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; LINDA BRYAN; JOHN L. MOORE; BETTY J. CLARK; SHELLY FARIAS; PATRICK CAMPBELL; FANETTE PERRY; CHARLES PRESTWOOD; ROY RINARD; STEVE LACEY; CATHERINE STEVENS; ROGER W. BOYCE; WAYNE M. STEVENS; NORMAN L. and PAULA H. 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; MIKIE RATH; JAMES S. PRENTICE; MARY K. JOYCE; SHEILA KNUDSEN; ROD HAYSLETT; PAULA RIEKER; WILLIAM D. GATHMANN; TOD A. LINDHOLM; PHILIP J. BAZELIDES; JAMES G. BARNHART; 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; ANDREW S. FASTOW; MICHAEL KOPPER; RICHARD A. CAUSEY; JAMES V. DERRICK, JR.; THE ESTATE OF J. CLIFFORD BAXTER; MARK A. FREVERT; STANLEY C. HORTON;	FIRST CONSOLIDATED AND AMENDED COMPLAINT CIVIL ACTION NO. H 01-3913 AND CONSOLIDATED CASES

KENNETH D. RICE; RICHARD B. BUY; LOU L. PAI; 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; JOSEPH M. HIRKO; KEN L. HARRISON; MARK E. KOENIG; STEVEN J. KEAN; REBECCA P. MARK-JUSBASCHE; MICHAEL S. MCCONNELL; JEFFREY MCMAHON; J. MARK METTS; JOSEPH W. SUTTON; ARTHUR ANDERSEN & CO. WORLDWIDE SOCIETE COOPERATIVE; ARTHUR ANDERSEN, LLP; UK ARTHUR ANDERSEN, 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; NANCY A. TEMPLE; DON DREYFUS; JAMES FRIEDLIEB; JOSEPH F. BERARDINO; DOES 2 THROUGH 1800 UNKNOWN PARTNERS IN ANDERSEN LLP; MERRILL LYNCH & CO., INC.; J.P. MORGAN CHASE & CO.; CREDIT SUISSE FIRST BOSTON CORPORATION; CITIGROUP, INC.; SALOMON SMITH BARNEY INC.; VINSON & ELKINS, LLP; RONALD T. ASTIN; JOSEPH DILG; MICHAEL FINCH; and MAX HENDRICK III,

Defendants.

TABLE OF CONTENTS

PAGE

I. NATURE OF THE ACTION 1

II. JURISDICTION AND VENUE 8

III. PARTIES 8

A. Parties 8

1. Plaintiffs 8

2. Defendants 15

a. Plan-Related Defendants 15

b. Northern Trust – ERISA Fiduciary Defendant 18

c. Enron Insider Defendants 18

d. Compensation Committee Defendants 25

e. Accountant Defendants and Their Role in the Conspiracy 25

f. Investment Banking Defendants 40

IV. THE EMPLOYEE VICTIMS OF DEFENDANTS' ILLEGAL CONDUCT 45

A. The Enron Corp. Savings Plan 46

1. Participant Contributions 46

2. Company Contributions 46

3. Vesting 47

4. Investment Options 47

5. Assets 47

B. The Enron Corp. ESOP 48

C. Enron Corp. Cash Balance Plan 50

D. Phantom Stock 52

V. FACTUAL ALLEGATIONS 53

A. Background Information 53

B. Enron's False and Misleading Financial Results are Reported to Unsuspecting Employees and the Market 56

C. False and Misleading Statements Issued Directly to Savings Plan Beneficiaries and ESOP Participants 67

D. Bad News Begins to Emerge Regarding Enron's True Financial Condition 86

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 90

1. JEDI and Chewco transactions 92

2. LJM1 Transactions 94

a. The Rhythm NetConnections Transactions 94

3. LJM2 Transactions 96

a. Raptor Transactions 97

b. LJM2 Limited Partnership Interests Were Sold Through a Private Placement Memorandum 103

c. The October 26, 2000 LJM2 Annual Partnership Meeting 105

d. The April 2001 letter from defendant Fastow to limited partners 106

e. Enron Ultimately Reacquires the Raptor Assets 107

F. Enron, Andersen and V&E Were Involved in Creating and Implementing Numerous Other Off-Balance Sheet Arrangements 108

1. The New Power Scheme 108

2. Project "Braveheart" 113

3. The Osprey Trust 116

4. Azurix 118

5. Other Off-Balance Sheet Entities 120

G. Enron's Financial Statements From December 31, 1997 Through June 30, 2001 Were Materially False and Misleading and Violated GAAP and SEC Regulations 120

1. Failure to Consolidate the Results of Related Entities into Enron's Financial Statements 122

2. Failure to Disclose Related Party Transactions 125

3. Enron's Improper Accounting For Certain Common Stock Issued....128

4. Enron's Failure to Make Proposed Audit Adjustments 128

5. Restatement of Interim Results Demonstrates Contemporaneous Knowledge or Reckless Disregard of Their Previous Falsity....129

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 131

VII. ANDERSEN PLAYED A ROLE IN DECIMATING THE ASSETS OF THE SAVINGS PLAN AND THE ESOP....132

A. Particular Examples of Andersen's Misconduct....133

1. The Chewco Transaction 133

2. The LJM and Raptor Transactions....134

B. Overall Audit Failures....136

C. Andersen's Role As Auditor Of The Savings Plan....138

D. Andersen's Destruction of Key Audit Documents 140

E. Andersen Ignores the Accounting Decisions of Its Internal Experts to Play Along With Enron's Accounting Mistreatments 150

