ROIC

196. At the February 21, 2001 All-Employees Meeting, Enron executives again praised the Company's performance and defended the stock price and level of disclosure concerning Enron's finances:

> LAY: Key messages we think and this is the message we shared with the analysts just a few weeks ago, Enron has built uniquely strong franchises with sustainable growth.
>
> * * *
>
> But overall, I think the company is in great shape. Every single one of our businesses is exactly well positioned. … The company is in excellent shape for moving forward in the future.
>
> * * *
>
> SKILLING: ***So to summarize, the company's doing great. We're in great shape.***
>
> * * *
>
> This one addresses the "Fortune Magazine" article. There's a "Fortune Magazine" article that's out – I think it started coming out yesterday, that the headline is: "Is Enron Stock Overvalued?" The gist of the article is that Enron is sort of a black box which – sorry, it's true. I mean it's just difficult for us to show people the specifics of how money flows through particularly the wholesale business. But the article's point is that it's a black box, and for a black box, should you be getting a 50 multiple of last year's earnings.

And they also note a couple of other things. They pointed out the return on equity problem that we have, a general return on assets.

The question here is: "Will our options ever get back in the money?'

* * *

Let me give you my take on the analysis. The entire reason that this analysis was done by "Fortune Magazine" is because "Business Week" had a favorable article about Enron the week before. And there is this competition that the news magazines have, where if one says something good, the other has to come and find something bad. So I think that was kind of the genesis of it.

In terms of the black box, yes, it is a black box, but it's a black box that's growing in the wholesale business by about 50 percent a year in volumes at profitability. That's a good black box. And we've been absolutely up front with the analysts, and we've said, "Look, the only thing we can track that seems to follow the earnings is volume growth. So just watch the volume growth. Assume a margin per unit of volume, and that's what the number is going to look like." And I think our analysts are pretty comfortable with that after a decade.

So the criticism I think is kind of ridiculous.

197. At this meeting, Skilling did not reveal that while he was promoting the Company's future, he had been consistently selling his Enron shares. For example, on the day of this meeting, he sold 10,000 shares for proceeds of $804,200, and had sold shares in blocks of 10,000 on December 6, 2000, December 13, 2000, December 20, 2000, December 27, 2000, January 3, 2001, January 10, 2001, January 17, 2001, January 24, 2001, January 31, 2001, February 7, 2001 and February 14, 2001.

198. In a 2001 employee newsletter, Defendant Lay promised to do a better job in the Company's disclosures to analysts:

Enron is going to do a better job of explaining our finances and operations to analysts and investors. "We're going to provide more segmentation of our earnings so that analysts have a good understanding of what goes on in our business units," Ken says. "If they understand our business, they're more likely to support our stock."

199. In a 2001 newsletter, Skilling described Enron's performance as "***simply stunning*":**

> **Simply stunning**. That's how Chief Executive Officer Jeff Skilling describes Enron's strong financial and operating performance in 2000. Every major business – pipelines, wholesale services, retail and broadband – turned in strong performances for the year that were reflected in record volumes, contract value and profitability. Revenues increased two-and-a-half times, reaching $101 billion. For the first time, Enron's pre-tax net income exceeded $1 billion, a 32 percent increase over last year, and shareholders received an 89 percent gain on the stock price. Other significant highlights included:
>
> - Fourth quarter revenues of $40.75 billion, exceeding 1999's entire reported revenues of 40 billion;
> - 25 percent increase in earnings per diluted share to $1.47;
> - 59 percent increase in marketed energy volumes to 52 trillion British thermal unit equivalents per day; and
> - Nearly doubling of new retail energy contracts to $16.1 billion.
>
> *Enron Business* met with Jeff to discuss last year's results and his outlook for 2001.
>
> **EB**: Enron had a great 2000. How did we do it?
>
> **Jeff**: Every one of our businesses performed beyond our expectations. …So we have significant upside in the stock price, probably in the $125 range.

200. On August 14, 2001, Lay informed employees that "***performance had never been stronger***":

> Now it's time to look forward. With Jeff leaving, the board has asked me to resume the responsibilities of President and CEO in addition to my role as Chairman of the Board. I have agreed. I want to assure you that I have never felt better about the prospects for the company. All of you know that our stock price has suffered substantially over the last few months. One of my top priorities will be to restore a significant amount of the stock value we have lost as soon as possible. Our performance has never been stronger; our business model has never been more robust; our growth has never been more certain; and most importantly, we have never had a better

> nor deeper pool of talent throughout the company. We have the finest organization in American business today. Together, we will make Enron the world's leading company.

201. On August 27, 2001, Lay, after receiving the Sherron Watkins' memo described below, and without the results of Vinson & Elkins LLP's "preliminary investigation" of her concerns, encouraged employees to invest in Enron stock:

> As promised, I want to update you on the Special Stock Option Grant that I announced at the all-employee meeting.
>
> Employees who are eligible to participate in this special program will receive award details in the next several weeks. More information about this grant will be available on the HR web site http://hrweb/enron.com.
>
> As I mentioned at the employee meeting, one of my highest priorities is to restore investor confidence in Enron. This should result in a significantly higher stock price. I hope this grant lets you know how valued you are to Enron. I ask your continued help and support as we work together to achieve this goal. Again, on behalf of the Enron Board and myself, thanks for everything you are doing to make Enron the great company it is. And stay turned for regular updates from me about what is happening around Enron.

202. Even while he had sold millions of shares of his own Enron stock and was intending to sell more and did so, Lay continued to falsely assure Enron employees that Enron had a solid future and strong financial basis. Thus, in answering questions of employees on September 26, 2001, Lay made the following statements designed to encourage investment in and/or retention of Enron stock:

> LAY: Good morning! I'm looking forward to all of your questions. I'm sure there are many and I will attempt to answer them as fully as possible.
>
> * * *
>
> POCHSNER: Who is our chief competitor and what will enable us to outperform them in the future?
>
> LAY: We have a number of strong competitors. Certainly among those that do many of the same things we do would be Dynegy, Duke, El Paso, AEP and several other energy companies. I would say the one that

operates the closest to our business model is Dynegy, although they are probably somewhat more asset-intensive. ***I think the main reason we will continue to outperform these competitors on a financial basis (which will lead to outperforming them on a stock basis),*** is the quality of our people.

* * *

ZALL: Why is there not a present initiative to have our management encouraged (with muscle) to buy Enron stock?

LAY: ***I have strongly encouraged our 16B officers to buy*** additional Enron stock. Some, including myself, have done so over the last couple of months and others will probably do so in the future. But, I'm sure you can understand that many of our senior management, as well as many of our employees, have been badly damaged financially by the drop in Enron's stock price as well as by the overall stock market, and have certain limitations as to how many of each stock they can purchase at this time. ***My personal belief is that Enron stock is an incredible bargain at current prices and we will look back a couple of years from now and see the great opportunity that we currently have.***

* * *

CVERNON: Mr. Lay – Enron has been aggressive in the use of SPVs collateralizing future cash flows for the sake of present earnings. I couldn't help but notice our auditor, Arthur Andersen of Houston, recently admitted guilt and paid the largest fine ever for criminal falsifications related to SPVs on behalf of another large Houston corporation. You are a man of integrity, so my "question" is a chance for you to so reassure us we have no such problems here at Enron.

LAY: To begin with, I can assure you that I or the Board of Directors, ***would not approve the use of any SPVs or other types of financial vehicles unless we were convinced both by all of our internal officers as well as our external auditor and counsel, that they were legal and totally appropriate.*** That is the standard that we have used for as long as I have been with Enron, and we will continue to use. In many cases, not only has the local Arthur Andersen office approved these vehicles, ***but they have also been approved at Arthur Andersen's headquarter*** office from some of the world's leading experts on these types of financing.

Now having said this, in the case of LJM2, which was a related party transaction, ***of which virtually every Fortune 500*** has such transactions, because there was significant static raised by that within the financial

markets, that was restructured so that there is no related party involved at the current time.

In addition to both approval internally and externally, certainly ***I or the Board also apply the concept of what appears to be right***, using a great deal of experience and common sense. And I believe overall, this has led to both creative transactions, which are beneficial for the company and its shareholders, as well as ***an abundance of safeguards*** that what is done is totally appropriate and acceptable.

* * *

BRYANT: In addition to working hard at our jobs in order to make Enron more successful, what can we, as employees of Enron do to help increase our stock price?

LAY: In addition to what I said to an earlier, similar question, I believe that the other thing employees can do is talk up the stock and talk positively about Enron to your family and friends. In part, because there have been so many short sellers of the stock over the last several months, ***there have been all kinds of reckless and unfounded rumors about Enron and the financial condition of Enron.*** To the extent that our employees begin repeating those rumors and spreading those rumors to other employees as well as family members and friends outside the company, it gives them a level of credibility that they do not deserve. And, thus damages the stock price.

The company is fundamentally sound. The balance sheet is strong. Our financial liquidity has never been stronger. And we again have record operating and financial results. At current stock prices, we're selling for about 13-14 times earnings and for a company that has been growing earnings per share at about 20% per year for some time, this seems to be an incredibly cheap stock.

* * *

The best way to restore the value is to continue to show strong financial and operating results. I am convinced we have a good business strategy and strong fundamentals that will allow us to do this. We are continuing to address some of the separate issues, such as broadband, California, India and some of the more complex financial vehicles. ***And over time, all of these will be resolved satisfactorily and if our financial performance and operating performance continues to be strong, then I am very confident that we will regain the value that we have lost and see new highs in our stock price.***

> So, I encourage you to continue to do the very best job that you can and if you, and all of our other employees, do the same thing, ***we will ride the up trend in the stock price together***. I will have a little more to say about this subject in the Lay It On the Line email that will be coming out shortly.
>
> * * *
>
> WYMER: Enron's stock is continually falling. Why the drastic changes? I feel the stock is trading lower than it is worth. Why the disconnect? Thanks, Matt.
>
> LAY: I agree with you. As my previous answer indicated, there is a disconnect. As I've mentioned earlier, we clearly do have some issues that we're addressing, ***but the underlying fundamentals are strong. Markets tend to overreact both on the up side and the down side.*** But over time, they do correct and I think that will happen to our stock if we keep performing well.
>
> * * *
>
> LEAHY: Institutional investors have learned a hard lesson in the last 18 months – that they do better holding stocks they understand and can analyze than stocks that have better stories than financial information. Enron is considered to be in the latter category. How are we dealing with transparency? How will we get the markets to trust the quality of our earnings? How will the change in investor appetite affect our business strategy with respect to non-core businesses?
>
> LAY: We have indicated that we are going to begin providing the financial community more information in our operations and financial performance. At the same time, we have made it very clear that we will not provide the kind of detail that our competitors would benefit from.
>
> ***I personally believe that the issue of quality of earnings is overstated. We have now had 24 consecutive quarters of over year increases and income in our wholesale business, which is where this quality of earnings issue is usually raised. If we somehow are filling holes in our operating income in this business, it would be virtually impossible to continue doing that for six years.*** Hopefully, as we do provide more detail to the financial community as well as continue to show good strong quarter-on-quarter financial performance, this issue will begin to fade.

203. On September 26, 2001, Ken Lay responded to questions posed by employees on the company intranet. Again, he was positive, announcing that everything was "great or strong":

> Responding to an inquiry re: the use of SPVs to collateralize future cash flows for the sake of present earnings.
>
> "…In many cases, not only has the local AA office approved these vehicles, ***but they have also been approved at AA's headquarter office from some of the world's leading experts on these types of financing."***

204. Responding to an inquiry about the stock, Lay states as follows:

> "My personal belief is that Enron stock is an incredible bargain at current prices and we will look back a couple of years from now and see the great opportunity that we currently have."
>
> * * *
>
> "There have been all kinds of reckless and unfounded rumors about Enron and the financial condition of Enron." If employees repeat the rumors, it will "damage the stock price."
>
> * * *
>
> "The company is fundamentally sound. The balance sheet is strong. Our financial liquidity has never been stronger. And we again have record operating and financial results…[ENE] seems to be an incredibly cheap stock."
>
> * * *
>
> "The third quarter is looking great. We will hit our numbers. We are continuing to have strong growth in our businesses, and at this time I think we're well positioned for a very strong fourth quarter."

205. While Lay was encouraging employees to buy or hold Enron stock, between the time of the Sherron S. Watkins letter in August 2001 and Enron's bankruptcy filing in November 2001, he sold approximately $26 million of his own holdings. And, at the time he stated that he was "encouraging" Enron's "16B officers" to buy stock (¶ 200 above), Lay failed to disclose that they were also selling massive quantities of Enron stock.

206. In large part because of the Enron ERISA Defendants' efforts to influence Plaintiffs and members of the Class, as of January 1, 2001, these participants had invested more

than $1.3 billion – more than 62% of the total asset value of all investments in the Savings Plan – in the Enron Corp. Stock Fund, which invested entirely in Enron securities.

D. Bad News Begins to Emerge Regarding Enron's True Financial Condition

207. On October 16, 2001, Enron issued a press release over the PR NEWSWIRE announcing its operating results for the quarter ending September 30, 2001, shocking the market and ESOP and Savings Plan participants by announcing that it would be forced to take a non-recurring charge against earnings of more than $1 billion against its third quarter earnings – which would force net income to an appalling loss of $618 million for the quarter. Enron detailed this surprising charge as follows:

> Enron's results in the third quarter of 2001 include after-tax non-recurring charges of $1.01 billion, or $ (1.11) per diluted share, consisting of:
>
> - $287 million related to asset impairments recorded by Azurix Corp. These impairments primarily reflect Azurix's Planned disposition of its North American and certain South American service-related businesses;
>
> - $180 million associated with the restructuring of Broadband Services, including severance costs, loss on the sale of inventory and an impairment to reflect the reduced value of Enron's content services business; and
>
> - $544 million related to losses associated with certain investments, principally Enron's interest in The New Power Company, broadband and technology investments, and early termination during the third quarter of certain structured finance arrangements with a previously disclosed entity.

208. As detailed below in Sections V(F) and V(G), this "restructuring charge" was itself improper, as it reversed income from prior periods that should never have been recognized in those periods, or finally recognized losses that had been suffered by the Company in earlier periods.

209. On October 17, 2001, before the market re-opened following this shocking news, Defendants "locked-down" the Savings Plan and ESOP accounts, making it impossible for the

participants to roll their investments in Enron stock into other investments. Essentially, ***participants of the Plans were forced by Defendants to watch from the sidelines as their hard-earned retirement savings evaporated as a result of Enron's financial misconduct***.

210. An article in the WALL STREET JOURNAL on October 17, 2001 further explained the nature of the "certain structured finance arrangements" alluded to in the October 16, 2001 press release as a labyrinth of complex partnership arrangements designed to keep certain losses off of Enron's books by exploiting perceived loopholes in accounting requirements. Shockingly, many of these partnerships were managed by Enron's Chief Financial Officer Andrew S. Fastow ("Fastow"). The article outlined some of the problem arrangements as follows:

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

211. On October 18, 2001, the WALL STREET JOURNAL elaborated on the nature of Fastow's financial arrangements in these complex partnership arrangements. This article reported that Enron "shrank its shareholder equity by $1.2 billion as the Company decided to repurchase 55 million of its shares that it had issued as part of a series of complex transactions with an investment vehicle" connected with Fastow. In response to the questions raised by these elaborate transactions and Enron's financial reporting in general, Enron's shares slid to close trading at $29.00 per share on October 18, 2001, on heavy trading volume.

212. These disclosures were troubling, to say the least, and the market continued to place downward pressure on the price of Enron stock with all the uncertainties raised by these complex accounting issues and questionable conduct by Enron's senior officers. The market forced the price of Enron stock lower during this period to close at $11.17 on November 5, 2001. Savings Plan participants were still "locked out" from trading in their accounts.

213. On November 8, 2001, the "other shoe" finally dropped when Enron filed a Form 8-K with the SEC disclosing that its financial reporting with regard to these complex transactions was not in accordance with Generally Accepted Accounting Principles ("GAAP") and SEC regulations and that "the previously-issued financial statements for these periods and the audit reports covering the year-end financial statements for 1997 through 2000 should not be relied upon." Enron further announced that it would be forced to restate each of its annual financial statements since the annual financial statements for the year ending December 31, 1997:

> Enron's current assessment indicates that the restatement will include a reduction to reported net income of approximately $96 million in 1997, $113 million in 1998, $250 million in 1999 and $132 million in 2000, increases of $17 million for the first quarter of 2001 and $5 million for the second quarter and a reduction of $17 million for the third quarter of 2001.
>
> Enron attributed the restatement to three reasons:
>
> To (1) reflect its conclusion that three previously unconsolidated entities did not meet certain accounting requirements and should have been included in Enron's consolidated financial statements, (2) reflect an adjustment to shareholders' equity described below and (3) include prior-year proposed audit adjustments and reclassifications (which were previously determined to be immaterial in the years originally proposed). Specifically, Enron has concluded that based on a review of related party transactions:
>
> - The financial activities of Chewco Investments, L.P. (Chewco), a related party which was an investor in Joint Energy Development Investments Limited Partnership (JEDI), should have been consolidated into Enron's consolidated financial statements beginning in November 1997;
> - The financial activities of JEDI, in which Enron was an investor and which were consolidated into Enron's financial statements beginning in the first quarter of 2001, should have been consolidated beginning in November 1997; and
> - The financial activities of a wholly-owned subsidiary of LJM Cayman, L.P. (LJM1), a private investment limited partnership for which the general partner's managing member was Andrew S.

> Fastow, former Executive Vice President and Chief Financial Officer of Enron, should have been consolidated into Enron's consolidated financial statements beginning in 1999.

This shocking news caused Enron's share price to collapse to under $9.00, and to continue to fall as low as $7.40 on November 20, 2001 – a loss of more than 90% from the Class Period high of $90.00 per share. The Savings Plan and the ESOP have lost some $2 billion dollars as a result of Defendants' misconduct. The size and scope of the restatements were shocking and unprecedented. Net income for each of the years from 1997 through 2000 was revised downward by as much as 75.2%, as shown by the following chart:

214. On November 19, 2001, Defendants Enron, the Enron ERISA Defendants and other fiduciaries ended their illicit Lockdown of the Savings Plan and the ESOP. But by this time, Enron stock had sunk to close at $9.06 per share.

215. Also on November 19, 2001, Enron filed its quarterly report on Form 10-Q for the period ending September 30, 2001 with the SEC. This Form 10-Q fully outlined the amount of the required restatements of Enron's 1997 through 2000 financial statements, and shed some light on the reasons that the restatement was required. It is interesting to note that the restated financial statements included in this Form 10-Q differed materially from the restatements announced on November 8, 2001. Following this disclosure, Enron's share price continued to sink, closing at $4.11 per share on November 27, 2001. The share price only remained that high because of the hope that Dynegy, Inc. ("Dynegy") would buy Enron at its already dramatically reduced share price.

216. On November 28, 2001, Dynegy announced over the BUSINESS WIRE that it was abandoning its previously announced merger of Enron because of Enron's false representations about its financial condition:

> The company cited Enron's breaches of representations, warranties, covenants and agreements in the merger agreement, including the material adverse change provision.

Without the possibility of an acquisition to keep its share price artificially high, Enron shares sunk to close at just $0.61 per share – a shocking decline of more than 99% from its highs in August of 2000. The Company is now bankrupt. In all, the Savings Plan and ESOP participants have lost billions from Defendants' unlawful conduct.

E. Enron's Use of "Off-Balance-Sheet-Partnerships" to Enhance Its Financial Statements in Violation of Accounting Principles and Regulations Led to the Restatements

217. During the late 1990s, Enron grew rapidly and moved into areas it believed fit its basic business plan: buy or develop an asset, such as a pipeline or power plant, and then expand it by building a wholesale or retail business around the asset. Much of this growth involved large initial capital investments that were not expected to generate significant earnings or cash flow in the short term, and they placed immediate pressure on Enron's balance sheet. Enron already had a substantial debt load. Funding the new investments by issuing additional debt was unattractive because cash flow in the early years would be insufficient to service that debt and would place pressure on Enron's credit ratings. Maintaining Enron's credit ratings at investment grade was vital to the conduct of its energy trading business. Alternatively, funding the investments by issuing additional equity was also unattractive because the earnings in the early years would be insufficient to avoid "dilution" – that is, reducing earnings per share.

218. In order to "dress-up" Enron's financial statements to maintain its credit ratings and allow its share price to escalate, it needed to find some way to disguise the level of assets that would not be immediately adding to cash flow.

219. Enron's treatment of the assets it had purchased for financial statement purposes was subject to accounting rules that determine whether the entity should be consolidated in its entirety (including all of its assets and liabilities) into Enron's balance sheet, or should instead be treated as an investment by Enron. ***Enron management preferred the latter treatment – known as "off-balance-sheet" – because it would enable Enron to present itself more attractively as measured by the ratios favored by Wall Street analysts and rating agencies***. Enron engaged in

numerous transactions structured in ways that resulted in off-balance-sheet treatment. Some were joint ventures. Others were structured as a vehicle known as a "special purpose entity" or "special purpose vehicle" (sometimes referred to as an "SPE").

220. A "Special Purpose Entity" is an entity created by a sponsor to carry out a specified purpose or activity, such as to consummate a specific transaction or series of transactions with a narrowly defined purpose. Special Purpose Entities are generally used as financing vehicles in which assets are sold to a trust or similar entity in exchange for cash or other assets funded by debt issued by the trust. Special Purpose Entities are often used in a structured transaction or series of transactions to achieve off-balance-sheet treatment for accounting purposes.

221. Accounting rules, as detailed below, provide that certain qualifying SPEs do not have to be consolidated into a Company's financial statements if, ***and only if***, they meet certain stringent criteria: (1) an owner independent of the company must make a substantive equity investment of at least 3% of the SPEs' assets, and that 3% must remain at risk throughout the transaction; and (2) the independent owner must exercise control of the SPE.

222. Beginning in approximately 1997, Enron began to form several partnerships – some of which were managed by its senior officers. Certain of these partnerships were substantively owned or controlled by Enron, and were thus required to be included in Enron's financial results, but were not. Further, the minimum capital investment thresholds were violated by numerous of the purported SPEs. In at least the following instances, partnerships that should have been included in Enron's reported financial results were excluded under the guise of being "unrelated" entities:

1. JEDI and Chewco transactions

223. Joint Energy Development Investments Limited Partnership, which Enron called "JEDI," is a Delaware limited partnership. From June 1993 through November 1997, Enron Capital Management LP of Houston served as JEDI's general partner, and the California Public

Employees' Retirement System ("CalPERS") was the limited partner. Because CalPERS owned more than a 3% stake in JEDI, it was Enron's view that JEDI would qualify as a non-consolidated SPE, as described above.

224. During 1997, Enron decided that it would rather have CalPERS invest in a new partnership rather than JEDI, and decided to buy CalPERS out of its investment in JEDI. But in order to maintain JEDI as an unconsolidated entity (and thus kept off of its financial statements and away from public scrutiny), Enron needed a new limited partner. Accordingly, it was decided that the Company would establish Chewco Investments LP ("Chewco") to take the role of limited partner that CalPERS had vacated.

225. Fastow originally wanted to be the manager of Chewco, but because as an officer of Enron his involvement would have to be disclosed in the Company's proxy statement, it was decided that Defendant Kopper (not an executive officer of the company) would control Chewco, through intermediary entities.

226. In November 1997, JEDI made a liquidating distribution to CalPERS of $383 million. Concurrently, Chewco purchased CalPERS' prior limited partnership interest in JEDI for $383 million, $132 million of which was financed by an interest-bearing loan from JEDI to Chewco, and $240 million of which was borrowed from a third-party financial institution supported by a guarantee from Enron.

227. Michael Kopper, an Enron employee, was an investor in the general partner of Chewco and, at the time of the purchase also was the manager of the Chewco general partner. As such, he unquestionably "controlled" Chewco for financial accounting purposes.

228. As originally formed in November of 1997, Chewco had no equity. To maintain the 3% of outside equity it believed would allow it to classify Chewco as an SPE (and thus not be included in the financial results of Enron), approximately $11.5 million in outside capital would need to be injected into Chewco. Initially, Kopper invested $125,000 in Chewco ($115,000 in the general partner entity and $10,000 in the limited partner entity). In addition to

this equity, its limited partner interest in JEDI was financed through a $132 million loan from JEDI; a $240 million loan from Barclay's Bank guaranteed by Enron and $11.4 million in loans from Barclay's Bank to Chewco's general partner and limited partner entities. But these loans required Chewco to establish a cash "reserve account" of $6.6 million immediately upon closing of the loan. Enron's counsel, Vinson & Elkins, drafted a "side letter" establishing this reserve account. Because the money left in a reserve account could not count toward the 3% minimum, Chewco's capital from entities outside Enron was then less than 3%, and it could not rightfully qualify for SPE treatment. But Enron accounted for Chewco as if it were a qualifying SPE during the period from December of 1997 through 2001.

229. Because JEDI's status as an independent SPE relied on Chewco's status as an SPE, JEDI was also required to be consolidated into Enron's financial statements after November 1997. Enron did not consolidate the financial results of JEDI either.

230. Through the first quarter of 2000, instead of consolidating the results of JEDI, Enron accounted for JEDI using the equity method of accounting. Under the equity method, Enron's proportionate share of JEDI's income was carried to Enron's reported financial results as income for Enron.

231. JEDI held 12 million shares of Enron stock, which it carried at "fair value." Changes in the value of JEDI's stock holdings were recorded as either income or losses in JEDI's income statement. Through the first quarter of 2000, Enron recognized its proportionate share of the "income" generated by JEDI, which was primarily gains in Enron stock. This hidden transaction had a circular effect on the Company's share price. Enron's share price was climbing on the basis of high earnings, causing JEDI to make money on its Enron stock which, in turn, increased Enron's earnings, fueling another increase in its share price. ***But GAAP specifically outlaws this type of circular transaction.***

232. In March 2001, Enron purchased Chewco's limited partnership interest in JEDI for $35 million, whereby JEDI became a wholly-owned subsidiary of Enron.

233. All of the above transactions were known to certain employees and partners of Defendant Andersen who served on the Enron engagement as part of the audit team and/or risk management team.