VIII. ANDERSEN'S REPEATED MISCONDUCT....152

A. Waste Management....152

B. Baptist Foundation of Arizona, Inc....162

C. Sunbeam....164

D. Other Instances of Audit Misconduct 166

IX. THE ROLE OF THE ATTORNEY DEFENDANTS IN THE SCHEME 167

A. V&E's Role in Structuring, Guiding and Planning SPEs and Misleading Disclosures 167

B. The V&E-Derrick Cover Up Effort 179

X. THE ROLE OF THE INVESTMENT BANKS IN THE SCHEME 182

A. Merrill Lynch 184

B. J.P. Morgan Chase & Co. 188

1. Operation Mahonia 191

C. Credit Suisse First Boston 195

D. Citigroup 199

1. Salomon Smith Barney 201

XI. INSIDER TRADING AND OTHER PROFITEERING BY THE ENRON INSIDER DEFENDANTS 204

A. Lavish Bonuses 224

B. Excessive Compensation Packages 225

XII. THE ERISA FIDUCIARIES REPEATEDLY BREACHED THEIR DUTIES TO THE PLANS 227

A. The Savings Plan Never Qualified As A Section 404(c) Plan 227

B. Enron and The Compensation Committee of Enron's Board Breached Their Duty To Select and Monitor the Plan's Fiduciaries 228

C. Olson, Prentice and the Administrative Committee Breached Their Duty To Monitor Enron Stock And Ensure That It Was A Prudent Investment For The Plans 229

D. Olson, Prentice and the Administrative Committee Failed To Diversify The Plan's Assets 233

E. Olson Failed to Act on Watkins' Assertions of Massive Accounting Irregularities 234

F. Olson Remains Silent While Lay Exhorts Employees to Purchase More Enron Stock and Fails to Correct His Material Misrepresentations to Them About Enron's Off-Balance Sheet Deals 235

G. Northern Trust, Olson, and the Administrative Committee Fail to Postpone the "Lockdowns" of the ESOP and the Savings Plan 236

XIII. CLASS ALLEGATIONS 240

XIV. CLAIMS FOR RELIEF 242

COUNT I INDUCING AND MANDATING THE ACQUISITION AND RETENTION OF ENRON STOCK IN THE SAVINGS PLAN AND THE ESOP 242

COUNT II LOCKDOWNS 245

COUNT III FAILURE TO DIVERSIFY SAVINGS PLAN ASSETS IN ACCORDANCE WITH THE TERMS OF THE PLAN 248

COUNT IV BREACH WITH RESPECT TO OFFSETS OF ACCRUED PENSION BENEFITS WITH ARTIFICIALLY INFLATED ENRON STOCK 250

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 252

COUNT VI (VIOLATIONS OF SECTION 1962(C) AND (D) OF RICO) 254

A. Description of Civil RICO Claims and Liable Persons 254

B. Conducting the Affairs of the RICO Enterprises 255

C. Defendants' Pattern of Racketeering Activity 264

1. Violations of Section 664 264

2. Violations of Sections 1341 and 1343 265

3. Obstruction of Justice 271

4. Interstate Transportation Offenses 271

D. Plaintiffs' Standing to Sue 272

COUNT VII (FOR VIOLATIONS OF SECTION 1962(A) AND (D) OF RICO) 273

E. Acquisition, Establishment, or Operation of the RICO Enterprise(s) 273

F. Investment Or Use Injury 277

G. RICO Conspiracy 278

COUNT VIII NEGLIGENCE 279

COUNT IX CIVIL CONSPIRACY 281

XV. PRAYER FOR RELIEF 283

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, except the allegations pertaining to the named plaintiffs which are based upon personal knowledge. As of the date of this complaint, no discovery has been turned over to plaintiffs by defendants. As a result, it is likely that once the discovery process is underway, the roles of other unknown conspirators and 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.

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, the Cash Balance Plan or who received "phantom stock" as compensation.[1] Their retirement assets in these plans, and the phantom stock "they received," are now worthless as a direct result of the unlawful conduct and conspiracy described below.

2. Enron will be recorded in history as one of the greatest financial debacles in the United States and worldwide. The facts, even without the benefit of any discovery, now demonstrate that Enron was a company used by unscrupulous merchants of greed, arrogance and abuse 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 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

1 These plans are defined below in Section IV.

and Chairman Kenneth Lay on August 15, 2001: "I am incredibly nervous that we will implode in a wave of accounting scandals." She was prophetic.

3. The wrongful conduct which underlies this case is not limited to Houston, but also took place on Wall Street, where Enron's investment bankers helped create, structure and sell the securities which propped up the pyramid. Indeed, the Wall Street firms named as defendants below provided the financial cover which let Enron grow into the Nation's fifth largest company, and in the process these firms earned hundreds of millions in underwriting fees, and much more for lending, derivatives trading and financial advice. The Wall Street defendants, as well as the attorney defendants, had extensive dealings with Enron over the years, and participated in multiple offerings and other financial transactions on behalf of Enron and its subsidiaries and affiliates. Pursuant to their due diligence obligations, the investment bankers and lawyers were required to and did review the financial statements and the legal status of Enron, and had access to material information concerning Enron's true financial status and the legality of its conduct. Enron's investment bankers and lawyers became active and critical participants in a far-ranging, multi-layered scheme designed to conceal Enron's financial condition while they and the Enron insiders profited. As a direct result of the willing participation of the investment bankers and lawyers in the scheme, Enron and its top executives were able to continue the illusion of Enron's profitability and financial strength, and thereby induced Enron's 24,000 employees to invest in and retain Enron stock in their retirement plans. Without the assistance and participation of the high-powered accountants, investment bankers and lawyers, the scheme could not have succeeded.

4. This First Consolidated and Amended Complaint ("Complaint") alleges that the Enron Corporation Savings Plan Administrative Committee, the Northern Trust Company and other persons responsible for safeguarding the assets of the employees' Savings Plan, ESOP and Cash Balance Plan stock 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,* imprudently permitting and/or causing the investment of Savings Plan assets in grossly overvalued Enron stock, failing to provide participants with complete and accurate information regarding the risks associated with investment in Enron stock, 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 Savings Plan and ESOP participants 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 the Enron Corp. Savings Plan governing document. 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.

5. This Complaint also alleges a claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968, against Enron's auditor, officers of Enron, various investment banks, and the attorney defendants, all of whom conducted and/or participated in the conduct of the affairs of the various RICO enterprises alleged herein, and were active participants in the schemes to defraud and conspiracies described below. This Complaint alleges that these defendants committed and/or conspired to commit a "pattern of racketeering activity," as that term is defined in 18 U.S.C. § 1961(1) and (5), which consisted of repeated instances of converting Savings Plan, ESOP and Cash Balance funds in violation of 18 U.S.C. § 664; multiple violations of the federal mail and wire fraud statutes, 18 U.S.C. § 1341 (mail fraud) and 18 U.S.C. § 1343 (wire fraud); interstate transportation offenses, in violation of 18 U.S.C. § 2314; and, in the case of Andersen and Enron, obstruction of justice in violation of 18 U.S.C. § 1512. By (i) certifying the accuracy of financial statements that it knew to be false and

misleading, (ii) reiterating those false statements in its capacity as auditor of the Savings Plan during part of the Class Period, and (iii) helping structure and disguise the various transactions that were at the core of the scheme, Andersen enabled the top executives and Enron to pay the rank-and-file employees compensation in the form of stock, whose value was not as represented. This, in turn, allowed the Enron executives who were a part of this scheme to use the cash they saved to enrich themselves in the form of lavish bonuses, compensation and stock options. The use of stock in retirement plans was also used as a mechanism to retain employees who were led to believe that they were working toward a comfortable retirement. Andersen's actions also caused employees to invest in or hold their Enron stock in their ESOP and Savings Plan accounts rather than to diversify or put their retirement funds in safer investments. In an apparent effort to hide its role in the scheme to defraud and the conspiracy, Andersen then destroyed documents concerning its role in the Enron debacle even after it was on notice that federal subpoenas had and/or would be issued for such documents. By participating in the financing of billions of dollars in Enron debt offerings and in arranging carefully disguised financial transactions that hid Enron's true financial condition, the investment banking defendants joined the conspiracy and participated in the affairs of the RICO enterprises described below. By providing the legal advice that approved of and helped create partnerships designed to hide Enron's liabilities, and by serving as counsel on offerings of securities where Enron's financial and legal status was purposefully concealed or obscured, the lawyers joined the conspiracy and participated in the affairs of the RICO enterprises described below.

6. 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.

7. 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 with the full complicity of Enron's auditors, its lawyers and the investment banking firms named as defendants.

8. Because investors and employees were unaware of the improper accounting and financial reporting underway at Enron, the market price of Enron stock continued to rise – trading as high as $90.00 per share in December 2000. Participants in the Savings Plan, the ESOP and the Cash Balance plans, having no knowledge of the accounting improprieties, and further encouraged by the statements of officers of Enron regarding the financial strength of the Company, as well as statements made by certain defendants specifically to employees, 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 in lieu of diversifying their holdings.

9. Throughout the Class Period, defendants Lay, Skilling, Olson and other top Enron executives actively 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 freeing cash 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 a dramatic drop when the company announced bad news. With shares tied up in Savings Plans, 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 in part due to the incessant hyping of Enron stock by Lay, Skilling, Olson and other top executives.

10. As a result of the promotional efforts undertaken by Lay and other top executives, and as a result of the false financial statements blessed by Andersen and touted to ESOP and Savings Plan members, 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.

11. 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 would lead to further investigation into these "structured finance arrangements."

12. 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 and options. Because of this maneuvering by certain defendants, the participants were powerless to sell their shares of Enron.

13. 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 authorized that it not be postponed. 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 duty as the trustee to the plans.

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

15. 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.

16. 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

17. 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.

18. On November 14, 2001 — after Savings Plan, ESOP and "phantom stock" 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.

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

20. In the end, the employees lost a large portion of their retirement accounts and much of their life savings. Enron executives involved in the scheme made hundreds of millions, as did the professionals who participated in the financial chicanery that was the underpinning for the schemes described below.

II. JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over Counts I-V of this action under ERISA pursuant to 29 U.S.C. § 1132(e)(1). This Court has subject matter jurisdiction over Counts VI-VII as a federal question arising under the Racketeer Influenced and Corrupt Organizations Act (RICO), pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 1964(a) and (c). The Court has supplemental jurisdiction over Counts VII-IX.

22. 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 plaintiff 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

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 Employee Stock Ownership 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 $1,000,000.

28. 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, his entire retirement savings.

29. 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.

30. 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.

31. 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 and merged into a company called 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 2085 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.

32. 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). McCown received compensation in Enron stock pursuant to the Enron Phantom Stock Plan. In 2001, the value of his stock dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss to his retirement savings of approximately $15,000.

33. 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 and phantom stock pursuant to the Enron Phantom Stock Plan 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.

34. Plaintiff Linda Bryan is a resident of Texas. She worked for Florida Gas, ECT, ENA and Enron Networks, all subsidiaries of Enron, from 1987 until her employment terminated at the end of 2001. Ms. Bryan was a "participant" in the Enron Corp. Savings Plan and the Enron Employee Stock Ownership Plan, within the meaning of ERISA § 3(7). In 2001, she also received bonus compensation in the form of Enron stock. In 2001 alone, the value of her stock dropped from approximately $80.00 per share to approximately $1.00 per share, representing a significant loss.

35. 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 stock dropped from approximately $80.00 per share to approximately $1.00 per share, representing a loss of approximately $790,000 to his retirement savings.

36. 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 $4,314.00.

37. 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.