2. LJM1 Transactions

234. LJM Cayman LP, commonly referred to by Enron as ("LJM1"), is a private investment limited partnership formed in 1999. Enron's initial capital commitment to LJM1 was $16 million. Defendant Fastow was the managing member of the general partners of LJM1 at the time of its creation until approximately July 31, 2001; yet Fastow was ***contemporaneously*** an officer and employee of Enron, serving as its Executive Vice President and Chief Financial Officer.

235. Another $15 million was contributed by the limited partners of LJM1, named ERNB, Ltd. and Campsie Ltd. ERNB, Ltd. was affiliated with CSFB, who was thus privy to the financial condition of LJM1.

a. The Rhythm NetConnections Transactions

236. In March of 1998, Enron invested $10 million in the stock of Rhythms NetConnections, Inc. By May 1999, this investment in 5.4 million shares had climbed to be valued at approximately $300 million ($55.55 per share), but Enron was contractually prohibited from selling its shares before the end of 1999. Enron accounted for this investment under the "mark-to-market" method, meaning that increases and decreases in the market value of the stock of the company would be reflected as gains or losses on Enron's income statement.

237. Enron was also looking for a way to take advantage of what it viewed as the "trapped" or "embedded" asset of an increase in the value of certain "forward contracts" it owned with an investment bank to purchase a specified number of shares of its own stock at a fixed price that was significantly lower than the then-current market price. Under GAAP, a company is generally precluded from recognizing an increase in value of its own stock (including forward contracts) as income. To solve both of their problems simultaneously, Enron

and others developed a plan to hedge the Rhythms investment by taking advantage of the value in the Enron shares covered by the forward contracts. They proposed to create a limited partnership SPE, capitalized primarily with the appreciated Enron stock from the forward contracts. This SPE would then engage in a "hedging" transaction with Enron involving the Rhythms stock, allowing Enron to offset losses on Rhythms if the price of Rhythms declined.

238. On June 30, 1999, a transaction was devised between Enron, LJM1 and LJM Swap Sub L.P. ("Swap Sub"). Swap Sub was intended to be a non-consolidated SPE. The general partner of Swap Sub was LJM Swap Co., an entity controlled by Defendant Fastow. LJM1 was the limited partner of Swap Sub, and was intended to provide the 3% outside capital to allow qualification as an SPE. The transaction was comprised of the following elements:

- Enron restructured the forward contracts, releasing 3.4 million shares of Enron stock that it then transferred to LJM1;
- LJM1 capitalized Swap Sub by transferring 1.6 million shares of Enron stock and $3.75 million in cash; and
- Enron received from Swap Sub a put option covering all of its shares of Rhythms stock. Under the option, Enron could require Swap Sub to purchase the Rhythms shares at $56 per share in June 2004.

239. As admitted by Joseph Berardino, Andersen's former Chief Executive Officer, in testimony before the U.S. House of Representatives Committee on Financial Services, "the 3 percent test for residual equity had to be met not only by LJM1, but also by LJM1's subsidiary, Swap Sub." But it was not, and LJM1 should have been consolidated into Enron's financial statements. Berardino chalked this violation of GAAP up to an "error in judgment."

240. Enron booked hundreds of millions of dollars of pre-tax earnings based upon this transaction, even though the financial activities of these affiliates were required by GAAP to be consolidated into Enron's financial statements in 1999 and 2000. The pre-tax earnings (loss)

impact of this transaction was approximately $119.5 million earnings in 1999 and $14.1 million loss in 2000.

241. All of the above transactions were known to certain employees and partners of Defendant Arthur Andersen who served on the Enron engagement as part of the audit team and/or risk management team.

3. LJM2 Transactions

242. LJM2 Co-Investment LLP, commonly referred to by Enron as ("LJM2"), is a private investment limited partnership formed in 1999, which represents itself to be a private investment company engaged in acquiring or investing in energy and communications-related investments, primarily involving either assets that Enron wanted to sell or risk management activities designed to limit Enron's exposure to price and value fluctuations as to its assets. Andrew Fastow was the managing member of the general partner of LJM2 at the time of its creation until approximately July 31, 2001; yet Fastow was ***contemporaneously*** an officer and employee of Enron, serving as its Executive Vice President and Chief Financial Officer.

243. LJM2 had approximately 50 limited partners, including entities affiliated with certain investment banks, including Merrill Lynch, J.P. Morgan and Citicorp. The sum of Enron and the other investors' capital commitments to LJM2 was $394 million.

244. Although cursory information regarding the transactions with LJM2 were disclosed in the Enron Proxy Statement dated March 27, 2001, and publicly filed with the SEC on that date, these ***non***-arm's length transactions with an affiliate were not fully and fairly disclosed and not properly accounted for on the books of Enron in its 1999 and 2000 financial statements.

245. Enron entered into numerous transactions with LJM2 that were nothing more than "sham" transactions designed to hide the risks of ownership of many Enron assets from Enron's financial statements and investors in Enron's retirement plans.

246. For example, in June 2000, LJM2 purchased dark fiber optic cable from Enron for a purchase price of $100 million. LJM2 paid Enron $30 million in cash and the balance in an interest-bearing note for $70 million. Enron recognized $67 million in pre-tax earnings in 2000 related to the asset sale. Many other transactions exist whereby Enron was manufacturing earnings by buying or selling to LJM2, which was essentially buying or selling from itself. But the transactions between LJM2 and Enron that had the most impact on Enron's financial statements were unquestionably the "Raptor" transactions.

a. LJM2 Limited Partnership Interests Were Sold Through a Private Placement Memorandum

247. As described above, LJM2 provided a way for Enron to avoid public disclosure of its losses from investments. LJM2 accomplished these goals by investing in complex hedging transactions with Enron – in essence by contracting to offset Enron's losses on various investments. LJM2's limited partnership interests were sold by means of a Private Placement Memorandum dated as of October 13, 1999 ("PPM").

248. On December 15, 1999, a Supplement Number One to the Private Placement Memorandum was issued, naming LJM2 Capital Management, L.P., a Delaware Limited Partnership, as the General Partner. LJM2 Capital Management, L.P. itself had a general partner and two limited partners. The general partner was LJM2 Capital Management, L.L.C., of which Fastow was the managing member. The limited partners were Fastow and, at some point after the creation of LJM2, an entity named Big Doe, L.L.C. Kopper was the managing member of Big Doe. (In July 2001, Kopper resigned from Enron and purchased Fastow's interest in LJM2.)

249. LJM2 was not an arm's length entity for Enron. This is evidenced by language both in the PPM prepared by Merrill Lynch and in the documents presented at the Annual Partnership Meeting on October 26, 2000. The "Investment Strategy" section of the PPM made it perfectly clear that the purpose of LJM2 was to create a vehicle for Enron to hide its assets and correspondent liabilities through "off-balance-sheet" arrangements with LJM2:

> Enron has been making investments over the past seven years. It is notable that, as of June 30, 1999, Enron had $34 billion of assets on its balance sheet, but was the owner or manager of assets in excess of $51 billion (the difference between those two numbers represents the amount of assets financed off-balance sheet, often through co-investment partnerships or joint ventures).

250. Merrill Lynch managed the initial October 1999 private placement for LJM2 until April 2000. The PPM itself stated, "Merrill Lynch, Pierce, Fenner & Smith Incorporated has been engaged as placement agent in connection with the formation of the Partnership and may use its affiliates to assist in its placing activities." As placement agent, Merrill Lynch worked to enlist the limited partners.

251. Through the use of the PPM and Merrill Lynch's vast marketing capabilities, LJM2 was able to get 52 investors to put nearly $400 million into LJM2 as limited partners. Investors included three J.P. Morgan Chase entities – Chemical Investments, Inc., J.P. Morgan Partners, and Sixty Wall Street Fund LP – which invested a total of $25 million. Merrill Lynch itself, via an entity named ML IBK Positions Inc., committed $5 million of corporate money, while more than 90 of the firm's investment advisors put in more than $17 million through an entity named ML/LJM2 Co-Investment LP. Curtis Cariddi, a director of Merrill Lynch's investment banking finance subsidiary, signed documents on behalf of both sets of Merrill Lynch investors.

b. The October 26, 2000 LJM2 Annual Partnership Meeting

252. The presentation package for an annual partnership meeting of LJM2 on October 26, 2000 identifies Chase Capital, J.P. Morgan Capital, Merrill Lynch, CSFB, Morgan Stanley and First Union Investors as "meeting attendees." Defendant Skilling and several officers of TNPC, Inc. were also identified as "guest speakers." This package set forth the meeting agenda, including sessions regarding "LJM Rationale," "LJM Strategy," "Activity Summary" and "Valuation."

253. In the "LJM Rationale" section of the presentation package, the presentation queried, "Why does Enron need private equity?" In response to this question, the package set forth the issue that because energy and communications assets do not typically generate earnings or cash flow, these types of assets would be "dilutive to Enron's current EPS" and "dilutive to credit rating ratios." The presentation set forth the following two "solutions" to these "problems":

- Enron must deconsolidate assets; and
- Enron must create structures which accelerate projected earnings and cash flows.

To "deconsolidate" an asset means, quite simply, to keep it off of Enron's balance sheet. Any reasonable person – let alone highly trained financial professionals – would realize that this provision dealt squarely with hiding assets (and liabilities) of Enron from the Company's financial statements. Certainly highly trained accounting professionals also know that "structures which accelerate projected earnings and cash flows" can only mean structures that will provide inaccurate and overly favorable earnings and cash flow numbers.

254. Thus, Defendants Andersen and others were well aware that Enron had assets and corresponding liabilities greatly in excess of those reported on the Company's financial statements.

255. Indeed, page 8 of the presentation package provides a chart showing that, as of 1999, Enron's reported "Total Assets" were $33.3 billion, while the "Total Assets and Combined Assets of Unconsolidated Affiliates" were in excess of $60 billion. Defendants Andersen and others were privy to information that participants in Enron's retirement plans were not – that Enron's assets and liabilities were greatly in excess of any reported amounts.

256. Page 20 of this presentation package set forth an "activity summary" describing the financial results of LJM2, and pages 26-28 identified cash flows from various LJM2 projects. Page 37 highlights the fact that the "major risk" to LJM2 is Enron's stock dropping below $48.00 per share.

257. Page 40 of the presentation package described the "Raptor III" transaction whereby Enron hid the volatility in its TNPC investment by entering into a "hedging" transaction with LJM2.

c. The April 2001 letter from Defendant Fastow to limited partners

258. Fastow sent a letter to the limited partners of LJM2 in April 2001, apprising them of the current status of the partnership. Fastow himself made this point regarding the return of capital from the various SPEs with which LJM2 was involved:

> After the settlement of the [Enron] puts, Enron and the Raptor vehicles began entering into derivative transactions designed to hedge the volatility of a number of equity investments held by Enron. LJM2's return on these investments was not at risk to the performance of derivatives in the vehicles, given that LJM2 had already received its return of and on capital.

d. Raptor Transactions

259. Four Special Purpose Entities known as Raptor I, Raptor II, Raptor III and Raptor IV (collectively, the "Raptors") were created in 2000, permitting Enron to hedge market risk in certain of its investments. LJM2 invested in these entities. As part of the capitalization of these entities, Enron issued common stock in exchange for a note receivable. Enron increased notes receivable and shareholders' equity to reflect this transaction. Under GAAP, the note receivable should have been booked as a ***reduction*** to shareholders' equity (similar to a shareholder loan), ***not*** as an ***increase*** in assets and ***increase*** in shareholders' equity. Accordingly, in violation of GAAP, the financial statements of Enron overstated both notes receivable and shareholders' equity by approximately $172 million in each of the second quarter, third quarter, and year-end financial statements (audited by Defendant Andersen) for the year 2000. As described in Section V(D), this led to a large component of the restatements announced in November of 2001. Defendant Andersen billed Enron approximately $335,000 in connection with its work on the creation of the Raptors in the first several months of 2000.

260. Similarly to the Rhythms hedge employed by LJM1, as described above, Enron sought to capitalize on the value of its "forward contracts" with an investment bank to purchase shares of its own stock at future dates for a fixed price significantly below then-market prices for Enron stock. Enron planned to use this "embedded value" to capitalize off-balance-sheet entities that would "hedge" the Company's potential losses from declines in the value of its investments in other companies. Enron did this by entering into complex derivative transactions with the Raptors that functioned as hedges for financial accounting and reporting. But these transactions were not true economic hedges. If Enron had hedged its merchant investments with creditworthy, independent parties, it would have successfully transferred the economic risk of declines in the value of the investments. But the Raptors essentially lacked any economic substance apart from Enron. ***In essence, Enron still bore the risk of any losses, and was only "hedging" the transactions with itself***. Under GAAP, the income attributable to this "sham" hedge cannot be recognized.

261. The Raptors made an extremely significant contribution to Enron's reported financial results over the last five quarters before Enron sought bankruptcy protection – *i.e.*, from the third quarter of 2000 through the third quarter of 2001. Transactions with the Raptors during that period allowed Enron to avoid reflecting on its income statement almost $1 billion in losses on its merchant investments that were required to be recognized under GAAP and SEC regulations.

262. Raptors I, II and IV were also capitalized by Enron with Enron stock and derivatives which could have required the future delivery of Enron stock. Raptor III was capitalized with an economic interest in warrants convertible into a stock of New Power, another Enron affiliate.

(1) Raptors I, II and IV

263. Raptor I was created effective April 18, 2000 as an SPE called Talon LLC ("Talon"). Talon was created solely to engage in hedging transactions with Enron to protect

Enron against declines in the value of derivative instruments it held related to the share price of its own stock. LJM2 invested $30 million in cash and received an LLC interest. Enron (through a subsidiary) contributed $1,000 in cash, a $50 million promissory note and Enron stock contracts with a fair market value of approximately $537 million. Transactions were structured on immensely favorable terms to LJM2, for no apparent business purpose to Enron. Enron purchased a "put" option on Enron stock for a premium of $41 million to Talon. The put option gave Enron the right to require Talon to purchase approximately 7.2 million shares of Enron common stock on October 18, 2000, six months after the effective date of the transaction, at a strike price of $57.50 per share. The closing price of Enron stock was $68 per share when Enron purchased the put. As long as Enron's share price remained above $57.50, the put option would expire worthless to Enron, and Talon would be entitled to record the $41 million premium as income. It could then distribute $41 million to LJM2, but continue to treat Talon as an adequately capitalized, unconsolidated SPE.

264. The $41 million was an absurdly high premium for this put option, and appears designed only to allow Talon to have sufficient capital to allow for its treatment as an SPE. The transaction makes little apparent commercial sense, other than to enable Enron to transfer money to LJM2 in exchange for its participation in vehicles that would allow Enron to engage in hedging transactions. On August 3, 2000, because Enron stock had appreciated, Talon was able to buy out the remaining time period on the put by paying $4 million to Enron. Thus, by Defendants' calculations, Talon was now sufficiently capitalized to enter into further "hedging" transactions with Enron.

265. Talon returned $4 million of the $41 million option premium to Enron, but nevertheless paid LJM2 $41 million. That left LJM2 with little further financial interest in what happened to Talon. In fact, Fastow told his limited partners in LJM2 that the Raptors were "divested investments" after LJM2 received its specified $41 million return. This is significant in that LJM2 no longer had the required 3% of the capital "at risk" and thus could not qualify as

an SPE. Defendant Fastow made this point himself in a private communication with LJM2 investors in April of 2001:

> After the settlement of the [Enron] puts, Enron and the Raptor vehicles began entering into derivative transactions designed to hedge the volatility of a number of equity investments held by Enron. ***LJM2's return on these investments was not at risk to the performance of derivatives in the vehicles, given that LJM2 had already received its return of and on capital.***

266. Raptors II and IV were essentially similar to Raptor I, and could not qualify as an SPE for the same reasons. Just as it had done with Talon in Raptor I, Enron paid Raptor II's SPE, "Timberwolf," and Raptor IV's SPE, "Bobcat," $41 million each for share-settled put options. As in Raptor I, the put options were settled early, and each of the entities then distributed approximately $41 million to LJM2 prior to September 22, 2000. Although these distributions meant that both Timberwolf and Bobcat were available to engage in derivative transactions with Enron, Enron engaged in derivative transactions only with Timberwolf. These transactions, entered into as of September 22, 2000 and December 28, 2000, sought to "hedge" Enron against declines in its own share price. ***But once again, the return of the $41 million to LJM2, in both instances, meant that qualification as an SPE was not met***, which required Enron to consolidate the Raptors on its financial statements, which it never did prior to the restatement announced in November of 2001.

(2) Raptor III

267. Raptor III was a variation of the other Raptor transactions, but with an important difference. Rather than hedging the Company against losses in its own share price, it was intended to hedge a single, large Enron investment in The New Power Company ("TNPC").[5] Instead of holding Enron stock, Raptor III held the stock of the very company whose stock it was intended to hedge – TNPC. (Technically, Raptor III held warrants to purchase approximately 24 million shares of TNPC stock for a nominal price. These warrants were thus the economic

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[5] *See* Section V(F)(1) for a description of the New Power Company.

equivalent of stock.) If the value of TNPC stock decreased, the vehicle's obligation to Enron on the hedge would increase in direct proportion. At the same time, its ability to pay Enron would decrease. Raptor III was thus the derivatives equivalent of doubling-down on a bet on TNPC. This extraordinarily fragile structure came under pressure almost immediately, as the stock of TNPC decreased sharply after its public offering.

268. As in the creation of the other Raptors, internal Enron accountants worked closely with Andersen in designing Raptor III. Andersen's billings for work on Raptor III were approximately $55,000. The structure of Raptor III, however, was different from the other Raptors because Enron did not have ready access to shares of its stock to contribute to the vehicle. Rather than seeking Board authorization for new Enron shares, which would have resulted in dilution of earnings per share, Enron Management chose to contribute some of Enron's TNPC holdings to Raptor III's SPE, "Porcupine."

269. As with the other Raptors, LJM2 contributed $30 million to Porcupine. It was understood that LJM2 would receive its substantial return before Porcupine would enter into derivative transactions with Enron. LJM2's specified return was set at $39.5 million or a 30% annualized rate of return, whichever was greater. It received a return of $39.5 million in only one week.

270. On September 27, 2000, Enron delivered approximately 24 million shares of TNPC stock to Porcupine at $10.75 per share. Enron received a note from Porcupine for $259 million, which Enron recorded at zero because it had essentially no basis in the TNPC stock sold to Porcupine. Enron did not obtain a fairness opinion with respect to the transaction. Enron, after consulting with Andersen, reasoned that its private sale of TNPC interests several months earlier at $10.75 per share was adequate support for the price of its transfer to Porcupine. The "road show" for the TNPC initial public offering was already underway, and there is evidence that Enron personnel were aware that the offering was likely to be completed at a much higher price. Indeed, on September 22, 2000 – five days before the transaction with Porcupine at

$10.75 per share – Enron distributed a letter to certain of its employees offering them an opportunity to purchase shares of TNPC in the offering and noting that "the current estimated price range [for the shares] is $18.00 to $20.00 per share." Nonetheless, Enron, with Andersen's knowledge and agreement, concluded that the last actual transaction was the best indicator of the appropriate price in valuing the warrants sold by Enron to Porcupine.

271. On October 5, one week after Enron contributed the warrants to Porcupine at a price equivalent to $10.75 per share, TNPC's initial public offering went forward at $21 per share. On the day of the initial public offering, the TNPC shares (for which Porcupine had paid $10.75 five days earlier) closed at $27 per share. That same day, Porcupine declared a distribution to LJM2 of $39.5 million, giving LJM2 its specified return and permitting Porcupine to enter into a hedging transaction with Enron. LJM2 calculated its internal rate of return on this distribution as 2500%.

272. Enron and Porcupine immediately executed a total return swap on 18 million shares of TNPC at $21 per share. As a result, Enron locked in an accounting gain related to the transactions of approximately $370 million. This gain, however, depended on Porcupine remaining a creditworthy counter-party, which in turn depended on the price of TNPC stock holding steady or increasing in value.

273. Although the initial public offering of TNPC was a success, the stock's value immediately began to deteriorate. After a week of trading, the share price had dropped below the offering price. By mid-November, TNPC stock was trading below $10 per share. This had a double-whammy effect on Porcupine: its obligation to Enron on its hedge grew, but at the same time its TNPC stock – the principal, and essentially only, asset with which it could pay Enron – fell in value. In essence, Porcupine had two long positions on TNPC stock. Consequently, Enron's transaction with Porcupine was not a true economic hedge, but merely a "sham" transaction to keep economic losses from being reflected on Enron's financial statements.

e. **The Raptors Begin to Unravel**

274. By November 2000, Enron had entered into derivative transactions with Raptors I, II and III with a notional value over $1.5 billion. Enron's accounting department prepared a daily tracking report on the performance of the Raptors. In its December 29, 2000 report, Enron calculated its net gain (and the Raptors' corresponding net loss) on these transactions to be slightly over $500 million. Enron could recognize these gains – offsetting corresponding losses on the investments in its merchant portfolio only if the Raptors had the capacity to make good on their debt to Enron. If they did not, Enron would be required to record a "credit reserve," reflecting a charge on its income statement. Such a loss would defeat the very purpose of the Raptors, which was to shield Enron's financial statements from reflecting the change in value of its merchant investments.

275. When the value of many of Enron's merchant investments fell in late 2000 and early 2001, the Raptors' hedging obligations to Enron grew. At the same time, however, the value of Enron's stock declined, decreasing the ability of the Raptors to meet those obligations. These two factors combined to create the very real possibility that Enron would have to record at the end of first quarter 2001 a $500 million impairment of the Raptors' obligations to it. To avoid recognizing those losses, Enron restructured the vehicles in the first quarter of 2001. In the third quarter of 2001, however, as the merchant investments and Enron's stock price continued to decline, Enron finally terminated the vehicles. In doing so, it incurred the after-tax charge of $544 million ($710 million pre-tax) that Enron disclosed on October 16, 2001 in its initial third quarter earnings release. Enron also reported that same day that it would reduce shareholder equity by $1.2 billion. One billion of that $1.2 billion involved the correction of accounting errors relating to Enron's prior issuance of Enron common stock (and stock contracts) to the Raptors in the second quarter of 2000 and the first quarter of 2001; the other $200 million related to termination of the Raptors.

276. The Raptors made an extremely significant contribution to Enron's reported financial results over the last five quarters before Enron sought bankruptcy protection – *i.e.*, from the third quarter of 2000 through the third quarter of 2001. Transactions with the Raptors during that period allowed Enron to avoid reflecting on its income statement almost $1 billion in losses on its merchant investments. Not including the $710 million pre-tax charge Enron recorded in the third quarter of 2001 related to the termination of the Raptors, Enron's reported pre-tax earnings during that five-quarter period were $1.5 billion.

f. Enron Ultimately Reacquires the Raptor Assets

277. Enron acquired LJM2's equity in Raptor during the third quarter of 2001 for $35 million. Enron recognized pre-tax earnings (losses) relating to risk management activities of $119 million, $518 million and $166 million in 1999, 2000 and 2001, respectively, including the effect of a $711 million pre-tax charge recognized in 2001, related to the termination of Raptor. During 2000 and the nine months ending September 30, 2001, Raptor hedged losses of $501 million and $453 million, respectively.

278. In the first quarter of 2001, Enron entered into contracts with Raptor that could have obligated Enron to issue Enron common stock in the future in exchange for notes receivable. Again, Enron increased notes receivable and shareholders' equity to reflect this transaction. Under GAAP, the note receivable should have been booked as a ***reduction*** to shareholders' equity (similar to a shareholder loan), ***not*** as an ***increase*** in assets and ***increase*** in shareholders' equity. Accordingly, in violation of GAAP, Enron's financial statements (reviewed by Defendant Andersen) overstated both notes receivable and shareholders' equity by $82 million during the first quarter of 2001. As a result of this improper, false and misleading accounting of these transactions by Enron, shareholders' equity and notes receivable were overstated by a total of $1 billion in the quarterly financial statements of Enron for March 31 and June 30, 2001.

279. In the third quarter of 2001, Enron purchased LJM2's equity interests in Raptor for $35 million.

280. Contrary to GAAP, Enron's financial statements accounted for this transaction as a reduction to Enron shareholders' equity and notes receivable by $1.2 billion. Enron recorded a $200 million equity reduction (which was part of the $1.2 billion restatement) related to the excess of the fair value of contracts deliverable by Enron over the notes receivable recorded in shareholders' equity, as adjusted.

281. All of the above transactions were known to certain employees and partners of Defendant Andersen who served on the Enron engagement as part of the audit team and/or risk management team, as described below.

F. Enron, Andersen, and Others Were Involved in Creating and Implementing Numerous Other Off-Balance-Sheet Arrangements

1. The New Power Transaction

282. With the assistance of certain Wall Street firms ("New Power Underwriters"), and with the participation of Andersen, Enron used a new vehicle to inflate its earnings, the Initial Public Offering ("IPO") of TNPC, Inc., which traded as New Power. The New Power transaction, described below, was facilitated by the prospectus for the IPO which was prepared by the New Power Underwriters. The New Power transaction also affected the Raptor III transaction.

283. New Power was created by Enron's Energy Services unit ("EES"), which itself was started in 1997 to take advantage of the imminent opening to competition of retail electricity markets around the country. Enron believed the retail market would provide a new source of demand for the Company's vast wholesale energy-trading operations.

284. In the spring of 1998, Enron plunged into California, hoping to snatch retail customers away from Pacific Gas & Electric Co. and the other old-line utilities. Under the deregulation plan, California's retail electricity market was opened up to competition. Any

creditworthy seller could market the juice, and its customers paid local utilities a fee to deliver it over existing wires.

285. But just 20 days after the market formally opened, Enron bailed out, disclosing that it had lost about $40 million in a mere three months. The problem was that few California consumers had ever heard of the Houston-based company, despite a $10 million advertising campaign. Moreover, power prices at the time were so low that there was little incentive to shop around.

286. Over the next year, Enron modified its formulae to reflect what it had learned in California. Instead of trying to crack the market alone, Enron launched talks with potential partners in 1999. Eventually, it signed a pact with America Online to solicit customers online. And it signed a 10-year deal with International Business Machines Corp. to handle New Power's payment and billing needs.

287. But Enron didn't just focus on building the business. Also in its sights were potential investors, chief among them the California Public Employees' Retirement System, or CalPERS, the biggest pension fund in America.

288. The story Enron sold to CalPERS in November 1999 was certainly compelling – at least on its face. At that point, Enron officials told pension-fund managers, 28 million households were potential customers, and that number would nearly triple by 2002 as more states deregulated their electricity sectors. In confidential presentation material given to CalPERS, Enron trumpeted that its enterprise was posed to claim a 10% share of the market within five years, giving it revenues of $10 billion to $15 billion.

289. Enron's sales job had a sense of urgency. By getting in on this "opportunistic investment" now, CalPERS was told, it would be in an excellent position when Enron took the venture public in coming months. It was, Enron noted, according to the presentation material, "an appealing IPO story."

290. CalPERS ponied up $15 million in late 1999. In July 2000 – with New Power by now incorporated as a separate entity – CalPERS put in $25 million more. And Enron continued to tout New Power's prospects. The retail energy business "has extraordinary growth potential," Mr. Lay said in an interview at the time.

291. Three months after the second private offering, Enron took New Power public, raising an additional $544 million with the help of lead underwriter DLJ.

292. Although New Power was a stand-alone company with Mr. Lockhart as chief executive, Enron maintained extremely close ties. Lou Pai, Chairman and CEO of Enron Accelerator, while continuing to run Enron Energy Services, served as New Power's chairman. Other senior Enron executives on New Power's board including Mr. Lay, Chief Accounting Officer Richard Causey, and General Counsel James Derrick. The companies used the same legal and accounting firms.

293. For those who had put their own money into New Power, Enron's deep involvement inspired comfort. As quoted in the WALL STREET JOURNAL, "Sponsorship from Enron was a big plus," says Jim Leech, head of merchant banking at the Ontario Teachers' Pension Board, "We expected that the senior Enron executives would see opportunities to help New Power going forward."

294. But early results were poor. The deal with AOL, which had been negotiated by Enron 11 months before New Power went public, sounded good. However, Enron committed New Power to pay $49 million over six years for marketing assistance – a considerable sum for a startup. In addition, for every 100,000 customers who subscribed to New Power via AOL, New Power had to fork over 258,060 shares of its stock to AOL, according to the offering circular. Mr. Lockhart terminated the AOL arrangement shortly after taking control, saying it was ineffective.

295. New Power had other troubles, as well. In Pennsylvania, the company won a contract a month after the IPO to serve nearly 300,000 customers who were being shed by

PECO, the old Philadelphia Electric Co., as it merged with Chicago-based Commonwealth Edison. PECO sent out letters notifying customers that they were being switched to New Power unless they objected. Yet even though New Power guaranteed a 2% break on all energy bills, "thousands and thousands of letters came back," recalls Irwin "Sonny" Popowsky, who oversees Pennsylvania's Office of Consumer Advocate. "They didn't want to be served by somebody they'd never heard of."

296. New Power lost a third of its Pennsylvania customers that first year. Equally taxing was the disaster unfolding in California, where wholesale energy prices climbed to 32 cents a kilowatt-hour in December 2000 from an average of three cents in 1999. By April 2001, California's largest utility had sought bankruptcy-court protection, the government in Sacramento had stepped in to assume power-buying duties, and states across the country were having second thoughts about opening their markets to companies such as New Power or Enron. New Power stock plummeted, and the Company's stock is an unmitigated disaster.

297. As the owner of a large stake in New Power, Enron should have recognized large losses from this scenario. To disguise these losses, Enron embarked on a tangled series of transactions characteristic of the labyrinthine way it managed many of its other financial affairs through the use of the Raptor III transactions as described in Section V(E)(3), *supra*.

2. Project "Braveheart"

298. Project Braveheart was a complicated transaction devised to allow Enron to circumvent accounting rules and recognize hundreds of millions of dollars of income from a partnership with Blockbuster, Inc. that, in fact, never made so much as a nickel in profits for Enron.

299. Enron Corp. and Blockbuster Inc. joined forces in mid-2000. The companies announced they would soon be allowing consumers across America to choose from among thousands of movies, including hot new features, sent via telephone lines to watch on their TVs at home.

300. Within months of inking the deal, Enron had set up an affiliated partnership, code-named Project Braveheart. Enron incorporated its Braveheart venture in Delaware on December 28, 2000, giving it the legal name EBS Content Systems LLC. To finance the venture, Enron obtained a $115.2 million investment in the partnership from CIBC World Markets, the investment-banking arm of Canadian Imperial Bank of Commerce. In exchange for its $115.2 million investment, CIBC was supposed to receive 93% of Braveheart's cash flow for 10 years. Because no bank could make an unsecured loan of this size to a speculative partnership, Enron made the investment in the partnership more attractive by guaranteeing to repay CIBC the full value of its investment regardless of the success of the partnership.

301. Enron wanted to hide this asset from its balance sheet, and sought to erect the same type of SPE structure as described in the JEDI, LJM1 and LJM2 transactions. Accordingly, Enron had to find an "independent" 3% investor to qualify as an SPE. To begin to piece together the 3% outside interest, Enron went to nCUBE, a Portland, Oregon technology company. nCUBE, which as a contractor was supplying the Blockbuster venture with computer hardware, also made a $2 million investment in Braveheart in late 2000. The president of nCUBE maintains that Enron promised to return the $2 million in early 2001.

302. Enron still needed another $1.74 million to hit the 3% goal. It obtained the money from another partnership, known as SE Thunderbird LLC. Defining this as outside money was complicated, since Enron itself owned 71.5% of SE Thunderbird, while outsiders owned 28.5%. Enron took $7.1 million from SE Thunderbird and moved it to Braveheart. Enron classified 28.5% of that – or about $2 million – as outside money, thus (by their calculations) exceeding the 3% threshold for SPE qualification.

303. At its peak, in March 2001, the venture with Blockbuster provided only about 1,000 test customers with movies in four U.S. cities. Many of those customers didn't even pay. "It was nothing but a pilot project," said an employee of Blockbuster. "I don't know how

anyone could have been booking revenues." Blockbuster, a unit of Viacom Inc., never accounted for any financial gain or loss from the short-lived venture.

304. Enron, however, assigned the partnership a value of $124.8 million based on its projections of the revenue and earnings potential of the Blockbuster venture – based only upon this "pilot project." Defendant Andersen signed off on the structure of the deal and the $124.8 million valuation of the Braveheart partnership assigned by Enron, according to the company documents. Thus, under the "mark to market" method of recognizing gains and losses in investments, Enron could book huge revenues from the purported gain in the value of the partnership.

305. Enron claimed $110.9 million in profits from Braveheart in the fourth quarter of 2000 and the first quarter of 2001.

306. Enron began using Braveheart for accounting purposes in the fourth quarter of 2000. For that period, Enron claimed its ownership of Braveheart resulted in a $53 million profit, ***even though the Blockbuster venture was only two weeks into its pilot program and not generating any profit at all.*** According to the WALL STREET JOURNAL, a former Enron employee familiar with Braveheart recalls wondering at the time, "'How can they monetize this asset when we're still putting it together?' It didn't make any sense to me."[6]

307. In the following quarter, the first of 2001, Enron claimed an additional $57.9 million gain from Braveheart. "I was just floored," said the former employee quoted in the WALL STREET JOURNAL, "I mean, I couldn't believe it."

308. The "unbelievable" profits Enron claimed in its public financial disclosures contributed to the impression that its broadband unit was promising, although still losing money overall, and that the parent company's earnings were growing in line with Enron's rising stock

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[6] Smith, *Show Business: A Blockbuster Deal Shows How Enron Overplayed Its Hand*, the WALL STREET JOURNAL, January 17, 2002, p. A1.

price. As a result of Braveheart's contribution, Enron Broadband's losses were limited to a total of $67 million during the two quarters – instead of the $177 million in losses actually suffered.

309. At a stock analysts' meeting in Houston in January 2001, Enron presented printed material in which it said it had achieved "critical mass roll-out of broadband services strategy" in 2000. The material added that Enron's "premium content-delivery business [was] firmly established." Enron told the analysts that the broadband-content business eventually would generate $45 billion in revenue, although it wasn't stated over what time period that would occur. Analysts around this time continued recommending Enron stock as a "strong buy."

310. But by March 2001, Blockbuster and Enron terminated their failing partnership. Termination of the Blockbuster deal created accounting problems for Enron. Braveheart had lost its source of potential revenue. Pressed by analysts and investors to explain its many opaque partnership deals, Enron in October announced a stunning third-quarter loss of $618 million. Lumped into that amount were losses from Braveheart – basically a reversal of the $110.9 million in profits it had claimed earlier. In fact, these "profits" should never have been recognized under GAAP and SEC regulations, and the $110.9 million that had previously been recognized should have resulted in a restatement of the fourth quarter of 2000 and the first quarter of 2001, rather than a charge in the third quarter of 2001.

3. The Osprey Trust

311. The Osprey Trust ("Osprey") was another complex arrangement designed to manipulate Enron's reported financial results. In September of 1999, Osprey issued $1.4 billion of 8.31% Senior Secured Notes in a private placement to institutional investors. These notes were issued pursuant to an Offering Memorandum dated September 16, 1999 (the "Offering Memorandum"). In September of 2000, another $1.1 billion was raised. All of this money went to finance Whitewing, LP ("Whitewing"). The private-offering memo was prepared by, and the offering was managed by, DLJ, Lehman Brothers, Deutsche Bank and UBS Warburg LLC, as co-managers. These underwriters received a total of $7 million for their services.

312. Enron and Andersen worked closely to set up Osprey and Whitewing structures.

313. Whitewing's role was to buy an assortment of power plants, pipelines and water projects in India, Turkey, Spain and Latin America that Enron had snapped up through the mid-1990s, when the Houston company was set on becoming a global energy supplier. Whitewing was formed in 1997 as an Enron subsidiary. In 1999 Enron decided to move Whitewing off its books, which it accomplished by giving half of the partnership's control to an unnamed investor. To protect the Osprey investors, whose notes had to be repaid in 2003, the offering memo said Enron would contribute shares of common stock to make up a shortfall if Whitewing assets dropped in value. Further, if the Enron shares could not be sold because of stock market conditions or regulatory delays, Enron promised to cover the investors' losses with cash.

314. The arrangement allowed Enron to escape reporting losses on some assets that were no longer worth what Enron had originally paid for them, according to some company officials. Such losses would have hurt Enron's stock price, which soared to as high as $90 a share when investors and employees believed Enron was succeeding in its shift to becoming a trading firm.

315. Enron recognized revenue of $632 million in 2000 and $192 million in 1999 from Whitewing on its reported financial statements.

316. The most Enron disclosed about Whitewing was in a footnote in its 1999 annual report. It said Enron "could be obligated" to issue shares of common stock under certain circumstances, which it did not explain.

317. Enron advised the Osprey investors – but not its public shareholders or its employees – that Enron indirectly controlled Whitewing and thus its executives had "significant influence" over Whitewing, including decisions on which projects to buy from Enron and how much Whitewing would pay. Further, the Osprey investors were aware of Enron's obligation to guarantee their investment – a fact that was hidden from participants in Enron's retirement plans and the rest of the world.

318. But the Defendants continued to issue misleading statements about Enron's financial results, (including the income that was attributable to "gains" in Enron's Whitewing investment), even in the face of Sherron Watkins' August 14, 2001 letter warning Lay about "accounting scandals," which cited "valuation issues with our international assets" that could be written down in future financial reports. Enron will have to "pony up stock" to Whitewing in 2003, she said, "and that won't go unnoticed."

319. In a conference call with analysts and investors on November 14, 2001, Jeffrey McMahon (the CFO of Enron), disclosed for the first time that Osprey's assets had declined in value by $600 million, and that ***the Osprey debt was backed by 50 million shares of Enron stock, and that Enron had a further obligation to issue even more stock if the Osprey assets and the original 50 million shares were insufficient to repay the Osprey investors in 2003***.

320. This "trigger" guaranteeing the Osprey investments was one of the direct causes of the downward spiral and ultimate bankruptcy of Enron.

4. Azurix

321. Azurix was created in 1998 to replicate Enron's international energy strategy in the worldwide water business. Azurix bought the Wessex Water (a British company) for approximately $1.9 billion, aiming to demonstrate the company's expertise in a new field.

322. At least three off-balance-sheet vehicles – the Marlin, Atlantic and Bristol water Trusts – were used to own part of Azurix, hold the debt created to buy Wessex Water and service that debt.

323. To set up the company, Enron formed a partnership called the Atlantic Water Trust, in which it held a 50% stake. That kept Wessex off Enron's balance sheet. Enron's partner in the joint venture was Marlin Water Trust ("Marlin"), which consisted of institutional investors. CSFB, and specifically Laurence Nath of that firm, worked closely with Enron and Andersen to structure the Marlin Water Trust. Marlin raised more than $1.1 billion from international investors in an offering of notes that was underwritten by CSFB. To help attract

them, Enron promised to back up the debt with its own stock if necessary. But if Enron's credit rating fell below investment grade and the stock fell below $37.84 per share, Enron could be on the hook for the partnership's $915 million in debt. Again, this was another gamble by Enron that its share price would continue to rise, or at least stay stable.

324. Prior to Azurix's IPO, Atlantic Water Trust owned all of Azurix's outstanding common stock. Each of Enron and Marlin Water Trust owned a 50% voting interest in Atlantic Water Trust.

325. Enron then floated an initial public offering in June 1999 for almost a third of Azurix at $19 per share in underwriting managed by, among others, Merrill Lynch and DLJ (now CSFB). Following completion of the offering, Atlantic Water Trust owned between 64.1% and 68.7% of Azurix's outstanding common stock. Azurix also issued bonds in 2000, and that offering was also underwritten by Merrill Lynch and DLJ.

326. Through this arrangement, Enron believed that it was not required to consolidate the operating results of Azurix – which was experiencing large losses. The publicly-traded portion of Azurix, based on these losses, fell to $7.00 per share.

327. In December 2000, Enron had bought back Azurix's stock for $9 per share from investors – many of whom had paid $19 or more. A "fairness opinion" for Enron shareholders was delivered by Salomon Smith Barney – for a fee of $3,125,000 – a fee largely dependent upon the transaction closing successfully.

328. Through this strategy, Enron kept billions of dollars in debt off its balance sheet through partnerships whose dealings purportedly did not have to be disclosed in financial statements. It also hid massive loan guarantees to the partners in these transactions. When Moody's downgraded Enron's debt rating to junk status on November 28, 2001, Enron was obliged to immediately pay $915 million owed by Marlin Water Trust. One week later, Enron made the largest bankruptcy filing in U.S. history.

5. Other Off-Balance Sheet Entities

329. It has been estimated that Enron had at least 3,500 entities that were involved in its off-balance-sheet transactions. These entities' names varied from bird names (Osprey, Condor, Egret, Peregrine and Blue Heron) to Jedi, Chewco, Obi and Kenobi Inc. following a Star Wars theme, to Western-themed names like Rawhide, Cactus, Sundance, Ponderosa and Mojave. The true extent of Enron's off-balance-sheet accounting fraud cannot be fully understood until discovery is taken into these various entities.

G. Enron's Financial Statements From December 31, 1997 Through June 30, 2001 Were Materially False and Misleading and Violated GAAP and SEC Regulations

330. In order to inflate Enron's revenues, earnings and assets improperly during the Class Period, Enron: (i) failed to consolidate the results of the SPEs into Enron's financial statements thereby failing to include hundreds of millions of dollars of losses and debt from Enron's financial statements; (ii) failed to disclose related party transactions; (iii) improperly accounted for common stock issued to a related entity; and (iv) failed to record an aggregate of $478 million in proposed audit adjustments from 1997 through 2000 on the grounds that they were "immaterial."

331. Enron has now admitted that its financial reporting from 1997 through June 2001 was materially false and misleading when the statements were issued. The size and scope of the accounting restatements are enormous and unprecedented for a company of Enron's size:

Enron Corp. Restatements

Net Income

¶	Net Income as Reported	Net Income Restated	Change (Dollars)	Change (Percentage)
1997	$ 105,000,000	$ 26,000,000	$ (79,000,000)	-75.2%
1998	703,000,000	564,000,000	(139,000,000)	-19.7%
1999	893,000,000	635,000,000	(258,000,000)	-28.9%
2000	979,000,000	842,000,000	(137,000,000)	-14.0%

Earnings Per Share

	E.P.S. as Reported	E.P.S. Restated	Change (Dollars)	Change (Percentage)
1997	$ 0.16	$0.02	$ (0.14)	-75.2%
1998	1.01	0.82	(0.19)	-19.7%
1999	1.10	0.78	(0.32)	-28.9%
2000	1.12	0.97	(0.15)	-14.0%

Total Assets

	Total Assets as Reported	Total Assets Restated	Change
1997	$ 22,552,000,000	$ 22,924,000,000	$ 372,000,000
1998	29,350,000,000	29,442,000,000	92,000,000
1999	33,381,000,000	33,272,000,000	(109,000,000)
2000	65,503,000,000	64,926,000,000	(577,000,000)

Total Debt

	Total Debt as Reported	Total Debt Restated	Change
1997	$6,254,000,000	$6,965,000,000	$ 711,000,000
1998	7,357,000,000	7,918,000,000	561,000,000
1999	8,152,000,000	8,837,000,000	685,000,000
2000	10,229,000,000	10,857,000,000	628,000,000

Total Equity

	Total Equity as Reported	Total Equity Restated	Change
1997	$ 5,618,000,000	$ 5,309,000,000	$(309,000,000)
1998	7,048,000,000	6,600,000,000	(448,000,000)
1999	9,570,000,000	8,724,000,000	(846,000,000)
2000	11,470,000,000	10,289,000,000	(1,181,000,000)

332. These improper accounting practices and manipulations were in direct violation of GAAP and SEC rules, as described below, and resulted in materially overstated revenues from total revenues, net income and net assets of the fiscal year ending December 31, 1997 and all subsequent quarterly and annual financial statements through June 30, 2001.

333. GAAP is the set of conventions, rules and procedures which constitute the professional standards of the accounting profession. Regulation S-X, 17 C.F.R. § 210.4-01(a)(1) provides that financial statements filed with the SEC which are not prepared in compliance with GAAP ***are presumed to be misleading or inaccurate.*** Financial Accounting Standards ("FAS") are promulgated by the Financial Accounting Standards Board ("FASB") and, along with SEC rules and releases, opinions of the Accounting Principles Board ("APB") and Accounting Research Bulletins ("ARB's") issued by the American Institute of Certified Public Accountants, are considered to be the highest authorities of GAAP. Emerging Issues Task Force positions ("EITF") of the Financial Accounting Standards Board are a lower level authority of GAAP.

1. Failure to Consolidate the Results of Related Entities into Enron's Financial Statements

334. Enron did not consolidate the results of several related entities the – "Off-Balance-Sheet-Partnerships" described in Section V(E), *supra* – entities which were, at all times, under the control of Enron. By excluding the "Off-Balance-Sheet-Partnerships" from their results of operations, Enron avoided recognition of huge losses suffered by these entities, thereby causing earnings to be materially overstated. Enron also avoided having to reduce net assets, increase the amount of debt on its balance sheet and reduce shareholders' equity by more than one billion dollars by the year 2000.

335. FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, provides that qualifying SPEs do not have to be consolidated into the financial results of a Company. An SPE is considered "qualifying" only if two conditions are met: first, an independent owner or owners of the SPE must make a substantive capital investment in the SPE, and that investment must have substantive risks and rewards of ownership during the entire term of the transaction. Where there is only a nominal outside capital investment, or where the initial investment is withdrawn early, then the SPE should be consolidated. The SEC staff has taken the position that 3% of total capital is the

minimum acceptable investment for the substantive residual capital, but that the appropriate level for any particular SPE depends on various facts and circumstances. Distributions reducing the equity below the minimum require the independent owner to make an additional investment. Investments are not at risk if supported by a letter of credit or other form of guaranty on the initial investment or a guaranteed return. Second, the independent owner must exercise control over the SPE to avoid consolidation.

336. If SPE treatment is not warranted, the relevant provision of GAAP concerning consolidations or combinations of related companies is ARB 51[7] which provides that a related party must be consolidated if one party establishes "control" over the other:

> There is a presumption that consolidated statements are more meaningful than separate statements and that they are necessary for a fair presentation when one of the enterprises in the group directly or indirectly has a controlling financial interest in the other enterprises.

The concept of "control" is applied broadly under GAAP and in a manner to emphasize the economic substance of the transaction, rather than a strict adherence to technical form, as described in APB Statement No. 4:

> Financial accounting emphasizes the economic substance of events even though their legal form may differ from the economic substance and suggest different treatment.

337. "Control" is similarly defined by SEC regulations as "the possession, direct or indirect, or the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise." Regulation S-X 17 C.F.R. § 201.1-02(g). Regulation S-X further recognizes that "control" may encompass situations other than strict technical ownership:

> In other situations, consolidation of an entity, notwithstanding the lack of technical majority ownership, is necessary to present fairly the financial position and results of operations of the registrant, because of the

[7] CONSOLIDATED FINANCIAL STATEMENTS, Accounting Research Bulletin No. 51.

> existence of a parent-subsidiary relationship by means other than record ownership of voting stock.

17 C.F.R. § 201.3A-02(a).336.

338. A company (Enron) whose Chief Financial Officer (Fastow) is the "managing member of the general partner" of a partnership plainly exercises "control" over that general partnership pursuant to GAAP and applicable SEC regulations. *See* Section V(G), *infra*. Accordingly, LJM1 and LJM2 were required to be consolidated into Enron's financial statements.

339. As described in Section V(E), *supra*, Chewco was formed in 1997 and was run by Michael Kopper, a managing director of Enron's Global Equity Markets Group. JEDI was a partnership which was controlled by Chewco, and was thus also under the control of Enron. Accordingly, both Chewco and JEDI were required to be consolidated into Enron's financial results.

340. Further, as detailed above, Chewco's "cash reserve" accounts required by its lenders caused it to be not in compliance with the 3% minimum threshold for outside capital investment. Because JEDI's status as a qualifying SPE depended upon Chewco's status as an SPE, it also failed the test, and was required to be consolidated into Enron's financial statements beginning in December of 1997.

341. As admitted by Joseph Berardino, Andersen's CEO, LJM1 also failed the "3% test" for outside equity, and was required to be consolidated into Enron's financial statements. Similarly, as described above, the initial return of capital to LJM2 in each of the Raptor transactions caused them to fail the "3% test," requiring consolidation on Enron's financial statements.

342. Although the results of LJM1, LJM2, Chewco and JEDI were required to be included in Enron's reported financial results for the reporting periods from December 31, 1997

through December 31, 2000, they were not – resulting in an overstatement of net income in the following amounts:

	1997	1998	1999	2000
JEDI and Chewco	$ 28,000,000	$133,000,000	$153,000,000	$ 91,000,000
LJM1 and LJM2	-	-	95,000,000	8,000,000

343. In addition, failing to consolidate these "Off-Balance-Sheet-Partnerships" into Enron's financial results caused Enron's shareholders' equity to be materially overstated in the following amounts:

	1997	1998	1999	2000
JEDI and Chewco	$ 258,000,000	`$ 391,000,000	$ 544,000,000	$ 814,000,000
LJM1 and LJM2	-	-	166,000,000	(60,000,000)

344. Failing to consolidate the "Off-Balance-Sheet-Partnerships" in Enron's financial statements caused the financial statements of Enron to be materially misstated in violation of GAAP. Thus, by reporting the financial condition and results of operations for the "Off-Balance-Sheet-Partnerships" separately from Enron, the financial statements of Enron were free from significant operating losses, debt and related interest expense reflected only on the non-public financial statements of the "Off-Balance-Sheet-Partnerships." The debt and related interest expense reported by the "Off-Balance-Sheet-Partnerships" were debt and interest incurred on a consolidated basis with Enron and should have been reported on the financial statements of Enron.

345. Had Enron properly consolidated the financial statements of the partnerships, as it was required to do under GAAP, the partnerships' obligations to Enron would have been properly reflected on the financial statements of Enron. Enron's improper accounting methodology with respect to these partnerships had the effect of artificially inflating the financial statements of Enron for the fiscal years ending December 31, 1997 through December 31, 2000 and for all quarters from December 31, 1997 through June 30, 2001.

2. Failure to Disclose Related Party Transactions

346. Even if Enron were not required to consolidate its operation with the franchisees for financial reporting purposes, Enron's financial statements during the period from December 31, 1997 through June 30, 2001, were materially false and misleading in that they failed to disclose adequately related party transactions with the SPEs, as required by GAAP. The relevant accounting standard addressing this topic is FAS 57, which requires sufficient detail to allow the reader of the financial statements to be able to fully understand the effects of the related party transaction on the financial statements. This provision states, in pertinent part:

> Financial statements shall disclose of material related party transactions....These disclosures shall include:
>
> a. The nature of the relationship(s) involved;
>
> b. A description of the transactions, including transactions to which no amounts or nominal amounts were ascribed, for each of the periods for which income statements are presented, and such other information deemed necessary to an understanding of the effects of the transactions on the financial statements;
>
> c. The dollar amounts of transactions for each of the periods for which income statements are presented and the effects of any change in the method of establishing the terms from that used in the preceding period;
>
> d. Amounts due from or to related parties as of the date of each balance sheet presented and, if not otherwise apparent, the terms and manner of settlement.

347. The existence of the large investment in the SPEs, clearly constitutes a related party relationship, as defined by FAS 57, which states:

> **Related Parties.** Affiliates of the enterprise, entities for which investments are accounted for by the equity method by the enterprise; trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management; principal owners of the enterprise; its management; members of the immediate families of principal owners of the enterprise and its management; ***and other parties with which the enterprise may deal if one***

> ***party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.*** Another party also is a related party if it can significantly influence the management or operating policies of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

Similarly, Regulation S-X, 17 C.F.R. § 210.1-02(g), defines "control" as "the possession, direct or indirectly, or the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise." Regulation S-X further recognizes that "control" may encompass situations other than strict technical ownership:

> In other situations, consolidation of an entity, notwithstanding the lack of technical majority ownership, is necessary to present fairly the financial position and results of operations of the registrant, because of the existence of a parent-subsidiary relationship by means other than record ownership of voting stock.