38. Plaintiff Paula H. Young is a resident of Texas. Ms. Young was a P/L scheduler for EOTT Energy from 1987 to 2000. She participated in the Enron Corp. Savings Plan from 1995 to 2001. She participated in the ESOP from 1987 to 1994. She participated in the Enron Cash Balance Plan from its inception until 2002. Until November 2001, Ms. Young held 1,600 shares of Enron stock in the Enron Corp. Stock Fund and 1,802 shares of Enron stock in the Employee Stock Ownership 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 $255,000.

39. Plaintiff Shelley Farias is a resident of Texas. She worked for Enron Engineering & Construction and Enron Energy Services from January 1999 until her employment terminated in December 2001. She has been a "participant" in the Enron Corp. Savings Plan since 1999 and remains a participant today. Ms. Farias holds 27 shares of Enron stock in the Enron Corp. Stock Fund, Ms. Farias also received compensation in the form of Enron stock pursuant to the Enron bonus plan. In 2001 alone, the value of her holdings dropped from approximately $80.00 per share to approximately $1.00 per share, representing a significant loss to her retirement savings.

40. 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 pursuant to the Enron bonus plan. 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.

41. 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, which 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.

42. 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 sine 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

43. 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, the ESOP and Cash Balance Plan sponsor and a fiduciary under ERISA (29 U.S.C. §§ 1002(16)(B) and

1002(21)(A)). Enron is also a party in interest pursuant to ERISA within the meaning of 29 U.S.C. § 1002(14). 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. Plan-Related Defendants

44. Defendant Enron Corp. Savings Plan Administrative Committee (the "Administrative Committee") was and is 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 is the same as Enron's at 1400 Smith Street, Houston, Texas 77002.

45. Defendant Enron Employee Stock Ownership Plan Administrative Committee ("ESOP Administrative Committee") was and is 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 is 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).

46. Defendant Cash Balance Plan Administrative Committee ("Cash Balance Plan Administrative Committee") was and is 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 is the same as Enron's at 1400 Smith Street, Houston, Texas 77002. Enron's Cash Balance Plan Administrative Committee is an ESOP within the meaning of 29 U.S.C. § 1107(d)(6).

47. 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 stockf or insider trading proceeds of $6,505,870.

48. Defendant Mikie Rath ("Rath") was a benefits manager at Enron and a fiduciary of the Savings Plan and the ESOP.

49. 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 (29 U.S.C. § 1002(21)(A)).

50. 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 (29 U.S.C. § 1002(21)(A)).

51. 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 (29 U.S.C. § 1002(21)(A)).

52. 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 (29 U.S.C. § 1002(21)(A)).

53. 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 (29 U.S.C. § 1002(21)(A)).

54. Defendant William D. Gathmann ("Gathmann") was a trustee of the ESOP, and thus a fiduciary of the ESOP within the meaning of ERISA (29 U.S.C. § 1002(21)(A)).

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

56. Defendant Philip J. 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 (29 U.S.C. § 1002(21)(A)).

57. Defendant James G. Barnhart was a member of the Administrative Committee. As such, he was also a fiduciary of the Savings Plan within the meaning of ERISA (29 U.S.C. § 1002(21)(A)).

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

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

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

61. Defendants John Does Nos. 1-100 ("Does") were at all relevant times members of the Administrative Committee. As such, they were also Savings Plan fiduciaries within the meaning of ERISA (29 U.S.C. § 1002(21)(A)).

62. The Defendants identified above in paragraphs ___-___ are sometimes herein collectively referred to as the "Enron ERISA Defendants." The Enron ERISA Defendants were named 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 assets, 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 – ERISA Fiduciary Defendant

63. 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 (29 U.S.C. § 1002(21)(A)).

c. Enron Insider Defendants

64. 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 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, Lay also was and acted as a fiduciary of the Savings Plan, the ESOP and 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 a selling frenzy, selling as follows:

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

65. 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 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.

66. Defendant Andrew S. Fastow ("Fastow") was, at all relevant times, Chief Financial Officer of Enron. Because of Defendant Fastow's position with the Company and involvement with Enron's "off balance" arrangements, including the LJM partnerships, 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). Rather than answer Congressional questions about his involvement in the downfall of

Enron and the misconduct alleged herein, Fastow invoked the Fifth Amendment. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Fastow sold 687,445 shares of his Enron stock for insider trading proceeds of $33,675,004.

67. Defendant Michael Kopper ("Kopper") was, at all relevant times, a managing director of Enron's Global Equity Markets Group and an underling of Fastow. Defendant Kopper also ran the Chewco and JEDI partnerships that were at the center of Enron's accounting misdeeds. Because of Defendant Kopper's positions with Enron, Chewco and JEDI, 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). Rather than answer Congressional questions about his involvement in the misconduct alleged herein, Kopper invoked the Fifth Amendment.

68. Defendant Richard A. Causey ("Causey") was, at all relevant times, Executive Vice-President and Chief Accounting Officer of the Company. Defendant Causey signed each of Enron's Form 10-K's and 10-Q's filed with the SEC from 1997 through 2000. Because of Defendant Causey's position with Enron, 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). Rather than answer Congressional questions about his involvement in the misconduct alleged herein, Causey invoked the Fifth Amendment. As described below, Causey was and acted as a fiduciary of the Savings Plan, the ESOP and Cash Balance plan. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Causey sold 208,940 shares of his Enron stock for proceeds of $13,386,896.

69. Defendant James V. Derrick, Jr. ("Derrick") has been Executive Vice President and General Counsel of the Company since July 1999, and prior to that was Senior Vice President and General Counsel. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Derrick sold 230,660 shares of his Enron stock for insider trading proceeds of $12.6 million.