17 C.F.R. § 201.3A-02(a).

As described above, Enron plainly exerted "control" or "significant influence" over LJM1, LJM2, Chewco and JEDI which triggers the disclosure requirements of FAS 57.

348. Similarly, SEC regulation S-X, rules 4-08(k)(1) and (2) set forth the following additional requirements:

> (k) Related party transactions, which affect the financial statements. (1) Related party transactions should be identified and the amounts stated on the face of the balance sheet, income statement, or statement of cash flows.
>
> (2) In cases where separate financial statements are presented for the registrant, certain investees, or subsidiaries, separate disclosure shall be made in such statements of the amounts in the related consolidated financial statements which are (i) eliminated and (ii) not eliminated. Also, any intercompany profits or losses resulting from transactions with related parties and not eliminated and the effects thereof shall be disclosed.

But despite these clear provisions of SEC regulations and GAAP, Enron completely failed to disclose any such information in any of its financial statements during the period from December 31, 1997 through June 30, 2001. The undisclosed related party transactions were plainly a material amount in relation to Enron's reported financial results.

3. Enron's Improper Accounting for Certain Common Stock Issued

349. GAAP, specifically EITF 85-1,[8] requires that notes received in payment for stock should be recorded as a reduction to shareholders' equity (except in certain strictly defined circumstances):

> The SEC requires that public companies report notes received in payment for the enterprise's stock as a deduction from shareholders' equity. Task force members confirmed the predominant practice is to offset the notes and stock in the equity section. However, such notes may be recorded as an asset if collected in cash prior to issuance of the financial statements.

350. In the second quarter of 2000 and the first quarter of 2001, Enron issued $1.2 billion of stock in exchange for a note receivable to capitalize entities known as Raptor I – IV. Although GAAP required that such notes be recorded and disclosed as a reduction to shareholders' equity, Enron instead recorded the notes receivable as an asset. Enron has admitted that this treatment was improper, and has restated the December 31, 2000 annual financial statements to reduce shareholders' equity by $172,000,000, and restated the first and second quarters of 2001 to reduce shareholders' equity by $1,000,000,000 as a result of this improper treatment.

4. Enron's Failure to Make Proposed Audit Adjustments

351. Enron admitted its failure to make audit adjustments proposed by its auditors under the theory that such adjustments were "immaterial." In each year, the proposed audit adjustments were downward adjustments and disregarded by Enron as being "immaterial." Specifically, Enron maintains that a proposed $51 million downward adjustment to net income in

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[8] CLASSIFYING NOTES RECEIVED FOR CAPITAL STOCK, EITF 85-1, Financial Accounting Standards Board (1985).

1997 was "immaterial" despite it being 48% of net income for the year. This is possibly the result of numerous proposed adjustments, with each of them individually being immaterial, that totaled the $51 million adjustment described above. But Enron was required by SEC Staff Accounting Bulletin No. 99 to judge the materiality of all proposed audit adjustments in the aggregate rather than individually:

> Even though a misstatement of an individual amount may not cause the financial statements taken as a whole to be materially misstated, it may nonetheless, when aggregated with other misstatements, render the financial statements, when taken as a whole to be materially misleading. Registrants and auditors of their financial statements accordingly should consider the effect of the misstatements on subtotals or totals. The auditor should aggregate all misstatements that affect each subtotal or total and consider whether the misstatements in the aggregate affect the subtotal or total in a way that causes the Registrant's financial statements as a whole to be materially misleading.

The proposed audit adjustments that were rejected by Enron as being "immaterial" from 1997 through 2000 and reclassifications had the effect of overstating net income and shareholders' equity in the following amounts:

	1997	**1998**	**1999**	**2000**
Net Income	$ 51,000,000	$ 6,000,000	$ 10,000,000	$ 38,000,000
Shareholders' Equity	51,000,000	57,000,000	136,000,000	255,000,000

These amounts are plainly material in the aggregate.

5. Restatement of Interim Results Demonstrates Contemporaneous Knowledge or Reckless Disregard of Their Previous Falsity

352. The fact that Enron was forced to restate each and every one of its annual financial statements for the periods ending December 31, 1997 through December 31, 2000 and its quarterly financial statements for the periods ending March 31, 2001 and June 30, 2001, conclusively demonstrates that: (1) the financial statements were false and misleading at the time they were issued; and (2) the misstatements were material.

353. The relevant authoritative pronouncement regarding accounting changes is APB Opinion No. 20,[9] which provides that changes in accounting estimates or knowledge gained subsequent to the issuance of financial statements does not require a restatement of previously issued financial statements:

> Errors in financial statements result from mathematical mistakes, mistakes in the application of accounting principles, or oversight or misuse of facts ***that existed at the time the financial statements were prepared.*** In contrast, a change in accounting estimate results from new information or subsequent developments and accordingly from better insight or improved judgment. Thus, an error is distinguishable from a change in estimate. [APB No. 20 ¶ 13.]

The Board determined that a change in accounting estimate would not require a restatement of previously reported results, but an error would require such a restatement:

> A change in estimate should not be accounted for by restating amounts reported in the financial statements or prior periods....[APB No. 20 ¶ 31.]
>
> * * *
>
> The Board concludes that correction of an error in the financial statements of a prior period discovered subsequent to their issuance should be reported as a prior period adjustment. [APB No. 20 ¶ 36.]

Similarly, APB Opinion No. 28 provides that changes in accounting estimates do not provide a basis for restatement of interim financial statements[10]:

> No restatement of previously reported interim information should be made for changes in estimates....[APB No. 28 ¶ 26.]

Thus, the improperly recognized expenses could not have been the result of new information coming to light subsequent to the issuance of the quarterly financial statements. It necessarily occurred ***because of an error or fact that was known at the time the financial statements were issued.*** In short, the financial statements were false and misleading when issued.

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[9] ACCOUNTING CHANGES, APB Opinion No. 20, Accounting Principles Board (1971).

[10] INTERIM FINANCIAL REPORTING, APB Opinion No. 28, Accounting Principles Board (1973).

354. The materiality of the misstatements is also proven by the fact that the financial statements must be restated. APB Opinion No. 20 also addresses this issue conclusively:

> If a change or correction has a material effect on income before extraordinary items or on net income of the current period before the effect of the change, the treatments and disclosures described in this Opinion should be followed. [APB No. 20 ¶ 38.]

Thus, only material errors need be restated, demonstrating that the falsifications contained in the year 1997 – 2000 annual financial statements and the quarterly statements for the quarters ending March 31, 2001 and June 30, 2001 were material.

VI. THE RELATED PARTY TRANSACTIONS SHOULD ALSO HAVE BEEN DISCLOSED IN THE NONFINANCIAL SECTIONS OF ENRON'S REGISTRATION STATEMENTS AND ANNUAL REPORTS DURING THE PERIOD

355. In addition to disclosing the nature and amounts of the related party transactions in the Company's financial statements, SEC regulations required Enron to make detailed disclosures about any transactions with Enron's management in the nonfinancial sections of any registration statements or annual reports.

356. SEC Regulation S-K, Reg. § 229.404. Item 404, requires disclosure of certain relationships and related transactions in the nonfinancial-statement portions of registration statements filed under the 1933 securities act and registration statements, annual reports, proxy statements, and any other documents required to be filed under the 1934 securities act, as follows:

> (a) ***Transactions with management and others.*** Describe briefly any transaction, or series of similar transactions, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, or series of similar transactions, to which the registrant or any of its subsidiaries was or is to be a party, in which the amount involved exceeds $60,000 and in which any of the following persons had, or will have, a direct or indirect material interest, naming such person and indicating the person's relationship to the registrant, the nature of such person's interest in the transaction(s), the amount of such transaction(s) and, where practicable, the amount of such person's interest in the transaction(s):

(1) Any director or executive officer of the registrant;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the registrant to own of record beneficially more than five percent of any class of the registrant's voting securities; and

(4) Any member of the immediate family of any of the foregoing persons.

357. Enron and others violated this SEC regulation in that its disclosures regarding Chewco, LJM, LJM2 and numerous other partnerships did not contain the information required. As set forth below, Andersen was involved in these nondisclosures.

VII. ANDERSEN PLAYED A ROLE IN DECIMATING THE ASSETS OF THE SAVINGS PLAN AND THE ESOP

358. Defendant Andersen participated in the Enron ERISA Defendants' breaches of fiduciary duty by recklessly or negligently concealing from the Savings Plan participants the disastrous financial condition of Enron.

359. Indeed, during part of the relevant time period, Andersen served as both the auditor of Enron and at times as the auditor of the Savings Plan. Further, Andersen provided consulting services to Enron that generated millions of dollars in fees to Andersen, provided Andersen to have intimate familiarity with virtually every aspect of Enron's financial dealings, and compromised Andersen's independence and ability to adequately perform its auditor function. Hence, Andersen was able to (i) recklessly or negligently misstate Enron's books and then (ii) assure the Savings Plan fiduciaries and the Plan participants and beneficiaries that the Plan's Enron stock was properly valued.

360. Andersen completely abandoned its "public watchdog" role and responsibilities to the Savings Plan participants to accommodate its client by recklessly or negligently acquiescing in Enron's decision to report false and misleading financials.

361. Andersen helped further the conduct complained of herein by permitting Enron to continue to circulate copies of its financial statements, which Andersen had certified, even though Andersen knew or should have known that they had not been prepared in conformity with GAAP or audited in accordance with GAAS. As described in detail herein, Andersen's abandonment of its "public watchdog" responsibility resulted in the issuance of false public statements by Enron and Andersen during the Class Period.

362. At the time Andersen issued its unqualified opinions, the Andersen Defendants knew or should have known the facts set forth herein which indicated that it should have qualified its opinion on Enron's financial statements for the years ending December 31, 1997 through December 31, 2000; or withdrawn, corrected or modified its opinions to recognize the impropriety of revenue recognized; or not have given an opinion in light of the potentially materially adverse effects of the undisclosed facts concerning Enron's revenues, assets and earnings. The failure to make such a qualification, correction, modification and/or withdrawal was a violation of GAAS, including the Fourth Standard of Reporting.

363. Andersen worked with certain Enron insiders to structure transactions and SPEs so as to take debt off Enron's balance sheet, thereby hiding assets.

364. The Chewco transaction arose in November of 1997 because Enron wanted to preserve its ability to keep the massive debt from the JEDI joint venture investment partnership off its balance sheets even though it was buying out the interest of the independent partner (CalPERS) that had previously allowed the non-consolidation of the JEDI balance sheet.

365. Accordingly, Enron formed Chewco to purchase CalPERS' interest in JEDI, and set up Enron employee Kopper as the manager and owner of Chewco's general partner. As Andersen knew, under GAAP, Enron could only avoid consolidating JEDI onto Enron's financial statements if Chewco had some independent ownership with a minimum of 3% of equity capital at risk.

366. However, Enron was unable to find any such outside investor, and instead financed Chewco's purchase of JEDI almost entirely with debt, not equity. Further, the limited amount of capital that was attributed to outside investors was subject to an agreement with the bank to keep these funds in reserve. The funds in the "reserve" plainly could not count towards the 3% minimum.

367. In violation of non-consolidation rules and after receiving a separate fee for consultation on the Chewco transaction, Andersen recklessly or negligently approved the non-consolidation of JEDI on Enron's financial statements from 1997 through November 2001 – when Enron was forced to announce that it would consolidate Chewco and JEDI retroactive to 1997.

368. This retroactive consolidation resulted in a massive reduction in Enron's reported net income and a massive increase in its reported debt, and helped bring about the collapse of Enron and the huge loss of assets by the Savings Plan and the ESOP.

A. The LJM and Raptor Transactions

369. Other major violations of consolidation and other accounting rules occurred with respect to the LJM partnerships, as discussed above and as partially detailed below.

370. There were numerous problems associated with the LJM SPEs, many of which involved self-dealing between Enron CFO Fastow (who controlled the LJM SPEs) and the LJM SPEs.

B. Overall Audit Failures

As noted above, in certifying Enron's financial statements, Andersen falsely stated that its examinations were made "in accordance with generally accepted auditing standards." For at least the following reasons, the audit conducted by Andersen was deliberately or recklessly performed in contravention of GAAS:

(a) Andersen violated SAS No. 22, Planning and Supervision, AICPA, Professional Standards, vol. 1, AU § 311.03, which provides that, in planning the testing to be

done in an audit, an auditor should consider "[c]onditions that may require extension or modification of audit tests, such as the risk of material error or fraud ***or the existence of related party transactions***" ;

(b) Andersen violated SAS No. 45, Related Parties, AICPA, Professional Standards, vol. 1, AU § 334, which requires the auditor to consider whether sufficient competent evidential matter has been obtained during the audit to understand the relationship of the parties and, for related party transactions, the effects of the transaction on the financial statements;

(c) Andersen violated SAS No. 82, Consideration of Fraud in a Financial Statement Audit, AICPA, Professional Standards, vol. 1, AU § 316, which requires the auditor to "assess the risk of material misstatement of the financial statements due to fraud and consider that assessment in designing the audit procedures to be performed," particularly when faced with significant related party transaction not in the ordinary course of business or with related entities not audited or audited by another firm;

(d) Andersen violated GAAS Standard of Reporting No. 3 that requires that due professional care must be exercised by the auditor in the performance of the examination and the preparation of the audit report;

(e) Andersen violated SAS No. 69 and GAAS Standard of Reporting No. 1 that requires the audit report to state whether the financial statements are presented in accordance with GAAP. Andersen's opinion inappropriately represented that Enron's financial statements complied with GAAP, when they did not for the reasons herein alleged;

(f) Andersen also violated GAAS Standard of Reporting No. 3 that requires informative disclosures in the financial statements to be regarded as adequate unless otherwise stated in the audit report. Here, the disclosures were not adequate. For example, the Notes to the Financial Statements failed to set forth the required related party disclosures, as described above. The audit report of Andersen failed to disclose that such disclosures or omissions of material

information, as heretofore alleged, rendered the respective financial statements false and misleading;

(g) As a result of the foregoing, Defendant Andersen's certification of Enron's financial statements falsely represented that said statements were audited pursuant to GAAS. Andersen did not exercise due professional care in the performance of its examination of Enron's financial statements and failed to obtain, through inspection, observations, inquiries, confirmations, and other audit procedures, sufficient competent evidential material to afford a reasonable basis for its unqualified opinion; and

(h) In the course of rendering its unqualified audit certifications on the financial statements of Enron, Andersen knew it was required to adhere to each of the herein described standards and principles of GAAS, including the requirement that the financial statements comply in all material respects with GAAP. Andersen, in issuing its unqualified opinions, knew or should have known that by doing so it was engaging in material departures from GAAS, thus making its opinions false, and issued such certification with reckless or negligent disregard whether or not GAAS was being complied with.

C. Andersen's Role as Auditor of the Plans

371. For part of the Class Period, Andersen served not only as auditor of Enron, but also as auditor of the Plans.

372. A report of independent public accountants was submitted by Andersen and included in Form 11-K for the Enron Savings Plan filed as of June 6, 1999. That report included the following representations by Andersen:

> To the Administrative Committee of Enron Corp. Savings Plan:
>
> We have audited the accompanying statement of net assets available for plan benefits of the Enron Corp. Savings Plan as of December 31, 1998 and the related statement of changes in net assets available for plan benefits for the year ended December 31, 1998.…

> We conducted our audit in accordance with generally accepted accounting standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.
>
> In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for plan benefits of the Enron Corp. Savings Plan as of December 31, 1998 and the changes in net assets available for plan benefits of the Enron Corp. Savings Plan for the year ended December 31, 1998, in conformity with generally accepted accounting principles.

373. As of both December 31, 1997 and December 31, 1998, the net assets of the Savings Plan included very large investments in Enron stock. Given Andersen's dual role as auditor at Enron Corp. during the Class Period, as set forth in more detail above, Andersen knew or should have known that the numbers that it certified as the net assets invested in Enron Corp. stock available for plan benefits as of December 31, 1998, and the related statement of changes in those net assets between December 31, 1997 and December 31, 1998, were materially false and misleading.

374. Despite its background and knowledge, Andersen on June 29, 1999, consented to this materially false and misleading report being incorporated into Enron's previous security filings, as follows:

> As independent public accountants, we hereby consent to the incorporation by reference of our report included in this Annual Report on Form 11-K of the Enron Corp. Savings Plan into the Company's previously filed Form S-8 Registration Statement Nos. 33-13397 (Enron Corp. Savings Plan), 33-34796 (Enron Corp. Savings Plan) and 33-52261 (Enron Corp. Savings Plan).

375. The 11-K filed as of June 28, 2000 for the Enron Savings Plan also included an independent public accountant's statement submitted by Andersen, which repeated the following misrepresentations:

> We have audited the accompanying statement of net assets available for benefits of the Enron Corp. Savings Plan as of December 3, 1998.
>
> * * *
>
> In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of the Enron Corp. Savings Plan as of December 31, 1998, in conformity with generally accepted accounting principles.

376. Given Andersen's dual role as auditor at Enron Corp. during the relevant times, as set forth in more detail above, Andersen knew or should have known that the numbers that it certified as the net assets invested in Enron Corp. stock available for plan benefits as of December 31, 1998, were materially false and misleading.

377. Yet, on June 22, 2000, Andersen again explicitly consented to this materially false and misleading report being incorporated into Enron's previous security filings, as follows:

> As independent public accountants, we hereby consent to the incorporation by reference of our report included in this Annual Report on Form 11-K of the Enron Corp. Savings Plan into the Company's previously filed Form S-8 Registration Statement Nos. 33-13397 (Enron Corp. Savings Plan), 33-34796 (Enron Corp. Savings Plan) and 33-52261 (Enron Corp. Savings Plan).

D. Andersen Ignores the Accounting Decisions of Its Internal Experts and Continues to Support Enron and the Enron Director Defendants' Accounting Fraud

378. The Professional Standards Group ("PSG") of Andersen consists of the firm's experts on accounting standards and their application. The PSG functions as a level of oversight of and consulting to the engagement personnel on an audit to ensure that accounting standards are being correctly applied by the company being audited.

379. Carl E. Bass ("Bass") was a member of PSG, working in the Houston office of Andersen. When Bass was promoted to the PSG in December 1999, it was expected that he would spend between 500 and 750 hours per year overseeing the Enron audit.

380. Beginning in 1999, Bass expressed his disagreement with many of Enron's financial accounting tricks, but was overruled time and again by Defendant Duncan and others at Andersen.

381. For example, in a December 18, 1999 e-mail, Bass documented his disagreement with Defendant Duncan over one particularly aggressive accounting treatment. Defendant Duncan was able to overrule Bass through the assistance of Defendant Odom.

382. Bass sent further e-mails in February, March and December of 2000, outlining his disagreements with the accounting treatments of the LJM1 Rhythm NetConnections transactions. Specifically, Bass objected to the transactions because:

> I am still bothered with this transaction…It looks like they have parked shares there to convert stock gains into income.

Bass has been shown to be entirely correct in this assessment.

383. Bass' expert interpretations proved to be a thorn in Enron's side – and thus a thorn in the side of Defendants Duncan and Andersen, who were only concerned with pleasing their client Enron.

384. Bass also objected – again, entirely correctly – to Enron's accounting of the "Braveheart" venture with Blockbuster. When Enron sought to pressure him to back off of his accurate conclusions, he responded that "I am not into negotiating with the client over accounting principles" in an e-mail to a colleague. Again, he was overruled, and Andersen allowed the improper accounting treatment.

385. Had Andersen followed its procedures and allowed the PSG – its only oversight group – to perform its role and have the final decision on accounting matters, the whole Enron disaster might not have happened. But Andersen was more concerned with continuing its efforts

as a member of the Enron enterprise(s) than in performing as an independent auditor to ensure that its lucrative consulting contracts would continue.

386. Instead of following the guidance of its in-house expert and purported quality control partner, Bass, Andersen summarily relieved him of his responsibilities because Richard Causey, Enron's Chief Accounting Officer complained he was "caustic and cynical" about Enron's accounting. Instead of providing the necessary oversight that should have prevented the fraud and saved the Class Members' hard-earned retirement savings, he was silenced by Andersen, who had abandoned its role as a "public watchdog" to use its defective audit as nothing but a tool to sell consulting work.

VIII. INSIDER TRADING AND OTHER PROFITEERING BY THE ENRON DIRECTOR DEFENDANTS WHILE THE PLANS ARE DECIMATED

387. One of the main objectives of the Enron Director Defendants was to use Enron as a vehicle for enormous personal gain. While masking Enron's true financial status, and personally looting the company at every opportunity, the Enron Director Defendants committed a variety of fiduciary breaches and participated in co-fiduciary breaches that decimated the Plans and the participants' retirement savings. This looting is partially described below, based just upon the publicly available information.

388. One vehicle used to accomplish their objective of self-enrichment was the use of grants of Enron stock options. While publicly promoting employees to purchase and/or retain Enron stock through their retirement plans and otherwise, these Defendants were cashing in on enormous quantities of options:

A. Insider Selling

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
Lay, Kenneth L.	Sold	10/19/98	$26.344	96,000	$ 2,528,995
Chairman of the Board	Sold	12/23/98	$28.720	149,800	$ 4,302,286
	Sold	12/29/98	$28.829	100,000	$ 2,882,920

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	02/22/99	$31.770	100,000	$ 3,177,000
	Sold	02/23/99	$32.460	100,000	$ 3,246,000
	Sold	04/20/99	$33.690	100,000	$ 3,369,000
	Sold	04/29/99	$36.640	100,000	$ 3,664,000
	Sold	05/10/99	$37.480	50,000	$ 1,874,000
	Sold	07/21/99	$42.600	110,770	$ 4,718,802
	Sold	07/21/99	$42.625	50,000	$ 2,131,250
	Sold	09/03/99	$40.190	148,991	$ 5,987,948
	Sold	04/20/00	$70.810	35,000	$ 2,478,350
	Sold	04/26/00	$73.060	86,800	$ 6,341,608
	Sold	05/04/00	$74.720	154,300	$ 11,529,296
	Sold	05/04/00	$74.660	50,000	$ 3,733,000
	Sold	05/08/00	$75.700	22,500	$ 1,703,250
	Sold	08/24/00	$85.750	25,000	$ 2,143,750
	Sold	08/24/00	$86.360	50,000	$ 4,318,000
	Sold	11/01/00	$83.130	3,534	$ 293,781
	Sold	11/01/00	$83.190	500	$ 41,595
	Sold	11/02/00	$83.560	500	$ 41,780
	Sold	11/02/00	$83.520	3,534	$ 295,160
	Sold	11/03/00	$81.000	500	$ 40,500
	Sold	11/03/00	$81.000	3,534	$ 286,254
	Sold	11/06/00	$78.250	3,534	$ 276,535
	Sold	11/06/00	$78.370	500	$ 39,185
	Sold	11/07/00	$82.750	500	$ 41,375
	Sold	11/07/00	$82.750	3,534	$ 292,439
	Sold	11/08/00	$82.750	3,534	$ 292,439
	Sold	11/08/00	$82.750	3,534	$ 292,439
	Sold	11/09/00	$82.970	500	$ 41,485
	Sold	11/09/00	$82.970	3,534	$ 293,216
	Sold	11/10/00	$82.750	500	$ 41,375
	Sold	11/10/00	$82.750	500	$ 41,375
	Sold	11/13/00	$78.250	500	$ 39,125

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	11/13/00	$78.250	500	$ 39,125
	Sold	11/14/00	$80.000	3,534	$ 282,720
	Sold	11/14/00	$80.000	500	$ 40,000
	Sold	11/15/00	$79.940	500	$ 39,970
	Sold	11/15/00	$79.940	500	$ 39,970
	Sold	11/15/00	$79.940	3,534	$ 282,508
	Sold	11/16/00	$81.630	3,534	$ 288,480
	Sold	11/16/00	$81.630	500	$ 40,815
	Sold	11/17/00	$80.470	500	$ 40,235
	Sold	11/17/00	$80.560	3,534	$ 284,699
	Sold	11/20/00	$81.370	3,534	$ 287,562
	Sold	11/20/00	$81.370	500	$ 40,685
	Sold	11/21/00	$80.750	3,534	$ 285,371
	Sold	11/21/00	$80.750	500	$ 40,375
	Sold	11/22/00	$78.630	500	$ 39,315
	Sold	11/22/00	$78.630	3,534	$ 277,878
	Sold	11/24/00	$77.590	3,534	$ 274,203
	Sold	11/24/00	$77.620	500	$ 38,810
	Sold	11/27/00	$79.310	3,534	$ 280,282
	Sold	11/27/00	$79.340	500	$ 39,670
	Sold	11/28/00	$79.000	3,534	$ 279,186
	Sold	11/28/00	$79.000	500	$ 39,500
	Sold	11/29/00	$77.410	3,534	$ 273,567
	Sold	11/29/00	$77.410	500	$ 38,705
	Sold	11/30/00	$70.970	3,534	$ 250,808
	Sold	11/30/00	$71.000	500	$ 35,500
	Sold	12/01/00	$67.190	500	$ 33,595
	Sold	12/01/00	$67.220	3,534	$ 237,555
	Sold	12/04/00	$67.250	3,534	$ 237,662
	Sold	12/05/00	$67.250	500	$ 33,625
	Sold	12/05/00	$67.250	500	$ 33,625
	Sold	12/05/00	$67.250	3,534	$ 237,662

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	12/06/00	$68.690	3,534	$ 242,750
	Sold	12/06/00	$68.690	500	$ 34,345
	Sold	12/07/00	$72.780	500	$ 36,390
	Sold	12/07/00	$72.780	3,534	$ 257,205
	Sold	12/08/00	$71.000	500	$ 35,500
	Sold	12/08/00	$71.000	3,534	$ 250,914
	Sold	12/11/00	$74.500	500	$ 37,250
	Sold	12/11/00	$74.500	3,534	$ 263,283
	Sold	12/12/00	$76.030	500	$ 38,015
	Sold	12/12/00	$76.030	3,534	$ 268,690
	Sold	12/13/00	$77.130	500	$ 38,565
	Sold	12/13/00	$77.130	3,534	$ 272,577
	Sold	12/14/00	$76.500	500	$ 38,250
	Sold	12/14/00	$75.000	3,534	$ 265,050
	Sold	12/15/00	$77.250	3,534	$ 273,002
	Sold	12/15/00	$77.280	500	$ 38,640
	Sold	12/18/00	$78.500	3,534	$ 277,419
	Sold	12/18/00	$78.500	500	$ 39,250
	Sold	12/19/00	$80.030	3,534	$ 282,826
	Sold	12/19/00	$80.030	500	$ 40,015
	Sold	12/20/00	$79.000	3,534	$ 279,186
	Sold	12/20/00	$79.000	500	$ 39,500
	Sold	12/21/00	$79.030	3,534	$ 279,292
	Sold	12/21/00	$79.030	500	$ 39,515
	Sold	12/22/00	$79.470	500	$ 39,735
	Sold	12/22/00	$79.470	3,534	$ 280,847
	Sold	12/26/00	$82.380	500	$ 41,190
	Sold	12/26/00	$82.380	3,534	$ 291,131
	Sold	12/27/00	$83.000	3,534	$ 293,322
	Sold	12/27/00	$83.000	500	$ 41,500
	Sold	12/28/00	$85.940	3,534	$ 303,712
	Sold	12/28/00	$82.940	500	$ 41,470

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	12/29/00	$84.060	3,534	$ 297,068
	Sold	12/29/00	$84.060	500	$ 42,030
	Sold	01/02/01	$81.000	3,534	$ 286,254
	Sold	01/02/01	$81.000	500	$ 40,500
	Sold	01/03/01	$77.940	3,534	$ 275,440
	Sold	01/03/01	$77.940	500	$ 38,970
	Sold	01/04/01	$72.250	500	$ 36,125
	Sold	01/04/01	$72.250	3,534	$ 255,332
	Sold	01/05/01	$72.190	500	$ 36,095
	Sold	01/05/01	$72.190	3,534	$ 255,119
	Sold	01/08/01	$71.530	500	$ 35,765
	Sold	01/08/01	$71.660	3,534	$ 253,246
	Sold	01/09/01	$70.530	500	$ 35,265
	Sold	01/09/01	$70.630	3,534	$ 249,606
	Sold	01/10/01	$68.750	500	$ 34,375
	Sold	01/10/01	$68.750	3,534	$ 242,963
	Sold	01/11/01	$69.090	500	$ 34,545
	Sold	01/11/01	$69.090	3,534	$ 244,164
	Sold	01/12/01	$69.500	500	$ 34,750
	Sold	01/12/01	$69.500	3,534	$ 245,613
	Sold	01/16/01	$69.280	500	$ 34,640
	Sold	01/16/01	$68.280	3,534	$ 241,302
	Sold	01/17/01	$68.750	3,534	$ 242,963
	Sold	01/17/01	$68.750	500	$ 34,375
	Sold	01/18/01	$71.560	500	$ 35,780
	Sold	01/18/01	$71.560	3,534	$ 252,893
	Sold	01/19/01	$70.590	500	$ 35,295
	Sold	01/19/01	$70.240	2,020	$ 141,885
	Sold	01/19/01	$71.060	1,514	$ 107,585
	Sold	01/22/01	$73.380	500	$ 36,690
	Sold	01/22/01	$73.380	3,534	$ 259,325
	Sold	01/23/01	$77.160	3,534	$ 272,683

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	01/24/01	$80.250	3,534	$ 283,604
	Sold	01/24/01	$80.250	500	$ 40,125
	Sold	01/25/01	$80.410	3,534	$ 284,169
	Sold	01/25/01	$80.410	500	$ 40,205
	Sold	01/26/01	$82.000	3,534	$ 289,877
	Sold	01/26/01	$82.000	500	$ 41,000
	Sold	01/29/01	$80.750	3,534	$ 285,371
	Sold	01/29/01	$80.750	500	$ 40,375
	Sold	01/30/01	$79.980	3,534	$ 282,649
	Sold	01/30/01	$80.000	500	$ 40,000
	Sold	01/31/01	$79.880	500	$ 39,940
	Sold	01/31/01	$79.880	3,534	$ 282,296
	Sold	02/01/01	$78.790	50,814	$ 4,003,635
	Sold	02/01/01	$78.830	2,500	$ 197,075
	Sold	02/01/01	$79.060	500	$ 39,530
	Sold	02/02/01	$78.770	2,500	$ 196,925
	Sold	02/02/01	$78.770	500	$ 39,385
	Sold	02/05/01	$80.490	500	$ 40,245
	Sold	02/05/01	$80.490	2,500	$ 201,225
	Sold	02/06/01	$80.810	2,500	$ 202,025
	Sold	02/06/01	$80.780	500	$ 40,390
	Sold	02/07/01	$80.400	500	$ 40,200
	Sold	02/07/01	$80.000	40	$ 3,200
	Sold	02/07/01	$80.390	2,460	$ 197,759
	Sold	02/08/01	$80.380	2,500	$ 200,950
	Sold	02/08/01	$80.380	500	$ 40,190
	Sold	02/09/01	$80.690	500	$ 40,345
	Sold	02/09/01	$80.770	2,500	$ 201,925
	Sold	02/12/01	$79.980	2,500	$ 199,950
	Sold	02/12/01	$79.980	500	$ 39,990
	Sold	02/13/01	$79.760	500	$ 39,880
	Sold	02/13/01	$79.960	2,500	$ 199,900

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	02/14/01	$80.720	500	$ 40,360
	Sold	02/14/01	$80.720	2,500	$ 201,800
	Sold	02/15/01	$77.600	2,500	$ 194,000
	Sold	02/15/01	$77.600	500	$ 38,810
	Sold	02/16/01	$76.360	500	$ 38,180
	Sold	02/16/01	$76.360	2,500	$ 190,900
	Sold	02/20/01	$76.280	2,500	$ 190,700
	Sold	02/20/01	$76.280	500	$ 38,140
	Sold	02/21/01	$74.930	500	$ 37,465
	Sold	02/21/01	$74.850	2,500	$ 187,125
	Sold	02/22/01	$72.570	500	$ 36,285
	Sold	02/22/01	$72.580	2,500	$ 181,450
	Sold	02/23/01	$71.060	2,500	$ 177,650
	Sold	02/23/01	$71.080	500	$ 35,540
	Sold	02/26/01	$70.370	500	$ 35,185
	Sold	02/26/01	$70.370	2,500	$ 175,925
	Sold	02/27/01	$70.360	500	$ 35,180
	Sold	02/27/01	$70.360	2,500	$ 175,900
	Sold	02/28/01	$69.500	500	$ 34,750
	Sold	02/28/01	$69.500	2,500	$ 173,750
	Sold	03/01/01	$67.780	2,500	$ 169,450
	Sold	03/01/01	$67.780	500	$ 33,890
	Sold	03/02/01	$68.990	500	$ 34,495
	Sold	03/02/01	$69.000	2,500	$ 172,500
	Sold	03/05/01	$70.480	2,500	$ 176,200
	Sold	03/05/01	$70.480	500	$ 35,240
	Sold	03/06/01	$69.860	500	$ 34,930
	Sold	03/06/01	$69.860	2,500	$ 174,650
	Sold	03/07/01	$69.300	2,500	$ 173,250
	Sold	03/07/01	$69.300	500	$ 34,650
	Sold	03/08/01	$70.400	2,500	$ 176,000
	Sold	03/08/01	$70.400	500	$ 35,200

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	03/09/01	$69.650	2,500	$ 174,125
	Sold	03/09/01	$69.870	500	$ 34,935
	Sold	03/12/01	$64.920	500	$ 32,460
	Sold	03/12/01	$64.920	2,500	$ 162,300
	Sold	03/13/01	$61.750	2,500	$ 154,375
	Sold	03/13/01	$61.750	500	$ 30,875
	Sold	03/14/01	$61.430	2,500	$ 153,575
	Sold	03/14/01	$61.430	500	$ 30,715
	Sold	03/15/01	$64.630	2,500	$ 161,575
	Sold	03/16/01	$65.500	2,500	$ 163,750
	Sold	03/16/01	$65.500	500	$ 32,750
	Sold	03/19/01	$62.270	2,500	$ 155,675
	Sold	03/19/01	$62.290	500	$ 31,145
	Sold	03/20/01	$62.300	500	$ 31,150
	Sold	03/20/01	$62.280	2,500	$ 155,700
	Sold	03/21/01	$59.570	2,500	$ 148,925
	Sold	03/21/01	$59.660	500	$ 29,830
	Sold	03/22/01	$53.930	500	$ 26,965
	Sold	03/22/01	$53.930	2,500	$ 134,825
	Sold	03/23/01	$57.720	2,500	$ 144,300
	Sold	03/23/01	$57.720	500	$ 28,865
	Sold	03/26/01	$61.320	2,500	$ 153,300
	Sold	03/26/01	$61.320	500	$ 30,660
	Sold	03/27/01	$60.510	500	$ 30,255
	Sold	03/27/01	$60.500	2,500	$ 151,250
	Sold	03/28/01	$58.870	500	$ 29,435
	Sold	03/28/01	$58.830	2,500	$ 147,075
	Sold	03/29/01	$56.800	2,500	$ 142,000
	Sold	03/29/01	$56.800	500	$ 28,400
	Sold	03/30/01	$56.620	2,500	$ 141,550
	Sold	03/30/01	$59.000	500	$ 29,500
	Sold	04/02/01	$57.500	500	$ 28,750

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	04/02/01	$57.500	2,500	$ 143,750
	Sold	04/03/01	$55.900	500	$ 27,950
	Sold	04/03/01	$55.900	2,500	$ 139,750
	Sold	04/04/01	$54.110	2,500	$ 135,275
	Sold	04/04/01	$54.050	500	$ 27,025
	Sold	04/05/01	$54.880	500	$ 27,440
	Sold	04/05/01	$54.880	2,500	$ 137,200
	Sold	04/06/01	$54.750	2,500	$ 138,875
	Sold	04/06/01	$54.750	500	$ 27,375
	Sold	04/09/01	$54.530	2,500	$ 136,325
	Sold	04/09/01	$54.520	500	$ 27,260
	Sold	04/10/01	$57.200	492	$ 28,142
	Sold	04/10/01	$58.310	2,008	$ 117,086
	Sold	04/11/01	$59.700	500	$ 29,850
	Sold	04/11/01	$59.690	2,500	$ 149,225
	Sold	04/12/01	$57.400	2,500	$ 143,500
	Sold	04/12/01	$57.850	500	$ 28,925
	Sold	04/16/01	$58.240	2,500	$ 154,600
	Sold	04/16/01	$58.240	500	$ 29,120
	Sold	04/17/01	$60.750	2,500	$ 151,875
	Sold	04/17/01	$60.750	500	$ 30,375
	Sold	04/18/01	$61.570	2,500	$ 153,925
	Sold	04/18/01	$61.640	500	$ 30,820
	Sold	04/19/01	$61.320	500	$ 30,660
	Sold	04/19/01	$61.320	500	$ 30,660
	Sold	04/20/01	$60.830	500	$ 30,415
	Sold	04/20/01	$60.870	2,500	$ 152,175
	Sold	04/23/01	$60.940	2,500	$ 152,350
	Sold	04/23/01	$60.940	500	$ 30,470
	Sold	04/24/01	$62.180	500	$ 31,090
	Sold	04/24/01	$62.180	2,500	$ 155,450
	Sold	04/25/01	$62.040	500	$ 31,020

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	04/25/01	$62.060	2,500	$ 155,150
	Sold	04/26/01	$63.210	500	$ 31,605
	Sold	04/26/01	$63.210	2,500	$ 158,025
	Sold	04/27/01	$62.980	2,500	$ 157,450
	Sold	04/27/01	$62.980	500	$ 31,490
	Sold	04/27/01	$63.500	63,152	$ 4,010,152
	Sold	04/30/01	$63.110	500	$ 31,555
	Sold	04/30/01	$63.350	2,500	$ 158,375
	Sold	05/01/01	$63.120	2,500	$ 157,800
	Sold	05/01/01	$63.070	1,000	$ 63,070
	Sold	05/02/01	$61.770	2,500	$ 154,425
	Sold	05/02/01	$61.780	1,000	$ 61,780
	Sold	05/03/01	$58.730	1,000	$ 58,730
	Sold	05/03/01	$58.790	2,500	$ 146,975
	Sold	05/04/01	$58.860	2,500	$ 147,150
	Sold	05/04/01	$58.860	1,000	$ 58,860
	Sold	05/07/01	$58.670	2,500	$ 146,675
	Sold	05/07/01	$58.680	1,000	$ 58,680
	Sold	05/08/01	$57.000	2,500	$ 142,500
	Sold	05/08/01	$57.000	1,000	$ 57,000
	Sold	05/09/01	$57.130	1,000	$ 57,130
	Sold	05/09/01	$57.210	2,500	$ 143,025
	Sold	05/10/01	$58.350	1,000	$ 58,350
	Sold	05/10/01	$58.350	2,500	$ 145,875
	Sold	05/11/01	$57.530	1,000	$ 57,530
	Sold	05/11/01	$57.540	2,500	$ 143,850
	Sold	05/14/01	$58.550	1,000	$ 58,550
	Sold	05/14/01	$58.520	2,500	$ 146,300
	Sold	05/14/01	$58.750	68,182	$ 4,005,693
	Sold	05/15/01	$58.080	2,500	$ 145,200
	Sold	05/15/01	$58.080	1,000	$ 58,080
	Sold	05/16/01	$57.250	2,500	$ 143,125

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	05/16/01	$57.250	1,000	$ 57,250
	Sold	05/17/01	$55.020	2,500	$ 137,550
	Sold	05/17/01	$55.050	1,000	$ 55,050
	Sold	05/18/01	$53.750	1,000	$ 53,750
	Sold	05/18/01	$53.750	2,500	$ 134,375
	Sold	05/21/01	$55.160	2,500	$ 137,900
	Sold	05/21/01	$55.160	1,000	$ 55,160
	Sold	05/22/01	$55.060	2,500	$ 137,650
	Sold	05/22/01	$55.060	1,000	$ 55,060
	Sold	05/23/01	$55.680	2,500	$ 139,200
	Sold	05/23/01	$55.670	1,000	$ 55,670
	Sold	05/24/01	$55.110	1,000	$ 55,110
	Sold	05/24/01	$55.110	2,500	$ 137,775
	Sold	05/25/01	$53.810	2,500	$ 134,525
	Sold	05/25/01	$53.810	1,000	$ 53,810
	Sold	05/25/01	$53.000	75,491	$ 4,001,023
	Sold	05/29/01	$53.410	2,500	$ 133,525
	Sold	05/29/01	$53.410	1,000	$ 53,410
	Sold	05/30/01	$52.950	2,500	$ 132,375
	Sold	05/30/01	$52.950	1,000	$ 52,950
	Sold	05/31/01	$53.030	2,500	$ 132,575
	Sold	05/31/01	$53.030	1,000	$ 53,030
	Sold	06/01/01	$52.660	2,500	$ 131,650
	Sold	06/01/01	$52.660	1,000	$ 52,660
	Sold	06/04/01	$53.880	2,500	$ 134,700
	Sold	06/04/01	$53.880	1,000	$ 53,880
	Sold	06/05/01	$54.080	1,000	$ 54,080
	Sold	06/05/01	$54.080	2,500	$ 135,200
	Sold	06/06/01	$52.790	2,500	$ 131,975
	Sold	06/06/01	$52.790	1,000	$ 72,790
	Sold	06/07/01	$50.630	1,000	$ 50,630
	Sold	06/07/01	$50.630	2,500	$ 126,575

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	06/08/01	$50.190	1,000	$ 50,190
	Sold	06/08/01	$50.200	2,500	$ 125,500
	Sold	06/11/01	$51.170	1,000	$ 51,170
	Sold	06/11/01	$51.170	2,500	$ 127,925
	Sold	06/12/01	$50.920	2,500	$ 127,300
	Sold	06/12/01	$50.910	1,000	$ 50,910
	Sold	06/12/01	$50.370	79,423	$ 4,000,537
	Sold	06/13/01	$50.640	1,000	$ 50,640
	Sold	06/13/01	$50.630	2,500	$ 126,575
	Sold	06/14/01	$48.830	2,500	$ 122,075
	Sold	06/14/01	$48.830	1,000	$ 48,830
	Sold	06/15/01	$47.800	1,000	$ 47,800
	Sold	06/15/01	$47.780	2,500	$ 119,450
	Sold	06/18/01	$46.000	2,500	$ 115,000
	Sold	06/18/01	$46.000	1,000	$ 46,000
	Sold	06/19/01	$44.930	1,000	$ 44,930
	Sold	06/19/01	$44.930	2,500	$ 112,325
	Sold	06/19/01	$46.180	86,665	$ 4,002,190
	Sold	06/20/01	$46.110	1,000	$ 46,110
	Sold	06/20/01	$46.110	2,500	$ 115,275
	Sold	06/21/01	$45.150	1,000	$ 45,150
	Sold	06/21/01	$45.150	2,500	$ 112,875
	Sold	06/22/01	$44.220	1,000	$ 44,220
	Sold	06/22/01	$44.210	2,500	$ 110,525
	Sold	06/22/01	$44.880	89,126	$ 3,999,975
	Sold	06/25/01	$44.790	2,500	$ 111,975
	Sold	06/25/01	$44.780	1,000	$ 44,780
	Sold	06/26/01	$43.650	1,000	$ 43,650
	Sold	06/26/01	$43.650	2,500	$ 109,150
	Sold	06/26/01	$44.190	90,518	$ 3,999,990
	Sold	06/27/01	$45.450	2,500	$ 113,625
	Sold	06/27/01	$45.450	1,000	$ 45,450

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	06/27/01	$46.720	85,616	$ 3,999,980
	Sold	06/28/01	$47.470	2,500	$ 118,675
	Sold	06/28/01	$47.470	1,000	$ 47,470
	Sold	06/28/01	$48.340	82,747	$ 3,999,990
	Sold	06/29/01	$49.250	2,500	$ 123,125
	Sold	06/29/01	$49.250	1,000	$ 49,250
	Sold	07/02/01	$48.810	2,500	$ 122,025
	Sold	07/02/01	$48.800	1,000	$ 48,800
	Sold	07/03/01	$48.800	2,500	$ 122,000
	Sold	07/03/01	$48.800	1,000	$ 48,800
	Sold	07/05/01	$49.660	2,500	$ 124,150
	Sold	07/05/01	$49.660	1,000	$ 49,660
	Sold	07/06/01	$50.060	2,500	$ 125,150
	Sold	07/06/01	$50.060	1,000	$ 50,060
	Sold	07/09/01	$49.400	1,000	$ 49,400
	Sold	07/09/01	$49.400	2,500	$ 123,500
	Sold	07/10/01	$49.410	1,000	$ 49,410
	Sold	07/10/01	$49.440	2,500	$ 123,600
	Sold	07/11/01	$49.000	1,000	$ 49,000
	Sold	07/11/01	$49.000	2,500	$ 122,500
	Sold	07/12/01	$49.540	2,500	$ 123,850
	Sold	07/12/01	$49.540	1,000	$ 49,540
	Sold	07/13/01	$49.480	1,000	$ 49,480
	Sold	07/13/01	$49.480	2,500	$ 123,700
	Sold	07/16/01	$49.500	2,500	$ 123,750
	Sold	07/16/01	$49.500	1,000	$ 49,500
	Sold	07/17/01	$49.640	2,500	$ 124,100
	Sold	07/17/01	$49.640	1,000	$ 49,640
	Sold	07/18/01	$49.390	1,000	$ 49,390
	Sold	07/18/01	$49.400	2,500	$ 123,500
	Sold	07/19/01	$48.910	1,000	$ 48,910
	Sold	07/19/01	$48.910	2,500	$ 122,275

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	07/20/01	$48.660	1,000	$ 48,660
	Sold	07/20/01	$48.660	2,500	$ 121,650
	Sold	07/23/01	$47.480	1,000	$ 47,480
	Sold	07/23/01	$47.490	2,500	$ 118,725
	Sold	07/24/01	$44.760	2,500	$ 111,900
	Sold	07/24/01	$44.760	1,000	$ 44,760
	Sold	07/25/01	$43.830	2,500	$ 109,575
	Sold	07/25/01	$43.870	1,000	$ 43,870
	Sold	07/26/01	$45.310	1,000	$ 45,310
	Sold	07/26/01	$45.350	2,500	$ 113,375
	Sold	07/26/01	$46.840	85,720	$ 4,015,125
	Sold	07/27/01	$46.050	2,500	$ 115,125
	Sold	07/27/01	$46.040	1,000	$ 46,040
	Sold	07/30/01	$46.250	2,500	$ 115,625
	Sold	07/30/01	$46.250	1,000	$ 46,250
	Sold	07/31/01	$45.980	2,500	$ 114,950
	Sold	07/31/01	$45.980	1,000	$ 45,980
	Sold	08/21/01	$36.250	110,706	$ 4,013,093
	Sold	08/23/01	$36.950	108,254	$ 3,999,985
	Sold	08/24/01	$36.350	110,041	$ 3,999,990
	Sold	08/30/01	$35.500	112,706	$ 4,001,063
	Sold	09/04/01	$35.000	114,346	$ 4,002,110
	Sold	10/23/01	$19.790	76,995	$ 1,523,731
	Sold	10/24/01	$16.410	103,614	$ 1,700,306
	Sold	10/25/01	$16.350	33,672	$ 550,537
	Sold	10/26/01	$15.400	147,770	$ 2,275,658
				4,002,259	$ 184,494,426
Mark-Jusbasche,	Sold	11/05/98	$28.000	3,400	$ 95,200
Rebecca P.	Sold	11/05/98	$27.875	64,200	$ 1,789,575
Director	Sold	11/05/98	$28.000	40,000	$ 1,120,000
	Sold	02/23/99	$32.500	212,946	$ 6,920,745

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	02/23/99	$32.531	41,400	$ 1,346,783
	Sold	02/23/99	$32.574	140,000	$ 4,560,360
	Sold	03/22/99	$34.002	62,500	$ 2,125,097
	Sold	03/22/99	$34.412	279,852	$ 9,630,337
	Sold	03/22/99	$34.002	66,668	$ 2,266,815
	Sold	03/23/99	$34.121	124,402	$ 4,244,598
	Sold	03/23/99	$33.938	75,598	$ 2,565,796
	Sold	04/01/99	$31.870	26,000	$ 828,620
	Sold	04/01/99	$31.900	2,016	$ 64,310
	Sold	05/26/99	$35.670	233,334	$ 8,323,024
	Sold	02/18/00	$68.910	62,500	$ 4,306,875
	Sold	02/18/00	$68.910	6,446	$ 444,194
	Sold	02/18/00	$68.910	66,666	$ 4,593,954
	Sold	02/18/00	$68.910	24,071	$ 1,658,733
	Sold	02/18/00	$68.910	259,392	$ 17,874,703
	Sold	05/03/00	$74.590	104,204	$ 7,772,576
				1,895,631	$ 82,536,737
Harrison, Kenny L.	Sold	11/04/98	$28.156	1,974	$ 55,580
Director	Sold	11/04/98	$28.250	4,506	$ 127,295
	Sold	11/04/98	$28.156	786	$ 22,131
	Sold	02/24/99	$33.960	54,000	$ 1,833,640
	Sold	04/30/99	$37.500	100,000	$ 3,750,000
	Sold	05/02/00	$74.070	56,500	$ 4,184,955
	Sold	05/02/00	$74.070	14,860	$ 1,100,680
	Sold	05/02/00	$76.070	10,170	$ 773,632
	Sold	05/02/00	$76.070	189,830	$ 14,440,368
	Sold	05/02/00	$74.070	28,640	$ 2,121,365
	Sold	05/11/00	$78.000	50,170	$ 3,913,260
	Sold	05/12/00	$78.000	15,000	$ 1,170,000
	Sold	05/15/00	$78.130	20,000	$ 1,562,600
	Sold	05/16/00	$78.170	65,000	$ 5,081,050

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	08/28/00	$86.690	32,000	$ 2,774,080
	Sold	08/29/00	$87.200	68,000	$ 5,929,600
	Sold	08/29/00	$86.880	30,740	$ 2,670,691
	Sold	08/29/00	$86.880	29,260	$ 2,542,109
	Sold	09/01/00	$86.910	40,000	$ 3,476,400
	Sold	09/18/00	$89.430	100,000	$ 8,943,000
	Sold	09/18/00	$89.440	33,410	$ 2,988,190
	Sold	09/18/00	$89.440	66,590	$ 5,955,810
				1,011,436	$ 75,416,636
Skilling, Jeffrey K. CEO, President & COO	Sold	11/04/98	$28.000	49,600	$ 1,388,800
	Sold	11/04/98	$28.031	14,000	$ 392,438
	Sold	11/04/98	$28.063	22,000	$ 617,375
	Sold	11/04/98	$28.094	2,120	$ 59,559
	Sold	02/04/99	$31.970	1,848	$ 59,081
	Sold	04/18/99	$34.530	250,000	$ 8,632,500
	Sold	05/05/99	$38.325	120,000	$ 4,599,000
	Sold	05/06/99	$38.250	50,000	$ 1,912,500
	Sold	05/07/99	$76.250	25,000	$ 1,906,250
	Sold	10/18/99	$38.000	126,784	$ 4,817,792
	Sold	04/26/00	$73.880	10,000	$ 738,800
	Sold	04/27/00	$72.500	25,000	$ 1,812,500
	Sold	04/27/00	$73.880	25,000	$ 1,847,000
	Sold	04/27/00	$74.000	26,217	$ 1,940,058
	Sold	08/30/00	$86.130	15,000	$ 1,291,950
	Sold	09/01/00	$86.880	30,000	$ 2,606,400
	Sold	09/01/00	$87.250	15,000	$ 1,308,750
	Sold	09/01/00	$87.000	15,000	$ 1,305,000
`	Sold	09/05/00	$85.000	11,441	$ 972,485
	Sold	11/01/00	$83.240	60,000	$ 4,994,400
	Sold	11/01/00	$83.060	12,600	$ 1,046,556