70. Defendant J. Clifford Baxter ("Baxter") has been Vice Chairman of the Company since October 2000 and Chief Strategy Officer since June 2000. Baxter also served as Chairman and Chief Executive Officer of Enron North America Corp. from June 1999 until June 2000, and Senior Vice President, Corporate Development from January 1997 until June 1999. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Baxter sold 577,436 shares of his Enron stock for insider trading proceeds of $35.2 million. Baxter committed suicide and his estate is now the named defendant.

71. Defendant Mark A. Frevert ("Frevert") has been Chairman and Chief Executive Officer of Enron Wholesale Services since June 2000, and Chairman and Chief Executive Officer of Enron Europe from March 1997 to June 2000. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Frevert sold 986,898 shares of his Enron stock for insider trading proceeds of $54,831,220. Frevert also received bonus payments of $4.3 million, in addition to his salary, for 1998, 1999 and 2000 based on Enron's false financial reports.

72. Defendant Stanley C. Horton ("Horton") was, at all relevant times, Chairman and Chief Executive Officer of Enron Transportation Services. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Horton sold 830,444 shares of his Enron stock for insider trading proceeds of $47,371,361. Horton also received bonus payments of $2.9 million, in addition to his salary, for 1998, 1999 and 2000 based on Enron's false financial reports.

73. Defendant Kenneth D. Rice ("Rice") has been Chairman and Chief Executive Officer of Enron Broadband Services, Inc. since June 2000. Prior to that, Rice was Chairman and Chief Executive Officer of Enron Capital & Trade ("ECT") – North America from March 1997 until June 1999. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Rice sold 1,234,009 shares of his Enron stock for insider trading proceeds of $76,825,145. Rice also received bonus payments of $3.9 million, in addition to his salary, for 1998, 1999 and 2000 based on Enron's false financial reports.

74. Defendant Richard B. Buy ("Buy") has been Executive Vice President and Chief Risk Officer of the Company since July 1999, Senior Vice President and Chief Risk Officer from March 1999 until July 1999, and Managing Director and Chief Risk Officer of ECT from January 1998 to March 1999. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Buy sold 140,234 shares of his Enron stock for insider trading proceeds of $10,656,595. Rice also received bonus payments of $3.9 million, in addition to his salary, for 1998, 1999 and 2000 based on Enron's false financial reports.

75. Defendant Lou L. Pai ("Pai") was Chairman and CEO of Enron Accelerator, and prior to that Pai was a director of Enron Energy Services and was involved in setting up some of the bad deals. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Pai sold 3,912,205 shares of his Enron stock for insider trading proceeds of $270,276,650.

76. 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.

77. 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.

78. 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.

79. 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.

80. 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.

81. 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.

82. 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.

83. 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.

84. Defendant Joseph M. Hirko ("Hirko") was, at all relevant times, Chief Executive Officer of Enron Broadband Services. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Hirko sold 473,837 shares of his Enron stock for insider trading proceeds of $35,168,721.

85. 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 1,111,436 shares of his Enron stock for insider trading proceeds of $75,416,636.

86. Defendant Mark E. Koenig ("Koenig") was, at all relevant times, Executive Vice President, Investor Relations of Enron. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Koenig sold 129,153 shares of his Enron stock for insider trading proceeds of $9,110,466.

87. Defendant Steven J. Kean ("Kean") has been Executive Vice President and Chief of Staff of the Company since 1999. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Kean sold 64,932 shares of his Enron stock for insider trading proceeds of $5,166,414.

88. 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.

89. Defendant Michael S. McConnell ("McConnell") was, at all relevant times, Executive Vice President, Technology of the Company. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, McConnell sold 32,960 shares of his Enron stock for insider trading proceeds of $2,506,311.

90. Defendant Jeffrey McMahon ("McMahon") was Executive Vice President, Finance and Treasurer of the Company since July 1999. Prior to that, he was Senior Vice President, Finance and Treasurer from July 1998 to July 1999, and, from 1994 to July 1998, was Chief Financial Officer of Enron Europe. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, McMahon sold 39,630 shares of his Enron stock for insider trading proceeds of $2,739,226.

91. Defendant J. Mark Metts ("Metts") was, at all relevant times, Executive Vice President, Corporate Development of Enron. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Metts sold 17,711 shares of his Enron stock for insider trading proceeds of $1.4 million.

92. Defendant Joseph W. Sutton ("Sutton") was Vice Chairman of Enron until early 2001. During the Class Period, while defendants were causing Enron to make false statements and issue false financial results, Sutton sold 688,996 shares of his Enron stock for insider trading proceeds of $42,231,283.

93. The defendants named in ¶¶ ____ are referred to as the Enron Insider Defendants.

94. The Enron Insider 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, including the unlawful acts described below.

d. Compensation Committee Defendants

95. Defendants LeMaistre, Blake, Duncan and Jaedicke were also members of the Compensation and Management Committee of the Enron Board of Directors. As described below, they were fiduciaries with respect to the Enron Corp. Savings Plan and the ESOP. They are collectively referred to at times as the "Compensation Committee Defendants."

e. Accountant Defendants and Their Role in the Conspiracy

96. Arthur Andersen & Co. Worldwide Societe Cooperative ("AWSC" or "Andersen Worldwide") is a Swiss cooperative entity created in 1977. AWSC is an umbrella organization

for the Arthur Andersen member firms throughout the world, including Andersen LLP, its United States affiliate. The AWSC umbrella also includes the Partners of AWSC, individuals who apply to membership in AWSC and who sign the Agreement Among Partners. These AWSC partners (sometimes known as Practice Partners) are the partners, principals, shareholders, directors, officers and/or employees of its member firms.