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	11/02/00	$82.340	20,000	$ 1,646,800
	Sold	11/07/00	$82.590	46,068	$ 3,804,756
	Sold	11/15/00	$80.310	10,000	$ 803,100
	Sold	11/22/00	$80.190	5,000	$ 400,950
	Sold	11/22/00	$77.060	5,000	$ 385,300
	Sold	11/29/00	$78.690	5,000	$ 393,450
	Sold	11/29/00	$74.190	5,000	$ 370,950
	Sold	12/06/00	$68.910	10,000	$ 689,100
	Sold	12/13/00	$77.060	10,000	$ 770,600
	Sold	12/20/00	$79.030	10,000	$ 790,300
	Sold	12/27/00	$83.000	10,000	$ 830,000
	Sold	01/03/01	$78.160	10,000	$ 781,600
	Sold	01/10/01	$69.200	10,000	$ 692,000
	Sold	01/17/01	$68.940	10,000	$ 689,400
	Sold	01/24/01	$80.280	10,000	$ 802,800
	Sold	01/31/01	$79.690	10,000	$ 796,900
	Sold	02/07/01	$80.370	10,000	$ 803,700
	Sold	02/14/01	$80.420	10,000	$ 804,200
	Sold	02/21/01	$74.780	10,000	$ 747,800
	Sold	02/28/01	$69.540	10,000	$ 695,400
	Sold	03/07/01	$69.520	10,000	$ 695,200
	Sold	03/14/01	$61.410	10,000	$ 614,100
	Sold	03/21/01	$59.240	10,000	$ 592,400
	Sold	03/28/01	$58.660	10,000	$ 586,600
	Sold	04/04/01	$54.100	10,000	$ 541,000
	Sold	04/11/01	$59.500	10,000	$ 595,000
	Sold	04/18/01	$61.300	10,000	$ 613,000
	Sold	04/25/01	$62.050	10,000	$ 620,500
	Sold	05/02/01	$61.780	10,000	$ 617,800
	Sold	05/09/01	$57.140	10,000	$ 571,400
	Sold	05/16/01	$57.300	10,000	$ 573,000
	Sold	05/23/01	$55.520	10,000	$ 555,200

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	05/30/01	$52.950	10,000	$ 529,500
	Sold	06/06/01	$52.740	10,000	$ 527,400
	Sold	06/13/01	$50.680	10,000	$ 506,800
				1,307,678	$ 70,687,199
Belfer, Robert A. Director	Sold	02/25/99	$33.190	6,000	$ 199,140
	Sold	03/10/99	$34.375	6,000	$ 206,250
	Sold	03/11/99	$35.500	2,000	$ 71,000
	Sold	09/02/99	$40.188	360,003	$ 14,467,810
	Sold	11/04/99	$39.700	57,000	$ 2,262,900
	Sold	11/08/99	$38.900	17,200	$ 669,080
	Sold	11/08/99	$38.340	25,800	$ 989,172
	Sold	11/11/99	$41.900	50,000	$ 2,095,000
	Sold	01/20/00	$56.760	8,000	$ 454,080
	Sold	03/01/00	$69.330	3,000	$ 207,990
	Sold	03/06/00	$70.200	6,000	$ 421,200
	Sold	03/07/00	$71.500	3,000	$ 214,500
	Sold	03/20/00	$71.000	1,500	$ 106,500
	Sold	03/23/00	$73.690	19,500	$ 1,436,955
	Sold	05/02/00	$75.750	15,000	$ 1,136,250
	Sold	05/11/00	$77.000	10,000	$ 770,000
	Sold	05/11/00	$76.000	5,000	$ 380,000
	Sold	05/15/00	$77.170	9,000	$ 694,530
	Sold	05/16/00	$77.890	4,500	$ 350,505
	Sold	08/30/00	$84.850	5,461	$ 463,420
	Sold	09/18/00	$89.060	10,800	$ 961,848
	Sold	11/02/00	$65.502	400,000	$ 26,200,800
	Sold	11/06/00	$80.460	16,449	$ 1,323,487
	Sold	12/21/00	$55.335	150,000	$ 8,300,250
	Sold	12/22/00	$55.692	75,000	$ 4,176,900
	Sold	12/26/00	$58.455	75,000	$ 4,384,125

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	01/26/01	$57.248	150,000	$ 8,587,200
	Sold	02/08/01	$56.605	50,000	$ 2,830,250
	Sold	02/14/01	$56.465	100,000	$ 5,646,500
	Sold	02/14/01	$80.990	10,000	$ 809,900
	Sold	02/26/01	$71.000	3,000	$ 213,000
	Sold	03/09/01	$58.840	151,674	$ 10,441,219
	Sold	05/23/01	$55.344	50,020	$ 2,768,307
	Sold	07/27/01	$46.094	100,014	$ 4,610,045
	Sold	09/21/01	$28.297	109,216	$ 3,090,485
				2,065,137	$ 111,941,200
Olson, Cindy K.	Sold	02/16/00	$70.000	4,620	$ 323,400
Executive VP,	Sold	02/16/00	$70.130	340	$ 23,844
Human Resources	Sold	02/16/00	$70.000	9,380	$ 656,600
	Sold	08/24/00	$86.410	11,630	$ 1,004,948
	Sold	08/24/00	$86.410	4,750	$ 410,448
	Sold	12/08/00	$72.000	7,698	$ 554,256
	Sold	12/22/00	$80.000	15,385	$ 1,230,800
	Sold	12/22/00	$80.000	6,656	$ 532,480
	Sold	12/22/00	$80.000	2,400	$ 192,000
	Sold	02/08/01	$81.000	13,409	$ 1,086,129
	Sold	03/08/01	$71.000	3,327	$ 236,217
	Sold	03/08/01	$71.000	1,022	$ 72,562
	Sold	03/08/01	$71.000	2,566	$ 182,186
				83,183	$ 6,505,870
Foy, Joe H.	Sold	02/25/99	$33.560	15,360	$ 515,482
Director	Sold	03/18/99	$34.505	5,920	$ 204,270
	Sold	03/18/99	$34.505	3.920	$ 135,260
	Sold	03/18/99	$34.505	3.920	$ 132,499
	Sold	01/21/00	$71.500	3,072	$ 219,648
	Sold	01/21/00	$71.500	3,600	$ 257,400

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	01/21/00	$71.500	2,448	$ 175,032
				38,160	$ 1,639,590
LeMaistre, Charles A.	Sold	01/06/99	$29.720	1,984	$ 58,964
Director	Sold	12/28/99	$42.620	7,360	$ 313,683
	Sold	05/10/01	$58.640	8,000	$ 469,120
				17,344	$ 841,768
Jaedicke, Robert K.	Sold	02/24/00	$65.940	5,360	$ 353,438
Director	Sold	05/02/01	$61.000	8,000	$ 488,000
				13,360	$ 841,438
Chan, Ronnie C.	Sold	07/26/99	$42.150	8,000	$ 337,200
Director				8,000	$ 337,200
Gramm, Wendy L.	Sold	11/03/98	$27.000	640	$ 17,280
Director	Sold	11/03/98	$27.000	2,304	$ 62,208
	Sold	11/03/98	$27.000	2,800	$ 75,600
	Sold	11/03/98	$27.000	1,632	$ 44,064
	Sold	11/03/98	$27.000	2,880	$ 77,760
	Sold	12/17/98	$27.500	72	$ 1,980
			TOTALS:	**10,452,516**	**$ 535,520,956**

389. In addition to the foregoing, Defendants Fastow, Kopper (and others), in fact, also realized millions of dollars of personal profits as a result of Enron's transactions with the LJM partnerships. In 2000, LJM2, including Fastow and certain other Enron management, reportedly realized more than $7 million in management fees and about $4 million in capital increases for LJM2.

B. Lavish Bonuses

390. The foregoing selling was not enough for certain Defendants and other insiders, and they continued to loot Enron in other ways. In the year 2001, despite Enron's hidden and mounting losses, or perhaps because of these losses, certain of the Defendants and other Enron insiders awarded themselves lavish bonuses as set forth below:

	Check Amount	**Date**
Kenneth Lay	3,600,000	1-11-01
	7,000,000	2-5-01
Jeffrey K. Skilling	1,920,000	1-11-01
	5,600,000	2-5-01
Kenneth Rice	1,750,000	2-5-01
	1,487,500	2-5-01
	262,500	2-5-01
	1,617,011	2-7-01
Jeffrey McMahon	1,100,000	2-5-01
	694,862	2-6-01
	1,500,000	11-29-01
John Clifford Baxter	200,000	1-11-01
	1,200,000	2-5-01
	1,386,055	2-7-01
Andrew S. Fastow	350,000	1-11-01
	1,300,000	2-5-01
	1,386,055	2-7-01
Richard A. Causey	350,000	1-11-01
	1,000,000	2-5-01

	Check Amount	Date
	200,000	2-5-01
Richard B. Buy	75,000	1-11-01
	900,000	2-5-01
	694,862	2-7-01
Mark Haedicke	170,000	1-11-01
	400,000	2-5-01
	808,346	2-6-01
	141,461	2-6-01
	750,000	11-29-01
James V. Derrick Jr.	484,000	1-11-01
	800,000	2-5-01
Ben F. Glisan Jr.	600,000	2-5-01
	69,223	2-6-01

The total year 2001 bonuses for just these eleven executives was $36,685,820. On information and belief, other top executives also received bonuses in 2001.

C. Excessive Compensation Packages

391. In addition to these lavish bonuses, certain of the Enron Director Defendants and other Enron insiders awarded themselves with unusual compensation packages that included lavish equity stakes in business units, even as the units they ran piled up losses.

392. The packages, outlined in filings with the Securities and Exchange Commission, reveal how Enron executives profited at the company's expense.

393. In all, more than 100 senior executives between 1988 and 2000 held equity in business units and were able to convert that equity into common stock or receive outright cash payments.

394. Many corporations use both equity stakes and bonuses to encourage strong performance by their executives. But those handed out by Enron were unusually large and were not sufficiently tied to long-term performance. Compensation experts said that, in some cases, the packages potentially put the executives in direct conflict with shareholders. "This really drives home the way executives treated a public corporation like their own cash cow," explained Elizabeth Warren, a Harvard University law professor and expert on business ethics. "They looked for any excuse to pay themselves."

395. A number of Wall Street analysts have agreed with Ms. Warren that the lavishness of the packages were unheard of, even among the country's largest corporations. A major component was equity stakes in Enron business units. For example, Jeffery K. Skilling, then Enron's president, held a 5% stake in Enron's retail-energy unit, Enron Energy Services ("EES"). Enron called Mr. Skilling's stake "phantom equity," reflecting that it was conceptual, designed to track the unit's performance, as EES had no stock of its own. Mr. Skilling converted his "phantom equity" into real money, by conversion of $100 million in Enron common stock in 1998, after he helped persuade the California Public Employee's Retirement System and the Ontario Teachers' Pension Plan to invest $130 million in EES.

396. Enron revealed Mr. Skilling's stake in a March 1997 proxy filing with the SEC. The same filing shows that Lou Pai, the former president of EES, owned a 15% phantom-equity stake in EES. Over a period of four years, Mr. Pai converted that stake to Enron common stock, accounting for the bulk of the $270 million in shares he sold before leaving the company in June 2001.

397. In a similar compensation arrangement, Robert Kelly, chairman and chief executive of Enron Renewable Energy Corp., received a 20% stake in his unit and was a minority owner. Mr. Kelly's stake wasn't listed in any of Enron's proxy filings. Mr. Kelly converted his stake into Enron shares that he sold for more than $20 million before leaving the company in 1999.

398. Between 1996 and 2000, the average chief executive salary and bonus increased by 24% to $1.72 million, according to a Forbes study of proxy reports. Total CEO compensation, including stock options and restricted stock grants, grew 166% to an average of $7.43 million. In the same period, corporate profits grew by 16%, and per capita income grew by 18%.

399. The stated goal of the Enron Board of Directors was to pay Enron executives in the 75th percentile of its peer group. In fact, it paid them vastly more and on a scale completely out of whack with the company's financial results – even if it's reported financial results are accepted as accurate.

400. In 2000 alone, Enron's top five executives received payments of $282.7 million, according to an analysis by Charas Consulting, a New York-based compensation-consulting firm. The top five were Skilling, the former president and briefly chief executive; Kenneth Lay, the CEO; Stanley Horton, CEO of Enron Transportation Services; Mark Frevert, CEO of Enron Wholesale Services; and Kenneth Rice, CEO of Enron Broadband Services. During the five-year period between 1996 and 2000, Enron paid its top five more than $500 million when options are valued at the time of actual exercise, the study indicates. While Enron's profligate culture is now well known, the extent to which it lavished pay and perks on top executives is still remarkable and only now being fully uncovered.

401. Rebecca Mark-Jusbasche, former chief executive of Enron International, received a bonus of $54 million for her work in securing the financing for the $2.9 billion Dabhol power project in India. The project is a total disaster for the Company. The bonus was paid in 14 installments of $3.9 million each between 1996 and 1999. Joe Sutton, president and chief operating officer of Enron International, received a $42 million bonus for his work on the project.

402. In sum, the Defendants were successful in using every possible vehicle to enrich themselves. The stock sales, bonuses, and other forms of compensation, enriched the Enron

Director Defendants and other Enron insiders to the tune of between $1.5 billion and $2.0 billion, if not more.

IX. THE ERISA FIDUCIARIES REPEATEDLY BREACHED THEIR DUTIES TO THE PLANS

A. The Savings Plan Never Qualified as a Section 404(c) Plan

403. The Enron Savings Plan is not and has never been a "§ 404(c) plan," i.e., a plan that complies with regulations promulgated by the Department of Labor under ERISA § 404(c), 29 U.S.C. § 1104(c), and purports to relieve the plan's fiduciaries of liability for the results of participants' exercise of control over their investment decisions. In order to qualify as a § 404(c) plan, a plan must provide plan participants with a broad range of diversified investment options, liberal opportunities to transfer assets among allocations, and sufficient information to make sound investment decisions. 29 C.F.R. § 2550.404c. For all or most of the Class Period, the Enron Savings Plan did not satisfy those requirements. Equally important, such a plan must put participants explicitly on notice that it intends to qualify under § 404(c). *Id.* This is also something the Enron 401(k) Plan has never done.

404. The failure of the Enron 401(k) Plan to qualify as a § 404(c) plan means that at all times Enron, the Administrative Committee and Northern Trust were and are liable for the results of all investment decisions taken with respect to the Plan's assets, including decisions ostensibly made, in whole or in part, by Plan participants themselves. *Id.*

B. Enron, and the Enron Director Defendants, including, but not limited to Lay and Skilling Breached Their Duty To Select and Monitor the Plan's Fiduciaries

405. Under the terms of the Enron Savings and ESOP Plans, the Administrative Committee was charged with the day-to-day or "general administration" of the Plan. Enron Corporation Savings Plan (as amended and restated effective July 1, 1999, together with subsequent amendments) ("Savings Plan Document"), §§ XIII.1, XV.2; Enron Corporation Employee Stock Ownership Plan (effective date January 1, 1999) ("ESOP Plan Document"), §§ 14.1, 17.2. Under both Plans, the Administrative Committee is one of the Plan's "named

fiduciar[ies]" under ERISA, which simply means that it is one of the fiduciaries named in the plan instrument or identified by the employer-sponsor of the Plan. ERISA § 402(a), 29 U.S.C. § 1102(a). The members of the Committee were and are all senior Enron employees or executives.

406. During the Class Period, the members of the Committee included Olson, Prentice and several other senior Enron officials who were plainly unqualified to serve as fiduciaries, as evidenced in part by their blatant breaches of their duties and utter lack of understanding of their role as fiduciaries as detailed in part below.

407. Under the terms of the Savings and ESOP Plans, Enron was responsible for the appointment of the Administrative Committee members. Savings Plan Document § XIII.1; ESOP Plan Document § 14.1. Thus, Enron had the responsibility and the authority to monitor the Administrative Committee members, and oversee their investment of Plan assets. On information and belief, the Enron Director Defendants, including, but not limited to Lay and Skilling, are the natural persons who acted on behalf Enron Corp. in carrying out its selection and monitoring duties under the Savings and ESOP Plan.

408. Under the terms of the Savings Plan, Enron also was responsible for the appointment of the Plan Trustee. Savings Plan Document § XIV.1 and XV.2. Thus, Enron had the responsibility and the authority to monitor the Trustee, and oversee the Trustee's investment of Plan assets.

409. Under the terms of the ESOP, the Board of Directors was expressly assigned responsibility for appointing, removing and replacing the ESOP Trustee. ESOP Plan Document § 16.8.

410. Enron, and the Enron Director Defendants who participated in the appointment of Administrative Committee members and the Trustee, including, but not limited to Lay and Skilling, withheld material information from the Administrative Committee and the Trustee as to the true financial condition of the Company, failed to ensure the Administrative Committee and

the Trustee were monitoring the prudence of Enron stock as a Plan investment and contributed to the Administrative Committee's and the Trustee's failure to monitor the prudence of Enron stock as a Plan investment. Enron and the Director Defendants also failed to ensure that the Trustee was directed by the Administrative Committee in a manner that was consistent with ERISA and the Plan Documents.

C. The Administrative Committee, including but not limited to Olson and Prentice, and Northern Trust Breached Their Duty To Monitor Enron Stock And Ensure That It Was a Prudent Investment For The Plans

411. Under the terms of the Savings Plan, the Administrative Committee had the duty to "ma[k]e available" to the participants investment options ("Investment Funds") into which participants would invest their contributions or investments in the Plan. Savings Plan Document, § V.17. Nothing in the Plan document provides or even suggests that the Committee must or should even consider making Enron stock as one of the Plan's investment options.

412. By contrast, the Plan document specifically provides that the Company match will be made in Company stock. *See* Savings Plan Document § V.16. However, the Administrative Committee had the obligation to monitor the continued prudence of allowing the plan sponsor (Enron) to do so and to inform Enron that it could no longer match in Company stock if Enron stock became an imprudent investment option. *See* ERISA § 404(a)(1)(D), 29 U.S.C. § 1004(a)(1)(D) (fiduciary "shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and… in accordance with the documents and instruments governing the plan ***insofar as such documents and instruments are consistent with the provisions of this title and title IV***").

413. The Administrative Committee members, of course, knew that the Plans were heavily invested in Enron stock, and that, in fact, the majority of Plans' assets was in the stock; and that the rapid run-up in the stock price beginning in August 1998 had greatly increased the risk associated with the Plans' investment in Enron stock. Yet, they did nothing to protect the Plans from the risk of loss attributable to these circumstances. Even as the stock declined

precipitously throughout 2001, the Committees failed to consider the continued prudence of the Plans' huge investment in Enron stock, to take any action to stem the losses as a result of the investment, or even to evaluate potential actions that could have been taken. Instead, they did nothing as the value of Plan assets plunged. Even worse, they continued to offer Enron stock as a Plan investment option for participant contributions, and poured millions of more dollars into matching contributions in the stock. In addition, as discussed below, the Administrative Committee members continued on this imprudent course even in the face of obvious red flags that alerted them, or should have altered them to the real and imminent threat of massive losses as a result of the Plans' enormous investment in Enron stock. They did nothing even though ERISA, and the Plan Documents clearly require the Administrative Committee, and others, including Northern Trust, to act loyally and prudently with respect to the Plan and Plan assets, and even to diversify them. Some of the red flags that the Committee knew or should have known about include the following events.

414. In 1999, Olson, who was Executive Vice President, Human Resources and Community Relations, was also made a member of the Company's 20-person Executive Committee responsible for running the Company. However, in January 2001, Ms. Olson ran afoul of then-CEO Jeffrey Skilling and, by her own admission, she was "[r]emoved" from that Committee by Mr. Skilling, who also "took away a lot of the Human Resource functions that [she] had."

415. At about the same time she was removed from the Company Executive Committee, in January 2001, Ms. Olson was made a member of the Savings Plan Committee. Two months later, on March 5, 2001, Fortune magazine published an article, which Olson testified she read, entitled "Is Enron Overpriced?" The article discussed how the Company's secrecy and growing debt and bullish expectations were worrying some Wall Street bankers and warned that the Company was indeed hiding information about its finances. Moreover, the article further warned that "Enron isn't leaving itself a lot of room for normal wobbles and

glitches that happen in any developing business." The article questioned Enron's "opaque accounting and dubious rationalizations" for its then-generous stock valuation ($76 a share). "The company remains largely impenetrable to outsiders," said the article. "How exactly does Enron make its money? Details are hard to come by because Enron keeps many of the specifics confidential.…Analysts don't seem to have a clue." All this amounted to a "red flag" that "may increase the chance of a nasty surprise."

416. Olson, who admitted that she and the other members of the Administrative Committee were fiduciaries responsible for ensuring that the Plan's investment options were "good options," did nothing as a Plan fiduciary with respect to the information contained in the Fortune article and specifically did not discuss its contents with the other members of the Plan Committee.

417. However, on March 8, 2001, Olson sold some $350,000 worth of Enron stock at $71 a share. Indeed, after becoming a Plan trustee in January 2001, Olson also sold over $2 million worth of Enron stock in January and February 2001. Over the course of the last three years, Ms. Olson sold some $6.5 million worth of Enron stock.

418. For his part, in June 2001, Prentice sold some $900,000 worth of Enron stock.

419. Prentice, who "was trained as a chemical engineer," and held the position of Senior Vice President of Liquids Operations at an Enron affiliate, EOTT Energy, where he managed the company's petrochemical facilities, served on the Administrative Committee for over 10 years and served as its Chairman from 1999 until 2002.

420. The Congressional testimony of both Prentice and Olson establishes that the Committee had no process for actively monitoring the prudence of Enron stock as an investment option for the Plan or protocol for discontinuing the use of Company stock upon it becoming no longer prudent as an investment for Plan assets.

421. According to both Prentice and Olson, it was only sometime in November 2001, with Enron on the verge of bankruptcy, that the Committee sought legal and investment advice regarding the prudence of Enron stock as a Plan investment option.

422. Olson admitted that she was explicitly warned in August 2001 by Enron Vice President for Corporate Development Sherron Watkins orally and in writing of the reasons why Watkins was “incredibly nervous that [Enron] will implode in a wave of accounting scandals.” However, Olson admitted, that in direct breach of fiduciary duties she owed to thousands of Plan participants, she kept that information to herself and Lay. Similarly, by the end of August 2001, Defendant Reiker, through Vinson & Elkins’ investigation, learned of Sharon Watkins’ allegations of specific accounting improprieties yet failed to inform her fellow committee members, other plan fiduciaries, or the Plans’ participants of those allegations or to cause any independent investigation of those concerns.

423. Any prudent, disinterested fiduciary would at that point, among other things, have immediately convened an emergency meeting of the Administrative Committee, made full disclosure of Watkins’ allegations to the Administrative Committee, the Plan’s counsel, the Plan’s investment consultant and the Plan’s participants; and taken actions to promptly suspend any further use of Enron stock as a Plan investment (based either on employee or employer contributions) pending an Administrative Committee investigation conducted independent of Enron, Andersen, and Vinson & Elkins and, upon receiving the result of such independent investigation, liquidate the Plan’s Enron stock holdings. Any prudent investigation would have revealed that Defendant Lindholm had signed off on documents approving Enron’s participation in certain transactions that hid Enron’s illicit financial practices from the Plan participants and the public.

424. Had the Administrative Committee so acted, even at this late date, it could have saved participants literally hundreds of millions of dollars. At the time (August 2001), the Plan held approximately 10 to 14 million shares of Enron stock and the stock was still selling for $35-

40 a share. If the Plan's holdings had been liquidated at that time, hundreds of millions of dollars would have been saved even assuming a precipitous drop in the stock's price resulting from a disclosure of Watkins' allegations of accounting improprieties at Enron.

425. Additionally, had Olson and the Administrative Committee immediately discontinued Enron stock as an investment option for new contributions, as was so plainly required given Watkins' allegations, employees would been prevented from throwing another $100 million into Enron stock, as they did between August and December 2, 2001, in large measure because of the continued encouragement by Lay that they continue to purchase Enron stock with funds deducted from their paychecks (employee contributions) and Enron's continued matching of those contributions in exclusively Enron stock (employer contributions) which continued up until November 29, 2001, when, the Board of Directors finally acted and amended the Plan to match employee contributions in cash.

426. In failing to inform or concealing from the participants that from all appearances Enron was a house of cards, Olson failed to act " solely in the interest of the participants…for the exclusive purpose of…providing [them] benefits" (ERISA duty of loyalty) and "with the care, skill, prudence, and diligence under the circumstances the prevailing that a prudent [person] acting in a like capacity and familiar with such matters would use" (ERISA duty of prudence). ERISA § 404(a)(1)(A)-(B), 29 U.S.C § 1104(a)(1)(A)-(B).

427. Indeed, not only did Olson fail to warn participants and take appropriate action to save their investments in mid-August 2001, but she also stood by and said nothing to participants again in late-August and then again in September 2001 as she heard Lay exhort them to purchase even more Enron stock and explicitly promise them that he and the Enron Board of Directors "were convinced by all of our internal officers . . . that [the accounting for the special purpose entities that is now seen as the principle reason for Enron's demise was] legal and totally appropriate."

428. Finally, in stark contravention of her fiduciary duties, Olson skipped the vast majority of Administrative Committee meetings. Under those circumstances, Olson – beyond being asleep at the wheel – was not even in the car as it careened towards inevitable disaster.

429. For his part, Prentice admitted he lacked the necessary competence to evaluate the prudence of continuing to offer and invest Enron workers in Enron stock. He expressly admitted that, until sometime in November 2001, just prior to the Company's ultimate collapse, that neither he nor the Administrative Committee ever questioned the prudence of Enron stock as a Plan investment.

430. In considering the use and continued use of Enron stock an investment option in the Plan for participant contributions (deducted from participants' paychecks), and in monitoring the prudence of continuing to implement Enron's decision to match employee contributions in Company stock (the employer matching contribution), the Administrative Committee members as employees and executives of Enron, and Enron itself who oversaw the Committee members, faced a direct, ongoing conflict of interest given the manifold business reasons they had for wanting to see employees heavily invested in Company stock

431. Prentice's admission that he and the other Administrative Committee members never, until November 2001, questioned the use of Company stock as a vehicle for participants' retirement savings is an admission of their failure to discharge their duties in conformance with the requirements of the law.