97. Andersen Worldwide describes and promotes itself as a single, integrated, full-service, professional business enterprise comprising “one firm” with “one voice” and a “shared heritage and common values and vision.” Andersen Worldwide does business and is found in Houston, Texas, and is 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. Prior to the fairly recent conduct outlined in Section VIII of this Complaint, *infra*, Andersen Worldwide enjoyed an excellent reputation; Andersen Worldwide’s involvement with auditing, SEC filings, and securities offerings bestowed the imprimatur of legitimacy, confidence, and stability on its clients, including Enron. Andersen Worldwide is sued herein as a direct participant and co-conspirator in the unlawful acts, omissions, and scheme set forth below. Plaintiffs will seek leave of court to amend this pleading to name constituent members of Andersen Worldwide after discovery into the exact nature of Andersen Worldwide and its members.

98. AWSC was created to coordinate the professional practices of the individual partners of the Andersen entities and its member firms throughout the world. It is used to implement reciprocal commitments of resources and to coordinate the common efforts of its member firms and partners worldwide.

99. Every member firm and each of AWSC’s individual partners enter into a standard form Member Firm Interfirm Agreement (“MFIFA”) with AWSC. Thus, each MFIFA appoints AWSC to coordinate the activities of all of the member firms worldwide. Those activities include the development of annual operating plans to coordinate the member firms’ practices, the

determination of the amount of payments and contributions partners and member firms will make to AWSC each year, and setting the annual income for its partners and member firms.

100. On information and belief, billions of dollars have flowed between the AWSC member firms from year to year pursuant to the provisions in the MFIFA that entitle member firms to receive and/or bind them to pay an annual amount from and/or to the other member firms as a reciprocal of a commitment to cooperative action in serving common clients internationally and to "reflect equitably the mutual and interdependent benefits of such practices."

101. AWSC operates through several organizations comprised of its partners: a Meeting of Partners; a Board of Partners; an Administrative Council and various committees with management responsibilities, such as the Partners' Income Committee, the Practice Unit – Executive Committee, the Board of Partners' Oversight Committee, the Managing Partner – Practice Unit, the Managing Partner – Practice Function, the Managing Partner – Area, the Managing Partner – Region, and the Managing Partner – Country. These Managing Partner – Business Unit positions are the top-level individual management posts within each business unit (area, region, country). These managing partners are responsible for coordinating that particular business units' international functions. Overseeing all of these AWSC partners, member firms, committees and business units is the AWSC Managing Partner – Chief Executive. These business units operate as management lines under the direction of the AWSC Board of Partners and a Managing Partner – Chief Executive. Pursuant to this structure, numerous members of the United States Andersen member firm, Andersen LLP, have been and remain the top managers of AWSC as well.

102. Defendant UK Arthur Andersen ("Andersen UK") is a member firm of Andersen Worldwide with offices in at least 14 cities through the United Kingdom, including London, Manchester, Leeds, Edinburgh and Glasgow. The individual members of Andersen UK are also practice partners of Andersen Worldwide and certain of them have had important roles in

directing Andersen's international operations. In or about October 2001, members of Andersen UK participated in destroying Enron audit records as part of an overall effort to clean up its files in response to learning, *inter alia*, that the SEC was investigating transactions that Andersen had helped engineer and which it had approved.

103. Defendant Andersen LLP ("Andersen") is a limited liability partnership, a member of "the Andersen global client service network," does business and is found in Houston, Texas, and is 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 VIII 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 as a direct participant and co-conspirator in the unlawful acts, omissions, and scheme set forth below.

104. On information and belief, Andersen Worldwide and Andersen LLP are alter egos of each other in that they now and at all relevant times (a) held themselves out to the public as a single, integrated, full-service, professional business enterprise comprising "one firm" with "one voice" and a "shared heritage and common values and vision"; (b) completely dominated and controlled each other's assets, operations, policies, procedures, strategies, and tactics; (c) failed to observe corporate formalities; and (d) used and commingled the assets, facilities, employees, and business opportunities of each other, as if those assets, facilities, employees, and business opportunities were their own – all to such an extent that any adherence to the fiction of the separate existence of any of these defendants distinct from the others would be inequitable, would permit egregious wrongdoers to abuse a corporate, limited liability partnership, and/or similar privilege of limited liability, if any, and would promote injustice by allowing these defendants to evade liability or veil assets that should be attachable.

105. That the formalistically separate Andersen Worldwide and Andersen LLP are, in fact, a single entity is evidenced in the written material it uses to describe itself. For example, its website represents that it does business in "84 countries … wherever you do business, we do business." Another example, demonstrating that it is a single entity, is found on its website and states as follows:

One World. One Organization.

Wherever you do business, we do business.

> Andersen truly operates as one firm to deliver measurable value to geographically diverse businesses throughout the world.

106. On its website, Andersen LLP reports its financial information as a combined global entity with Andersen Worldwide and the member firms:

Facts and Figures

2001 revenues by area (in US$)

	2001	**2000**
1. North America	$4.49 billion	$4.01 billion
2. Latin America	$0.39 billion	$0.39 billion
3. Western Europe	$2.87 billion	$2.63 billion
4. Central Europe, Middle East, India and Africa	$0.39 billion	$0.36 billion
Asia Pacific	$1.20 billion	$1.12 billion
Total	**$9.34 billion**	**$8.51 billion**

2001 revenues by solution (in US$)

	2001	**2000**
1. Assurance and business advisory	$4.26 billion	$3.92 billion
2. Tax, legal and business advisory	$2.98 billion	$2.62 billion
3. Business consulting	$1.70 billion	$1.62 billion
4. Global corporate finance	$0.39 billion	$0.36 billion
Total	**$9.34 billion**	**$8.51 billion**

107. When it releases financial news, it also reports the news on a global basis:

> **Andersen announces global revenue of $9.3 billion**
>
> CHICAGO, October 11, 2001 – Andersen, the global integrated professional services firm, today announced record global net revenue of US$9.3 billion for the fiscal year ended August 31, 2001. Global revenue grew 15 percent before the impact of exchange. Expressed in U.S. dollars, revenue grew 10 percent. The firm has achieved double-digit growth in revenue expressed in U.S. Dollars for the past eight consecutive years.
>
> Andersen just completed the largest expansion of its partnership in the firm's 88-year history. The admission of 589 new partners by member firms brings the total to 4,806 partners in the entities that comprise the worldwide Andersen organization. Andersen also advanced an unprecedented 817 partners to membership in the global entity that coordinates its member firms and other affiliates.

108. Andersen views, conducts, operates and promotes itself as a global entity with a "single support staff" with seamless integration:

> **A single support staff more than 85,000 strong**
>
> Our 390 offices may be scattered amid 84 different countries, but our voice is the same. No matter where you go, or who you talk to, we act with one vision. Without boundaries.

109. Andersen Worldwide admits that it "operates as one firm."

> **Why should I work for Andersen, as opposed to another Big Five firm?**
>
> Our culture, our people, our training and our resources make this a great firm. No other global accounting firm is structured like Andersen. We operate as a single **worldwide** organization – as one firm, with one culture and even a common language – English. Our structure, and our culture, allows us to accelerate learning and to serve clients with the highest levels of quality and consistency.

110. Andersen Worldwide was run until recently by a five-person team that includes Joseph F. Berardino, who recently resigned as head of Andersen LLP.

111. The interconnection between Andersen LLP and AWSC, and the controlling nature of AWSC is further evidenced by the fact that AWSC is the entity that is the named

insured on Andersen's professional indemnity policy and retains the right to determine who among the Andersen entities is covered.

112. In sum, Andersen LLP is controlled and operated by AWSC, is the alter ego of AWSC and is *de facto* controlled by AWSC.

113. 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. On information and belief, Duncan acted as a direct participant and/or co-conspirator in the unlawful acts, omissions, and scheme set forth below, and/or ordered and/or participated *inter alia* in the shredding, destruction, and spoliation of documents and other evidence of (a) the unlawful acts, omissions, and scheme set forth below, and (b) Andersen's involvement therein as a direct participant and/or co-conspirator. Duncan intentionally, willfully, and/or recklessly did so with full knowledge that these evidentiary matters were highly relevant to administrative, civil, and criminal investigations and litigation that had already been or were about to be commenced. On January 15, 2002, Andersen announced that it had dismissed Duncan for his role in an "expedited effort to destroy documents in Houston." In response to questions from Congress, Duncan invoked the Fifth Amendment. Duncan is sued herein as a direct participant and/or co-conspirator in the unlawful acts, omissions, and scheme set forth below.

114. 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. On information and belief, Bauer acted as a direct participant and/or co-conspirator in the unlawful acts, omissions, and scheme set forth below, and/or ordered and/or participated *inter alia* in the shredding, destruction, and spoliation of documents and other evidence of (a) the unlawful acts, omissions, and scheme set forth below, and (b) Andersen's involvement therein as a direct participant and/or co-conspirator. Bauer intentionally, willfully, and/or recklessly did so with full knowledge that these evidentiary matters were highly relevant to administrative, civil, and

criminal investigations and litigation that had already been or were about to be commenced. On January 15, 2002, Andersen announced that it was placing Bauer on administrative leave after its preliminary investigation of an "expedited effort to destroy documents in Houston." Bauer is sued herein as a direct participant and/or co-conspirator in the unlawful acts, omissions, and scheme set forth below.

115. 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. On information and belief, Cash acted as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below, and/or ordered and/or participated *inter alia* in the shredding, destruction, and spoliation of documents and other evidence of (a) the fraudulent acts, omissions, and scheme set forth below, and (b) Andersen's involvement therein as a direct participant and/or co-conspirator. Cash intentionally, willfully, and/or recklessly did so with full knowledge that these evidentiary matters were highly relevant to administrative, civil, and criminal investigations and litigation that had already been or were about to be commenced. On January 15, 2002, Andersen announced that it was placing Cash on administrative leave after its preliminary investigation of an "expedited effort to destroy documents in Houston." Cash is sued herein as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below.

116. 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. On information and belief, Willard acted as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below, and/or ordered and/or participated *inter alia* in the shredding, destruction, and spoliation of documents and other evidence of (a) the fraudulent acts, omissions, and scheme set forth below, and (b) Andersen's involvement therein as a direct participant and/or co-conspirator. Willard intentionally, willfully, and/or recklessly did so with full knowledge that these evidentiary matters were highly relevant

to administrative, civil, and criminal investigations and litigation that had already been or were about to be commenced. On January 15, 2002, Andersen announced that it was placing Willard on administrative leave after its preliminary investigation of an "expedited effort to destroy documents in Houston." Willard is sued herein as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below.

117. 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. On information and belief, Goddard acted as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below, and/or knew of, condoned, authorized, directed, furthered, and/or participated *inter alia* in the shredding, destruction, and spoliation of documents and other evidence of (a) the fraudulent acts, omissions, and scheme set forth below, and (b) Andersen's involvement therein as a direct participant and/or co-conspirator. Goddard intentionally, willfully, and/or recklessly did so with full knowledge that these evidentiary matters were highly relevant to administrative, civil, and criminal investigations and litigation that had already been or were about to be commenced. On January 15, 2002, Andersen announced that it was relieving Goddard of his management responsibilities after its preliminary investigation of an "expedited effort to destroy documents in Houston." Goddard is sued herein as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below.