432. For its part, Northern Trust, a "named fiduciary" under both Plans, also had a duty to act in accordance with the Plans. Although both Plans required, as does ERISA itself, that the fiduciaries discharge their duties loyally and prudently, Northern Trust failed to take any steps to investigate the prudence of the Plans' heavily concentrated investment in Enron stock or to balance expected risks prudently with appropriate returns. Further, even aside from its role as a named fiduciary, Northern Trust knew or should have known from a number of significant waving red flags and/or regular reviews of the company's financial statements that Enron was in

financial danger and its stock greatly diminished in value. Northern Trust consequently had a fiduciary duty to investigate the advisability of purchasing the company stock to insure that the action was in compliance with ERISA as well as the Plans. Northern Trust breached that duty.

D. Olson, Prentice, the Administrative Committee and Northern Trust Failed To Diversify the Plans' Assets

433. Under ERISA, one of the most fundamental of fiduciary duties is the duty to act "in accordance with the documents and instruments governing the plan." ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). According to the terms of the Savings Plan, the Committee and the Trustee, as "named fiduciaries," were expressly charged with the duty of "diversifying the investments of the Plan so as to minimize the risk of large losses." Plan, § XV.3. Likewise, the Enron Corp. Employee Stock Ownership Plan charged the Committee and the Trustee with the same duty to "diversify the investments of the Plan so as to minimize the risk of large losses . . ." ESOP Plan, § VII.3(c). Unlike ERISA itself, which by virtue of ERISA § 404(a)(2), 29 U.S.C. § 1104(a)(2), exempts defined contribution plans from ERISA's diversification requirement (ERISA § 404(a)(1)(C), 29 U.S.C. § 1104(a)(1)(C)) to the extent the plan invests in employer stock, the Enron Savings Plan admits of no such exception and thus the requirement to diversify the Plan's assets extended to the Plan's investment in employer stock. In addition, while section 407(d)(6) of ERISA defines an ESOP to be an individual account plan which is designed to invest primarily in qualifying employer securities, neither ERISA nor the applicable regulations dictate a maximum or minimum percentage which must be invested in employer securities in order to satisfy the "primary" requirement. ERISA § 407(d)(6)(A), 29 U.S.C. § 1107(d)(6)(A); U.S. Dept. of Lab, Adv.Op. 83-6A (January 24, 1983).

434. With respect to the Committee's efforts to diversify the assets of the Savings Plan, Prentice testified that, while Enron's Benefits Department did distribute educational materials on occasion to participants referencing the concept of diversification, the Administrative Committee undertook no such educational efforts or other actions to diversify the Plan's assets. To the

contrary, the Committee acquiesced in the desire of Enron, the Plan sponsor, as a business matter to have participants heavily invested in Enron stock. The Committee similarly took no efforts, and indeed no efforts to investigate, the need and/or prudence of diversification of the ESOP's assets.

435. For its part, Northern Trust, a "named fiduciary" under both Plans, also had a duty to act in accordance with the Plans. Although both Plans required diversification, Northern Trust failed to take any steps to investigate the prudence of the Plans' heavily concentrated investment in Enron stock or to balance expected risks prudently with appropriate returns or to ensure diversification.

436. Olson agreed with Senator Lieberman that the Savings Plan, which had 60% or more of its total assets invested in Enron stock as of last year, was not in fact "diversified."

437. Prudent fiduciaries charged specifically with the responsibility to diversify the Plan assets would have monitored the performance of the Enron stock in the Plans, and at reasonable intervals, would have reallocated the Plans' portfolios to ensure proper diversification as required by the Plan Documents. Instead, Defendants responsible for diversification, namely the Administrative Committees and Northern Trust, failed to take any action, or even to consider taking action to rebalance the Plans' investments to maintain a prudent relationship between expected risk and appropriate returns or to ensure diversification so that the Plans' portfolios were not overweighted in Enron stock, and, thus, at risk of enormous losses in the event the stock declined.

E. Olson Failed to Act on Any of the Red Flags Raised in Connection with Watkins' Assertions of Massive Accounting Irregularities

438. The ongoing fiduciary breaches were exacerbated by the events that occurred in connection with the warnings Sherron Watkins gave to Olson in August 2001. On Thursday, August 16, 2001, Lay presided over an all-employee meeting to address employee concerns about Skilling's abrupt resignation. As part of his effort to address employee fears, Lay

encouraged employees, if they remained troubled, to direct their concerns to him through, among others, Olson.

439. Accordingly, on or about August 16th, Watkins met with Olson and disclosed to her that she was the author of the one-page letter placed in the employee-complaint box, reiterated her concerns in detail to Olson that the Company's improprieties would end in disaster and asked for Olson to arrange a meeting with Lay. Olson subsequently arranged a meeting between Lay and Watkins, which was held on Wednesday, August 22, 2001.

440. Olson testified that Lay had "kicked off" an investigation of Watkins' allegations by the law firm of Vinson & Elkins. Olson testified that she felt that the investigation was "in good hands."

441. On information and belief, Olson learned that Fastow wanted Watkins fired for raising the questions she had raised and also wanted her computer seized, and Olson so informed Watkins. Watkins requested a transfer out of her division and was moved into the Human Resources Department where she remains to this day. Olson learned that Watkins' computer had in fact been confiscated upon Fastow's order and arranged for Watkins to obtain a new one.

442. Despite all of these red flags, Olson testified that she failed to inform the other members of the Administrative Committee, failed to inform Plan counsel and failed to inform the Plan's investment consultant about Ms. Watkins' letter and allegations.

F. Olson Also Remained Silent While Lay Exhorted Employees to Purchase More Enron Stock and Failed to Correct His Material Misrepresentations to Them About Enron's Off-Balance Sheet Deals

443. On or about August 27, 2001, another all-employee meeting was convened by Lay at which he again ensured employees that all was well at Enron. On information and belief, Lay made statements to employees at this meeting similar to the ones he made in the e-mail issued two weeks earlier announcing Skilling's resignation, when Lay wrote: "Our performance has never been stronger; our business model has never been more robust; our growth has never been more certain." He added: "We have the finest organization in American business today."

Following the August 27th employee meeting, Mr. Lay sent employees another e-mail, saying, in pertinent part: "As I mentioned at the employee meeting, one of my highest priorities is to restore investor confidence in Enron. This should result in a significantly higher stock price."

444. On September 26, 2001, in an online chatroom meeting arranged by Olson, Lay repeatedly urged employees to view the stock's then-current $27-a-share purchase price as "an incredible bargain," "an incredibly cheap stock," and a "great opportunity." Lay also told employees that the financial results for the third-quarter – the end of which was just four days away – were "looking great." *Id.* Three weeks later, however, Enron disclosed that it lost $618 million in the quarter and that it was writing down $1.2 billion of its net worth partly to reflect the reversing of some of its complex deals.

445. When specifically asked by one employee for reassurance that the Company was not engaged in accounting irregularities in connection with its handling off its off-balance sheet partnerships, Lay responded by stating:

> I can assure you that I or the Board of Directors, would not approve the use of any SPVs [special purpose vehicles] or other types of financial vehicles unless we were convinced both by ***all of our internal officers*** as well as our external auditor ***and counsel***, that they were legal and totally appropriate. That is the standard that we have used for as long as I have been with Enron, and we will continue to use. In many cases, not only has the local Arthur Anders[e]n office approved these vehicles, but they have also been approved at Arthur Anders[e]n's headquarter office from some of the world's leading experts on these types of financing.

446. In making these comments, Lay failed to reference the views of Watkins – an "internal officer" – which indicated she was far from "convinced" that Enron's handling of these SPV's was either "legal" or "totally appropriate." Nor did Lay mention that he had asked Vinson & Elkins – "counsel" – to review her allegations to determine whether Enron's booking of these matters was indicate "legal and totally appropriate."

447. Olson also did nothing to correct Lay's misstatements, although she knew or should have known that they could reasonably be expected to influence participants to continue

to hold and purchase more Enron stock, which many participants in fact did, based on the strength of Lay's recommendation.

G. Northern Trust, Olson, and the Administrative Committee Failed to Postpone the Lockdowns of the ESOP and the Savings Plan

448. Sometime in 2001, the Enron Defendants decided to replace the Plans' trustee, Northern Trust, and its recordkeeper, Northern Trust Retirement Consulting, with a new recordkeeper, Hewitt Associates, and a new trustee, Wilmington Trust. Planning for the trustee/recordkeeper switch (or "transition") began in July 2001 and was scheduled to occur sometime in the Fall of 2001. Trustee/recordkeeper transitions, though routine, are frequently delayed or postponed due to any number of administrative difficulties that can arise during the process.

449. Trustee transitions for large Plans like the Savings Plan and the ESOP typically require a "blackout," "freeze" or "Lockdown" period of some period of time during which participants are unable to move from one plan investment fund to another. In the case of the Northern Trust-Hewitt transition, the Lockdowns were to last nearly one month.

450. Both the Administrative Committee and Northern Trust knew for several months prior to the start of the scheduled Lockdown period that if and when imposed, the Lockdowns would prevent participants, who otherwise wished to do so, from selling their Enron stock and moving the proceeds. After several reschedulings, the Lockdown was officially scheduled to begin on the afternoon of October 26, 2001 for the Savings Plan; as for the ESOP, the Lockdown was scheduled to begin earlier, since written distribution forms had to be received by Northern Trust by October 20th in order to effectuate a sale and distribution before the Lockdown began.

451. Shortly before the Lockdowns were scheduled to take effect, however, on October 16, 2001, Enron surprised the market with its report that it had lost $618 million in the quarter and that it was writing down $1.2 billion of its net worth partly to reflect the reversing of some of its complex deals.

452. By this time at the latest, Olson knew or should have known both that Watkins' allegations were accurate and that Lay had misled participants just days before the end of the third-quarter into thinking the quarter was "looking great" when in fact this unexpected loss was the Company's first reported loss in years. Indeed, almost immediately stories began appearing in the press raising questions about the Company's candor about its true financial condition and the stock began to steadily decline.

453. Given these stories, and a slew of complaints from Class Members to Northern Trust urging Northern Trust to postpone the Lockdowns, by October 17, 2001, Northern Trust knew or should have known that going forward with the Lockdowns as scheduled would have a materially adverse effect on ESOP and Savings Plan participants and beneficiaries.

454. On October 22, 2001, Enron publicly announced that the SEC had opened an informal investigation in the Company's accounting practices. On October 24, 2001, Fastow, who as Olson knew tried to get Watkins fired, was forced himself to step down as Chief Financial Officer in favor of McMahon who, Olson knew, had raised many of the same concerns about Enron's accounting improprieties as Watkins had. On October 25, 2001, Enron drew down about $3 billion, the bulk of its available bank credit lines. The Fitch rating agency put Enron on review for a possible downgrade, while another, Standard & Poor's, changed Enron's credit outlook to "negative" from "stable." In addition, the consistent decline in the share price of Enron stock that had been ongoing throughout the Class Period, and which was an additional red flag under the circumstances, deteriorated into a free fall in the weeks preceding the Lockdowns.

455. Meanwhile, confused and frightened Enron employees, so recently led to believe the Company's prospects were strong, were demanding that the Company postpone its scheduled Lockdowns. So many complaints about the impending Lockdowns were received and so obvious was the harm that would befall Plan participants that the Company was forced to consider postponing the Lockdowns.

456. Indeed, Enron made inquiry into the possibility of postponing the Lockdowns and was told by both Northern Trust and Hewitt that such a postponement was physically possible for them. Without consulting with the other members of the Administrative Committee, Olson declined to honor participants' request that the Lockdowns be postponed.

457. According to Olson and others who testified before Congress, the Lockdowns were not postponed out of a concern that former employees (versus current employees with Company email) could not be notified effectively in time. However, no witness could articulate what possible prejudice the non-imposition of the Lockdowns could have caused former employees.

458. This was not the explanation that the Company gave employees on October 25th, when just before midnight it sent employees an email in response to their complaints about the official start date of the impending imposition of the Savings Plan Lockdown. In that email, the Company explained that, while it appreciated participants' concerns, it would not delay the Lockdown because it would be too inconvenient to the Company, Northern Trust and Hewitt to do so.

459. Enron told employees in an October 25th e-mail, at 11:44 p.m.:

> ***We understand that you are concerned*** about the timing of the move to a new Savings Plan administrator and the restricted access to your investment funds during the upcoming transition period [*i.e.,* the freeze period] scheduled to take place beginning at 3:00 p.m. CST on October 26 and ending at 8:00 a.m. CST on November 20.
>
> ***We have been working with Hewitt and Northern Trust since July.*** We understand your concerns and are committed to making this transition period as short as possible without jeopardizing the reconciliation of both the Plan in total or your account in particular. Remember that the Enron Corp. Savings Plan is an investment vehicle for your long-term financial goals. The Enron plan will continue to offer a variety of investment opportunities with different levels of risk. As always, we advise you to review your overall investment strategy and carefully weigh the potential earnings of each investment choice against its risk before making investment decisions that are aligned with your long-term financial plans

> and your risk tolerance. For that reason, it is critical that ALL trades among your investment funds be completed by 3:00 p.m. CST Friday, October 26 before the transition period begins.

460. Employees who saw this email saw it only hours before the October 26th Lockdown was imposed. This obviously did not give them the time they needed to "review [their] overall investment strategy and carefully weigh the potential earnings of each investment choice against its risk before making investment decisions that are aligned with [their] long-term financial plans and [their] risk tolerance."

461. For its part, Northern Trust concurred with Olson and Enron, and recommended that the Lockdowns go forward as planned – even though (i) Northern Trust knew or should have known that the Lockdowns would cause harm to the participants and beneficiaries of the Savings Plan and the ESOP and (ii) Northern Trust had the power to stop the Lockdowns from going forward as scheduled.

462. From the beginning to the end of the Savings Plan Lockdown period, Enron stock lost more than one-third of its value.

463. From the beginning to the end of the ESOP Lockdown, Enron stock lost more than two-thirds of its value.

X. CLASS ALLEGATIONS

464. Plaintiffs bring this action as a Class Action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of:

(a) The Enron Corp. Savings Plan (the "Savings Plan" or the "401(k) Plan") and all participants and beneficiaries who held beneficial interest in Enron stock purchased or held by the Savings Plan during the period from January 20, 1998 through December 2, 2001 (the "Savings Plan Class"). Excluded from the Savings Plan Class and the Classes identified below are the named Defendants, and any member of senior management (whose identity will be specified after class discovery);

(b) The Enron Corp. Employee Stock Ownership Plan (the "ESOP") and all participants and beneficiaries who held beneficial interest in Enron stock held by the ESOP who are or were participants or beneficiaries of the ESOP during the period from January 20, 1998 through December 2, 2001 (the "ESOP Class");

(c) The Cash Balance Plan and all participants and beneficiaries of the Retirement Plan (now the Cash Balance Plan) who earned benefits under the Plan between January 1, 1987 and December 31, 1994 that were or will be partially offset by the value of the Enron stock as of January 1, 1998, January 1, 1999, and January 1, 2000 (the "Cash Balance Class"); and

(d) The Cash Balance Plan and all participants and beneficiaries of the Retirement Plan (now the Cash Balance Plan) who accrued benefits under the Retirement Plan between January 1, 1987 and December 31, 1994 that were reduced by the application of the plan amendment of January 1, 1995 that applied offsets to those accrued benefits prior to a participant's retirement.

465. As of August 2001, there were approximately 24,000 participants in the Savings Plan. The exact number of class members in Classes (b)-(d) is not known. However, each of the Classes consist of thousands of persons located throughout the United States and in foreign countries, thus, the members of the Classes are so numerous that joinder of all Class members is impracticable. The exact number of Class members is not presently known to Plaintiffs, but can readily be determined by appropriate discovery.

466. Plaintiffs will fairly and adequately protect the interests of the members of the Classes and have retained counsel competent and experienced in class actions and ERISA litigation. Plaintiffs have no interests that are adverse or antagonistic to those of the Classes.

467. The claims of the representative parties are typical of those of the Classes.

468. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by many individual Class

members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to individually seek redress for the wrongful conduct alleged herein.

469. The prosecution of separate actions by the members of the Classes would create a risk of inconsistent adjudications establishing incompatible standards of conduct for the Defendants.

470. The Defendants have acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Classes as a whole.

471. Common questions of law and fact exist as to all members of the Classes and predominate over any questions solely affecting individual members of the Classes. Among the questions of law and fact common to the Classes are:

(a) Whether ERISA was violated by Defendants' acts and omissions, as alleged herein;

(b) Whether Defendants breached fiduciary duties owed to Plaintiffs and the members of the Classes by failing to act prudently and solely in the interest of the Savings Plan, the ESOP, the Cash Balance Plan, and their participants and beneficiaries;

(c) Whether the conduct as alleged herein violated the common law of Texas; and

(d) Whether Plaintiffs and the members of the Classes have sustained injury by reason of Defendants' actions and omissions.

472. Plaintiffs envision no difficulty in the management of this litigation as a Class Action.

XI. CLAIMS FOR RELIEF

COUNT I - INDUCING AND MANDATING THE ACQUISITION AND RETENTION OF ENRON STOCK IN THE SAVINGS PLAN AND THE ESOP

(Breaches Of Fiduciary And Co-Fiduciary Duties In Violation Of ERISA, 29 U.S.C. § 1104 (a)(1)(A)-(D), 29 U.S.C. § 1105)

(Claim on Behalf of the Savings Plan and the ESOP Against Enron, the Enron ERISA Defendants, the Enron Director Defendants, Lay, Skilling, Northern Trust, and Andersen)

473. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if set forth fully herein.

474. At all relevant times, Enron, each of the Enron ERISA Defendants and Northern Trust, was and acted as a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) with respect to the Savings Plan and/or the ESOP. Defendants Lay and Skilling, by virtue of their promotion of Enron stock to the Savings Plan, the ESOP, and the participants and beneficiaries, and their role as appointing fiduciaries, were and acted as fiduciaries.

475. ERISA imposes strict fiduciary duties upon plan fiduciaries. ERISA § 404(a), 29 U.S.C. § 1104(a), states, in relevant part, that:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ---
>
> (A) for the exclusive purpose of
>
> (i) providing benefits to participants and their beneficiaries; and
>
> (ii) defraying reasonable expenses of administering the plan;
>
> (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims;
>
> (C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

> (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and Title IV.

476. Moreover, ERISA fiduciaries have a duty to speak truthfully, to not mislead participants and to disclose truthful information on their own initiative when participants need such information to exercise their rights under the plan.

477. At all relevant times, Enron, each of the Enron ERISA Defendants, Northern Trust, Lay and Skilling, also were, and each acted as, a co-fiduciary of the other Defendants within the meaning of ERISA § 405, 29 U.S.C. § 1105. ERISA § 405, 29 U.S.C. § 1105(a), states, in relevant part, that:

> In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:
>
> (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; or
>
> (2) if, by his failure to comply with section 404(a)(1) in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
>
> (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

478. As detailed in part in Section IX, supra, all of the Defendants in this Count breached the fiduciary duties they owed Plaintiffs, the Savings Plan, the ESOP and their participants and beneficiaries by: (i) allowing Savings Plan participants the ability to direct the Plan's fiduciaries to purchase Enron stock and have such stock allocated to their individual accounts in exchange for monies participants contributed to the Plan as deductions from their salaries; (ii) inducing Savings Plan participants to direct the Plan's fiduciaries to purchase Enron stock and have such stock allocated to their individual accounts in exchange for monies

contributed to the Plan by participants; (iii) causing and allowing the Savings Plan to purchase or accept Enron's matching contributions to the Savings Plan in the form of Enron stock; (iv) imposing and maintaining age and other restrictions on the ability of the participants to direct the Savings Plan's fiduciaries to transfer Savings Plan and ESOP assets out of Enron stock; and (v) inducing Savings Plan and ESOP participants to direct or allow the Plans' fiduciaries to maintain the Plans' investments in Enron stock – and with respect to subparagraphs i-v herein, taking or allowing such actions all at a time when Enron, the Enron ERISA Defendants, Northern Trust, and Lay and Skilling knew or should have known that Enron stock was not a prudent investment option for the Plans, and, thus, that such actions were contrary to ERISA, and that any Plan terms allowing or requiring the actions should have been disregarded.

479. In addition, the Defendants named in this count breached their fiduciary duties in following ways: (i) Enron, Lay, Skilling, and the other Director Defendants who participated in the appointment of Plan fiduciaries failed to provide material information regarding the financial condition of Enron to the Administrative Committee members that the Defendants knew or should have known was necessary for the prudent administration of the Plans; (ii) Enron, Lay, Skilling, the other Director Defendants, and the Administrative Committee members failed to provide material information regarding the financial condition of Enron to participants and beneficiaries that the Defendants knew or should known, through prudent investigation, was a threat to the Plans, and that participants and beneficiaries needed in order to make informed decisions about investing in Enron stock, failed to correct misinformation, and, with respect to Lay, Skilling, and Olson, in particular, provided false information regarding the same; (iii) Administrative Committee members, including but not limited to Olson and Prentice failed to investigate the prudence of continuing to invest and hold Plan assets in Enron stock despite red flags and warnings regarding Enron's financial condition and malfeasance, and Northern Trust failed to investigate the advisability of continuing to follow directions to purchase Enron stock in order to ensure that the action was in compliance with ERISA as well as the Plans; and

(iv) Enron and the Administrative Committee members faced a direct conflict of interest with respect to the continued use of Enron stock as an investment option in the Plan, and in monitoring the continued prudence of matching employee contributions in Enron stock in light of the circumstances alleged in the Complaint.

480. Each Defendant knowingly participated in these fiduciary breaches of its co-fiduciaries, enabled its co-fiduciaries to commit such fiduciary breaches by its own failure to comply with the provisions of ERISA § 404(a), 29 U.S.C. § 1104(a), and had knowledge of the breaches of its co-fiduciaries and failed to make reasonable efforts to remedy such breaches.

481. In addition to its liability as a fiduciary, Defendant Enron has liability, to the extent it acted with respect to the Plans in a non-fiduciary capacity, as a knowing participant in the fiduciary breaches of the Enron ERISA Defendants. Enron was and is a party in interest to the Plan within the meaning of ERISA § 3(14), 29 U.S.C. § 1002(14), because it was and is (a) a fiduciary of the Savings Plan and the ESOP; (b) a person providing services to the Plans; (c) an employer with some employees covered by the Plans; and/or (d) a corporation fifty percent or more of which is owned directly or indirectly by persons described in subparagraphs (a), (b) or (c). As such, Enron had a duty under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), to refrain from participating in any breaches of fiduciary duty with respect to the Plans when, as here, it had actual or constructive knowledge of such breaches.

482. Defendant Enron knowingly participated in its own and the other Plan fiduciaries' breaches described above, with actual or constructive knowledge of those breaches, in violation of ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

483. Defendant Andersen also had a duty under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), to refrain from participating in any fiduciary breaches with respect to the Plan, with actual or constructive knowledge of those breaches. However, Andersen knowingly participated in the Enron Defendants' breaches of fiduciary duty by actively concealing from the Plan

fiduciaries and Plan participants the true financial condition of the Company and the imprudence of investing in Enron stock.

484. But for these breaches of fiduciary duty, the Plans' assets would not have been invested in Enron stock but rather would have been invested in the most profitable alternative investment available to the Plans.

485. As a direct and proximate result of the breaches of fiduciary duty alleged herein, the Plans, and indirectly the Plaintiffs and the Plans' other participants and beneficiaries, lost hundreds of millions of dollars.

486. Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), and 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plans, and indirectly, the Plaintiffs and the Plans' other participants and beneficiaries caused by the Defendants' breaches of their fiduciary duties.

COUNT II – LOCKDOWNS

(Breaches of Fiduciary Duties in Violation of ERISA,
29 U.S.C. § 1104 (a)(1)(A)-(D); 29 U.S.C. § 1105)

(Claim on Behalf of Savings Plan and ESOP Against Enron, the Enron ERISA Defendants, The Northern Trust Company)

487. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if set forth fully herein.

488. At all relevant times, Enron, the Enron ERISA Defendants and The Northern Trust Company each was and acted as a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), with respect to the Savings Plan and the ESOP. In addition, each of these Defendants was, and acted as, a co-fiduciary of the others within the meaning of ERISA § 405, 29 U.S.C. § 1005.

489. As detailed in part in Section IX(G), supra, all of the Defendants in this Count breached the fiduciary duties they owed the Savings Plan, the ESOP and those Plans' participants and beneficiaries by proceeding with administrative "freezes," "blackouts," or

"Lockdowns" (hereinafter, the "Lockdowns") of the Plans in October 2001 while the Plans were switched to a new record keeper and trustee. This includes the Northern Trust Company which, as a named fiduciary and Trustee to the Plans, was expressly charged with acting in accordance with "proper directions of the [Plans' Administrative] Committee that [we]re made in accordance with the terms of the Plan and the Act" i.e., ERISA. *See* Savings Plan § XV.2. In violation of ERISA, the Lockdowns improperly prevented other Plan fiduciaries as well as participants from directing the Plans' fiduciaries to sell the Plans' Enron stock prior to the further collapse in the value of Enron stock. This caused the Plans, and indirectly, Plaintiffs and the Plans' other participants and beneficiaries, hundreds of millions of dollars in unnecessary losses. Furthermore, during the lockdowns, Northern Trust exercised control over all Plan assets, and given the circumstances, as well as its duties of loyalty and prudence as set forth in controlling Plan documents, and ERISA, Northern Trust should have itself taken action to preserve the value of the Plans' assets by selling some or all of the Plans' investments in Enron stock.

490. Although the ESOP Lockdown did not actually begin on that date, it effectively began on or about October 17, 2001 – the day after Enron surprised the market with its report of a large third-quarter loss – because, in order to sell their Enron stock in their ESOP retirement accounts, ESOP participants were required to deliver a written form to Northern Trust by October 20, 2001. Otherwise, ESOP participants were locked in until November 20, 2001. *See* October 8, 2001 letter to "All Enron Employee Stock Ownership Participants (ESOP)" (indicating that, unless ESOP participants' mailed distribution forms were received by October 20, 2001, their ESOP assets would be frozen in Enron stock until November 20, 2001). Given the circumstances described herein regarding Enron's dire straits as of the time the Lockdown was imposed, the restrictions on trading ESOP stock should have been suspended.

491. The ESOP Lockdown was not lifted until November 14, 2001, by which time the stock had dropped from $33.84 at the close of trading on October 16, 2001 to a low of $10.00 on

November 14, 2001. Hence, between the start and end of the ESOP Lockdown, Enron stock lost nearly $24.00, or more than two-thirds of its value.

492. The Lockdown of the Savings Plan officially began on or about October 26, 2001, and did not end until on or about November 14, 2001. Between the start and end of the Lockdown, Enron stock lost more than one-third of its value.

493. As a direct result of the Lockdowns, the ESOP and the Savings Plan, and indirectly Plaintiffs and the other Plan participants, suffered hundreds of millions of dollars in losses.

494. As detailed in part in Section IX(G), supra, the Defendants, who knew some or all of the true facts concerning Enron's precarious financial condition, knew or should have known that it was imprudent to proceed with the Lockdowns. While the Lockdowns were planned months earlier under very different conditions, by the time they were imposed, and the Defendants made or acquiesced in the decision not to postpone them, there had been serious and surprising revelations concerning Enron and its finances, and indications that further damaging disclosures were likely, all of which would have led loyal and prudent fiduciaries to postpone the planned Lockdowns. The Defendants knew that there was no need to proceed with the Lockdowns as scheduled. Indeed, they had already been postponed or rescheduled previously. Under these circumstances, the Defendants had a duty to postpone the Lockdowns, otherwise cause the Lockdowns to be postponed and/or refuse to participate in the Lockdowns which would have effectively caused their postponement. Defendants' breach of those duties caused the Plans, and indirectly, Plaintiffs and the Plans' other participants and beneficiaries, to lose hundreds of millions of dollars during the Lockdowns.

495. Whether the Lockdowns should have been postponed or not, the Defendants had a duty to provide timely and informative notice of the Lockdowns to participants and beneficiaries so they could safeguard their rights and direct the Plans' fiduciaries to sell the Enron stock allocated to their individual accounts. The Defendants failed in their duty to provide participants

and beneficiaries with timely and informative notice of the Lockdowns, and their breach caused the Plans, and indirectly, Plaintiffs' and the Plans' other participants and beneficiaries, to lose hundreds of millions of dollars.

496. Each Defendant knowingly participated in these fiduciary breaches of its co-fiduciaries, enabled its co-fiduciaries to commit such fiduciary breaches by its own failure to comply with the provisions of 29 U.S.C. § 1104(a), and had knowledge of the breaches of its co-fiduciaries and failed to make reasonable efforts to remedy such breaches.

497. But for these breaches of fiduciary duty, the Plans' assets would not have been invested in Enron stock but rather would have been invested in the most profitable alternative investment available to the Plans.

498. As a direct and proximate result of proceeding with the Lockdowns in violation of ERISA as described above, the Savings Plan and the ESOP lost hundreds of millions of dollars.

499. Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), and ERISA § 409(a), 29 U.S.C. § 1109(a), Defendants in this Count should, among other things, restore the losses to the ESOP, the Savings Plan and their participants and beneficiaries caused by the Defendants' breaches of their fiduciary duties.

COUNT III - FAILURE TO DIVERSIFY SAVINGS PLAN AND ESOP ASSETS IN ACCORDANCE WITH THE TERMS OF THE PLANS AND ERISA

Breach of Fiduciary Duty in Violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D))

(Claim on Behalf of Savings Plan and ESOP Against Enron, the Enron ERISA Defendants, Lay, Skilling and Northern Trust)

500. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if set forth fully herein.

501. At all relevant times, each of the Enron ERISA Defendants and Northern Trust was, and acted as, a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), with respect to the Savings Plan and ESOP. Defendants Lay and Skilling, by

virtue of their encouragement and promotion of Enron stock to the Savings Plan and ESOP Plans' fiduciaries, and participants and beneficiaries, are liable as cofiduciaries; they enabled the other fiduciaries failure to diversify the Plans' assets as a result of their own breaches, and they knew of the other Defendants' failure to diversify the Plans' assets and took no action to remedy such breach. At all relevant times, each of the Defendants in this Count was, and acted as, a co-fiduciary of each of the other Defendants within the meaning of ERISA § 405, 29 U.S.C. § 1105.

502. One of the strict duties imposed upon fiduciaries such as the Defendants is the duty to act "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and Title IV." ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). Northern Trust was expressly charged with acting in accordance with "proper directions of the [Plans' Administrative] Committee that [we]re made in accordance with the terms of the Plan and the act," i.e., ERISA.

503. By the express terms of both the Savings and ESOP Plan Documents – "[e]ach fiduciary under the Plan, including, but not limited to, the Committee and the Trustee . . . shall discharge his duties and responsibilities with respect to the Plan" by, among other things, "diversifying the investments of the Plan so as to minimize the risk of large losses, unless under the circumstance it is clearly not prudent to do so." *See* Enron Corp. Savings Plan § XV.3(c); Enron Corp. Employee Stock Ownership Plan § XVII.3(c). Neither of the Plans nor any other "document [or] instrument governing the [P]lan," ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), qualified this duty to diversify the Plans' assets, for example, by exempting employer securities from the duty of diversification, as is permitted to be done by statute. *See* ERISA § 404(a)(2), 29 U.S.C. § 1104(a)(2).

504. Thus, under the Plan documents and subject to their duty of loyalty and the prudent man standard, the Administrative Committee and Northern Trust shared a fiduciary responsibility to diversify the Plans' assets. Furthermore, Northern Trust had a duty to Plan

participants not to follow the Administrative Committee's directions where they were contrary to ERISA, i.e., where they would lead to an imprudent result harmful to the Plan participants and beneficiaries. Here, the Defendants did not question or investigate the prudence of investing Plan assets (including company matching assets) in Enron stock. The Administrative Committee did nothing to direct Northern Trust to diversify, nor did it supervise to insure that Northern Trust did diversify the Plans' assets. Northern Trust did not investigate the prudence of diversification or whether it should not follow any directions from the Administrative Committee as being contrary to ERISA.

505. As detailed in part in Section IX(C), supra, the Defendants did nothing to comply with this key provision of the Plans or discharge their duties of prudence and loyalty, with the result that throughout the relevant time period, the Plans were not diversified and were dangerously over-weighted in Enron stock. Northern Trust, moreover, has admitted that it did not ever even consider diversifying the Plan assets.

506. As a direct and proximate result of the Defendants' failure to follow the terms of the Plans and ERISA generally in this regard, the Plans, and indirectly the Plaintiffs and the Plans' other participants and beneficiaries, suffered losses in the hundreds of millions of dollars.

507. Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), and ERISA § 409(a), 29 U.S.C. § 1109(a), Defendants in this Count should, among other things, restore such losses to the Plans, and indirectly, the Plaintiffs and the Plans' other participants and beneficiaries caused by the Defendants' breaches of their fiduciary duties.

COUNT IV - BREACH WITH RESPECT TO OFFSETS OF ACCRUED PENSION BENEFITS WITH ARTIFICIALLY INFLATED ENRON STOCK

(Breach of Fiduciary Duty in Violation of ERISA § 404(a)(1)(a)-(d), 29 U.S.C. § 1104(a)(1)(a)-(d))

(Claim on Behalf of Certain Retirement Plan Participants and Beneficiaries Against Enron, the Enron ERISA Defendants and the Enron Corp. Cash Balance Plan as Successor to the Enron Corp. Retirement Plan)

508. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if set forth fully herein.

509. The Enron Corp. Retirement Plan, and its successor, the Enron Corp. Cash Balance Plan, was at all relevant times a "defined benefit plan" within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35). Until January 1, 1996, the Retirement Plan's benefit formula was a final average pay formula under which participants with five years or more of service were entitled to benefits based upon the sum of different percentages of final average pay multiplied by levels of years of accrued service, based in part on final average pay in excess of 125% of Social Security covered compensation. Benefits accrued under the Retirement Plan were offset by the annuity value of a portion of individual participants' accounts in the ESOP ("Offset Accounts") as of certain determination dates – generally the date of commencement of Retirement Plan benefit payments, or, if earlier, the date(s) of distribution(s) from Offset Accounts.

510. Effective January 1, 1996, the Retirement Plan was amended, restated and renamed "the Enron Corp. Cash Balance Plan," and the benefit formula was changed from a final average pay formula to a cash balance formula.

511. Additionally, the Retirement Plan was amended on or about January 1, 1995 to terminate the offset arrangement between the Plan and the ESOP over a five-year period, January 1, 1996 to January 1, 2000, and continue the Retirement/Cash Balance Plan and the ESOP as ongoing, independent plans. Under the amended, terminating offset arrangement, each January 1st over the five-year period from 1996 to 2000, the value of one-fifth of the shares of

Enron stock credited to each participant's Offset Account was to be computed based on the then-current market price for the stock, permanently fixing that component of the offset. At the time that the value of each component was fixed, and periodically thereafter, ESOP participants were supposed to have the right to withdraw the fixed portion of their Offset Accounts, to leave it in the ESOP, or to roll it over either to an individual retirement account or to the Enron Corp. Savings Plan.

512. Each of the Defendants in this Count, excepting the Retirement/Cash Balance Plan, was at all relevant times a fiduciary with respect to the Retirement/Cash Balance Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

513. On or about each January 1st over the three-year period 1998 to 2000, these Defendants knew or should have known that the market price of the Enron stock in participants' Offset Accounts was not its true value. Under those circumstances, the Defendants had a fiduciary duty to compute each component of the offset according to the true value as opposed to its artificially inflated market price; a duty to refuse to permanently fix a component of the offset on a basis that did not reflect the stock's true value on the relevant dates; and/or a duty to disclose to participants and beneficiaries that the price at which components of the offset would be fixed were artificially inflated or otherwise not reflective of the true value of the stock on the relevant dates.

514. As a direct and proximate result of the Defendants' breach of their fiduciary duties in this regard, Retirement Plan participants and beneficiaries who accrued benefits under the Retirement Plan between January 1, 1987 and December 31, 1994, which benefits have been, are, or will be offset by the market price of one-fifth of the shares of the Enron stock in their ESOP Offset Account as of each January 1st over the five-year period 1996 to 2000, have suffered or otherwise will suffer losses of approximately $100 million or more.

515. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), and ERISA § 409(a), 29 U.S.C. § 1109(a), Defendants in this Count should be, among other things, enjoined from

computing the value of each component of the offset according to the market value of one-fifth of the Enron shares in participants' ESOP Offset Accounts on each January 1st of the three-year period, 1998-2000, and ordered to redress all prior breaches by computing the value of each component of the offset strictly in accordance with the true value of one-fifth of the Enron shares in participants ESOP Offset Accounts on each January 1st of the three-year period 1998-2000. Defendants should also be subject to other appropriate equitable relief, including but not limited to an order requiring them to distribute to such participants and beneficiaries who have already received benefits improperly offset by artificially valued Enron stock such amounts as will make them whole under an appropriate offset calculation.

COUNT V - FAILURE TO MONITOR THE PLANS' INVESTING FIDUCIARIES AND/OR FAILURE TO DISCLOSE TO THE INVESTING FIDUCIARIES MATERIAL FACTS CONCERNING ENRON'S FINANCIAL CONDITION

Breaches of Fiduciary and Co-Fiduciary Duties in Violation of ERISA, 29 U.S.C. § 1104 (a)(1)(a)-(d), 29 U.S.C. § 1105)

(Claim on Behalf of the Savings Plan, the ESOP and the Cash Balance Plan Against Enron and the Enron Director Defendants)

516. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if set forth fully herein.

517. At all relevant times, Enron, and the Enron Director Defendants acted as fiduciaries, within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), with respect to the Savings Plan and the ESOP to the extent that they were charged with, responsible for, and/or otherwise assumed, the duty of selecting, monitoring, and, when and if necessary, removing other Plan fiduciaries, including but not limited to the Members of the Plans' Administrative Committee(s). Included in these Defendants' duty to monitor the Plans' other fiduciaries was the duty to monitor the manner in which those fiduciaries were investing the Plans' assets.

518. As fiduciaries, and knowing that the investing fiduciaries (including but not limited to the Members of the Administrative Committee(s)) were investing and contemplating continuing to invest Plan assets in Enron stock, these Defendants also had an affirmative duty to

disclose to the investing fiduciaries such material facts about the financial condition of the Company that these Defendants knew or should have known the investing fiduciaries needed in order to make sufficiently-informed decisions, based on accurate information, concerning those investments.

519. At all relevant times, each Defendant in this Count also was, and acted as, a co-fiduciary of the other Defendants and the other Plan fiduciaries within the meaning of ERISA § 405, 29 U.S.C. § 1105.

520. As detailed in Section IX above, all of the Defendants in this Count breached the fiduciary duties and co-fiduciary duties they owed Plaintiffs, the Savings Plan, the ESOP, the Cash Balance Plan and their participants and beneficiaries by: (i) appointing fiduciaries to manage Plan assets who these Defendants knew or should have known were not qualified to loyally and prudently manage the Plans' assets; (ii) failing to adequately monitor the investing fiduciaries' investment of Plan assets; (iii) failing to adequately monitor the Plans' other fiduciaries' implementation of the terms of the Plans, including but not limited to the investment of Plan assets; (iv) failing to disclose to the investing fiduciaries material facts concerning the financial condition of Enron that they knew or should have known were material to loyal and prudent investment decisions concerning the use of Enron stock in the Plans and/or with respect to the implementation of the terms of the Plans; (v) failing to remove fiduciaries who they knew or should have known were not qualified to loyally and prudently manage the Plans' assets; (vi) knowingly participating in the investing fiduciaries' breaches by accepting the benefits of those breaches, both personally and on behalf of the Company, knowing of those breaches; (vii) knowingly undertaking to conceal acts and omissions of those fiduciaries, knowing they constituted fiduciary breaches; (viii) failing to remedy those fiduciaries' breaches, having knowledge of them.

521. But for these breaches of fiduciary duty, the Plans' assets would not have been invested in Enron stock but rather would have been invested in the most profitable alternative

investment available to the Plans. Moreover, the ESOP offset would not have been calculated based on the artificially inflated stock price of Enron.

522. As a direct and proximate result of the breaches of fiduciary duty alleged herein, the Plans, and indirectly the Plaintiffs and the Plans' other participants and beneficiaries, lost hundreds of millions of dollars.

523. Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), and ERISA § 409(a), 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plans, and indirectly, the Plaintiffs and the Plans' other participants and beneficiaries caused by the Defendants' breaches of their fiduciary duties.

COUNT VI - ILLEGAL CUTBACK OF ACCRUED PENSION BENEFITS

(Violation of ERISA § 204(g)(1), 29 U.S.C. § 1054(g)(1))

(Claim on Behalf of Certain Retirement Plan Participants and Beneficiaries Against Enron)

524. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if set forth fully herein.

525. The Enron Corp. Retirement Plan ("Retirement Plan"), and its successor, the Enron Corp. Cash Balance Plan ("Cash Balance Plan"), were at all relevant times "defined benefit plans" within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35).

526. The Retirement Plan was effective as of July 1, 1986. The Retirement Plan was amended and restated and renamed the Cash Balance Plan effective January 1, 1996.

527. Under the Retirement Plan, eligible employees accrued defined benefits based on a final average pay formula. In general, all employees of Enron and its affiliated companies and subsidiaries who were over 21 years of age and were not collective bargaining unit employees could participate in the Retirement Plan beginning on the first day of the first month of their first anniversary of employment, as long as they had worked at least 1,000 hours during that year.

528. From 1987-1996, eligible employees also received shares of Enron stock in their ESOP retirement sub-accounts.

529. Effective January 1, 1987, Enron established a "floor-offset" arrangement between Retirement Plan benefits and ESOP retirement subaccounts. Under this arrangement, the accrued Retirement Plan benefit served as a "floor" in that it represented the minimum annuity benefit that an employee would receive at the time of retirement. That amount was to be offset, generally as of the date that benefit payments from the Retirement Plan commenced, by the annual annuity value of the employee's ESOP Retirement Subaccount holdings.[11] If the annual annuity value of the retiree's ESOP retirement sub-account was greater than the value of the accrued Retirement Plan benefit, the retiree would be entitled to the entire amount of her ESOP Retirement Subaccount, but would not receive any Retirement Plan benefit. On the other hand, if Enron stock were to lose all of its value (and thus have an annual annuity value of zero), the employee would receive the entire amount of her accrued Retirement Plan benefit.

530. Effective January 1, 1995, Enron amended the Retirement Plan to provide that the amount of the offset for benefits accrued during 1987-94 would be set during the period from 1996-2000 pursuant to the amended, terminating offset arrangement as set forth below.

531. Under the amended, terminating offset arrangement, each January 1st over the five-year period from 1996 to 2000, the annual annuity value of one-fifth of the shares of Enron stock credited to each participant's ESOP Retirement Subaccount was to be computed based on the then-current market price for the stock, permanently fixing that component of the offset. On each January 1st during that period, employees were given access to an additional 20% of their

[11] The "annual annuity value" is the dollar amount available each year if the account balance at the time of retirement were used to purchase an annuity (using standard assumptions for life expectancy and risk). This is defined under § 20.2(a) of the Retirement Plan as the single life annuity that could be purchased under the Metropolitan Life Insurance Company Group Annuity Contract No. 9373-0. At no time was any employee required to purchase an annuity with their ESOP retirement subaccount holdings; to the contrary, once they received access to the subaccount shares, employees were free to hold them in the ESOP, roll them over into their 401(k) plan or into an IRA account, or simply sell them.

original total shares in their ESOP Retirement Subaccounts, which they were then free to leave in the plan, transfer to the Savings Plan or an IRA, or simply sell.[12]

532. Many Retirement Plan participants (i) had their offsets calculated at a time when the price of Enron stock was high, yet (ii) by the time they retired, the price of Enron stock was reduced to almost nothing. Accordingly, the amendments that eliminated the "floor" amounted to an illegal cutback of their accrued benefits in violation of ERISA § 204(g) since the changes to the benefit computation reduced their accrued retirement benefits. But for the illegal amendments, Enron would have been obligated to fund the Retirement Plan to pay for Plan participants' claims, and, as of retirement, these Retirement Plan participants would be entitled to receive the monthly benefits they accrued under the Retirement Plan.

533. In 2002, the IRS conducted a review of the Cash Balance Plan and notified Enron that it intended to issue an adverse determination with respect to the floor-offset arrangement on the grounds that it was an illegal cutback under Internal Revenue Code § 411(d)(6). As of this filing, the IRS has not yet made any such final determination.

534. Retirement Plan participants could not have known that their accrued benefits were cut back until, at the earliest, the Fall of 2001 when the drastic drop in the price of Enron stock meant that their ESOP Retirement Subaccount was worth far less than it had been when their offset was calculated, and meant that – at retirement time – they would get neither their Retirement Plan payments (which had been offset to zero) or their ESOP Retirement Subaccount shares (which were worth nearly nothing.) As long as the price of Enron stock remained high, Plaintiffs had no reason to suspect that – come retirement time – they would be deprived of the accrued "floor" to which they were entitled up until the illegal amendment.

535. Moreover, at all relevant times, Enron misleadingly informed Retirement Plan participants in Summary Plan Descriptions and other documents that the Retirement Plan (and

[12] All employees who were over 50 years of age and had given more than 5 years of service to Enron received access to ***all*** of their ESOP Retirement Subaccount shares on January 1, 1996; hence, their offset was completely calculated as of January 1, 1996.

the Plan as illegally amended) complied with all relevant federal laws and regulations. In light of this, employees could only have believed that the cutbacks were legal under both ERISA and the Internal Revenue Code.

536. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek (i) a declaratory judgment that the amendment eliminating the floor was an illegal cutback; and (ii) a declaratory judgment that the Plan administrator must calculate Retirement Plan payments pursuant to the terms of the floor-offset arrangement as it existed prior to the illegal amendment.[13]

COUNT VII – NEGLIGENCE

(Claim Under Texas Common Law on Behalf of the Participants and Beneficiaries of the Savings Plan and the ESOP Against the Andersen Defendants)

537. Plaintiffs incorporate by reference all of the preceding paragraphs o this Amended Complaint as if fully set forth above.

538. Defendant Andersen owed a duty of due care to the Participants and Beneficiaries of the Savings Plan and the ESOP to exercise that degree of skill normally expected of accountants performing auditing services for public companies, particularly where Defendant knew that its audits would form the basis for public filings and would be relied upon by employees, including the participants and beneficiaries of the Savings Plan the ESOP.

539. In addition, Andersen owed a duty of care to the participants and beneficiaries of the Savings Plan to exercise that degree of skill normally expected of accountants performing auditing services for such entities because it also served as the Savings Plan's auditor during the Class Period. As of both December 31, 1997, and December 31, 1998, the net assets of the Savings Plan included very large investments in Enron stock. Given Andersen's dual role as auditor at Enron Corp. during the Class Period, as set forth in great detail above, Andersen knew

[13] In the exceedingly unlikely event that the Plan administrator refused to recalculate Retirement Plan benefits in accordance with such a declaratory judgment, Plaintiffs would then seek an injunction ordering the Plan administrator to do so.

or should have known that the numbers that it certified as the net assets invested in Enron Corp. stock available for Plan benefits as of December 31, 1998, and the related statement of changes in those net assets between December 31, 1997, and December 31, 1998, were materially false and misleading.

540. Furthermore, notwithstanding the fact that the Savings Plan explicitly mandated that the Plan's assets be diversified, Andersen overlooked this Plan requirement in certifying the Plan's books notwithstanding the Plan's heavily-overweighted holdings in Enron stock.

541. Despite Andersen's knowledge that the Saving's Plan's assets consisted largely of stock that was artificially inflated as a result of its own improper accounting, the 11-K filed as of June 28, 2000 for the Enron Savings Plan included an independent public accountant's statement submitted by Andersen, which repeated the following misrepresentations:

> We have audited the accompanying statement of net assets available for benefits of the Enron Corp. Savings Plan as of December 3, 1998.
>
> * * *
>
> In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of the Enron Corp. Savings Plan as of December 31, 1998, in conformity with generally accepted accounting principles.

542. Defendants, in performing audits for Enron and the Savings Plan, failed to exercise the degree of care, skill, and competence exercised by competent members of the accounting profession. As a result, Defendants' audit of Enron seriously misrepresented the financial condition of Enron and of the Savings Plan.

543. Defendants knew that Enron intended to – and did – supply their audit data to the ESOP, the Savings Plan, their participants and their fiduciaries.

544. Defendants intended that Enron employees, the Savings Plan, the ESOP and their participants and fiduciaries rely on the integrity of Enron's financial statements and it was foreseeable that they would do so. Indeed, Defendants Lay, Skilling and other Enron executives

referred to the strength of Enron's financial condition in encouraging employees to accept stock as compensation in the form of matching contributions in the Savings Plan, to further invest in Enron in the Savings Plan, and to leave their Enron stock in the ESOP and the Savings Plan.

545. Andersen and Duncan knew that Enron and its directors intended to refer employees, and Savings Plan and ESOP fiduciaries, to the certified financial statements for the purpose of inducing the employees, fiduciaries, the Savings Plan and the ESOP to rely on such statements.

546. It was foreseeable to Defendants that the Plan fiduciaries, participants and beneficiaries would rely upon the audit data and financial statements that Defendants prepared in business relationships with Enron, or upon the integrity of the auditing process.

547. Defendants' auditing was seriously flawed. Enron subsequently declared bankruptcy as a result of Enron's significant debt, and accounting irregularities that were not disclosed by Defendants' negligent audits.

548. The ESOP, the Savings Plan and their fiduciaries relied upon Defendants' audits and/or the integrity of the auditing process with Enron subsequent to the audits but prior to Enron's financial failure. The beneficiaries and participants of the Savings Plan and the ESOP have suffered actual damages as a result of being funded with stock in a financially unstable, and now bankrupt entity.

549. Defendants are liable for all losses to the participants and beneficiaries of the ESOP and the Savings Plan as a result of the afore-described violations of their professional duties and negligence.

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

A. That this Court certify this action as a class action under Rule 23(b)(1), 23(b)(2) and 23(b)(3) with respect to the Savings Plan Class, the ESOP Class, and the Cash Balance Plan Class;

B. That this Court order that each of the Enron ERISA Defendants, the Enron Director Defendants, including, but not limited to, Lay and Skilling, and Northern Trust, are liable to the Savings Plan, the ESOP and the Cash Balance Plan for violating their duties and responsibilities as ERISA fiduciaries and co-fiduciaries with respect to the Plans, and that Andersen is liable in equity for its knowing participation in the aforementioned violations of the ERISA fiduciaries;

C. That this Court enjoin the Enron ERISA Defendants and the Cash Balance Plan, as the successor to the Enron Corp. Retirement Plan, from computing the value of each component of the ESOP offset according to the market value of the Enron shares on each January 1st of the three-year period 1998-2000 and order those Defendants to redress all damages flowing from prior Cash Balance payments made pursuant to the offset arrangement;

D. That this Court declare the January 1, 1995 Amendment to the Cash Balance Plan violative of ERISA § 204(g)(1) to the extent accrued Retirement Plan benefits were reduced by offsets prior to a participants' retirement;

E. That this Court enjoin the Enron ERISA Defendants and the Enron Director Defendants from further violating the duties, responsibilities, and obligations imposed upon them as fiduciaries by ERISA and the Plan documents with respect to the Savings Plan, the ESOP and the Cash Balance Plan;

F. That this Court order the Andersen Defendants to pay compensatory damages as a result of their violations of the common law of Texas;

G. That this Court award to Plaintiffs reasonable costs and attorneys' fees; and

H. That this Court grant such other relief as may be just and proper.

Plaintiffs demand a trial by jury on Count VII.

Respectfully submitted this 31st day of December, 2003.

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2004, a true and correct copy of the foregoing document was served upon all known counsel of record via the http://www.esl3624.com web site, or as otherwise indicated pursuant to the Court's April 10, 2002, Order Regarding Service of Papers and Notice of Hearings.

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