118. 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. On information and belief, Lowther acted as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below, and/or knew of, condoned, authorized, directed, furthered, and/or participated *inter alia* in the shredding, destruction, and spoliation of documents and other evidence of (a) the fraudulent acts, omissions, and scheme set forth below,

and (b) Andersen's involvement therein as a direct participant, aider and abettor, and co-conspirator. Lowther intentionally, willfully, and/or recklessly did so with full knowledge that these evidentiary matters were highly relevant to administrative, civil, and criminal investigations and litigation that had already been or were about to be commenced. On January 15, 2002, Andersen announced that it was relieving Lowther of his management responsibilities after its preliminary investigation of an "expedited effort to destroy documents in Houston." Lowther is sued herein as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below.

119. 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. On information and belief, Goolsby acted as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below, and/or knew of, condoned, authorized, directed, furthered, and/or participated *inter alia* in the shredding, destruction, and spoliation of documents and other evidence of (a) the fraudulent acts, omissions, and scheme set forth below, and (b) Andersen's involvement therein as a direct participant and/or co-conspirator. Goolsby intentionally, willfully, and/or recklessly did so with full knowledge that these evidentiary matters were highly relevant to administrative, civil, and criminal investigations and litigation that had already been or were about to be commenced. On January 15, 2002, Andersen announced that it was relieving Goolsby of his management responsibilities after its preliminary investigation of an "expedited effort to destroy documents in Houston." Goolsby is sued herein as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below.

120. 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. On information and belief, Odom acted as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below, and/or *inter alia* knew of, condoned, authorized, directed, participated in, furthered, and/or attempted to conceal the true extent of Andersen's involvement in the fraudulent acts, omissions, and scheme set forth below. Odom intentionally, willfully and/or recklessly did so with full knowledge that these evidentiary matters were relevant to administrative, civil and criminal investigations and litigation that had already been or were about to be commenced. Odom is sued herein as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below.

121. 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. On information and belief, Jones acted as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below, and/or ordered and/or participated *inter alia* in the shredding, destruction, and spoliation of documents and other evidence of (a) the fraudulent acts, omissions, and scheme set forth below, and (b) Andersen's involvement therein as a direct participant and/or co-conspirator. Jones intentionally, willfully, and/or recklessly did so with full knowledge that these evidentiary matters were highly relevant to administrative, civil, and criminal investigations and litigation that had already been or were about to be commenced. Jones is sued herein as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below.

122. 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, and worked on the Enron account. On information and belief, Swanson acted as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below, and/or ordered and/or participated

inter alia in the shredding, destruction, and spoliation of documents and other evidence of (a) the fraudulent acts, omissions, and scheme set forth below, and (b) Andersen's involvement therein as a direct participant and/or co-conspirator. Swanson intentionally, willfully, and/or recklessly did so with full knowledge that these evidentiary matters were highly relevant to administrative, civil, and criminal investigations and litigation that had already been or were about to be commenced. Swanson is sued herein as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below.

123. 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. In or about August through November 2001, Stewart altered and destroyed memoranda reflecting the involvement and approval of Andersen's Chicago office personnel of certain of Enron's off book transactions. On information and belief, Stewart acted as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below, and/or ordered and/or participated *inter alia* in the shredding, destruction, and spoliation of documents and other evidence of (a) the fraudulent acts, omissions, and scheme set forth below, and (b) Andersen's involvement therein as a direct participant and/or co-conspirator. Stewart intentionally, willfully, and/or recklessly did so with full knowledge that these evidentiary matters were highly relevant to administrative, civil, and criminal investigations and litigation that had already been or were about to be commenced. Stewart is sued herein as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below. Plaintiffs will seek leave to amend to state the full and correct name of Stewart when that information is ascertained.

124. Defendant Nancy A. Temple ("Temple") is a resident of Chicago, Illinois, a former partner in the prestigious corporate law firm of Sidley & Austin, and a high-level corporate attorney employed by Andersen. On information and belief, Temple acted as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below, and/or *inter alia*, knew of, condoned, authorized, directed, participated in, furthered, and/or

attempted to conceal the true extent of Andersen's involvement in the fraudulent acts, omissions, and scheme set forth below. As set forth more fully below, Temple, *inter alia*, wrote an e-mail and caused it to be sent to Andersen's Houston office to encourage and incite the shredding, destruction, and spoliation of records. Temple intentionally, willfully, and/or recklessly did so with full knowledge that these evidentiary matters were highly relevant to administrative, civil, and criminal investigations and litigation that had already been or were about to be commenced. Rather than answer questions at her recent deposition, Temple invoked the Fifth Amendment. Temple is sued herein as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below.

125. Defendant Don Dreyfus ("Dreyfus") is a resident of Wilmette, Illinois, was at all relevant times an attorney in Andersen's Chicago office, and consulted with others who worked on the Enron account. On information and belief, Dreyfus acted as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below, and/or ordered and/or participated *inter alia* in the shredding, destruction, and spoliation of documents and other evidence of (a) the fraudulent acts, omissions, and scheme set forth below, and (b) Andersen's involvement therein as a direct participant and/or co-conspirator. Dreyfus intentionally, willfully, and/or recklessly did so with full knowledge that these evidentiary matters were highly relevant to administrative, civil, and criminal investigations and litigation that had already been or were about to be commenced. Dreyfus is sued herein as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below.

126. Defendant James 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. On information and belief, Friedlieb acted as a direct participant, aider and abettor, and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below, and/or ordered and/or participated *inter alia* in the shredding, destruction, and spoliation of documents and other evidence of (a) the fraudulent acts, omissions, and scheme set forth below, and (b) Andersen's

involvement therein as a direct participant, aider and abettor, and co-conspirator. Friedlieb intentionally, willfully, and/or recklessly did so with full knowledge that the evidentiary matters were highly relevant to administrative, civil, and criminal investigations and litigation that had already been or were about to be commenced. Friedlieb is sued herein as a direct participant, aider and abettor, and co-conspirator in the fraudulent acts, omissions, and scheme set forth below.

127. Defendant Joseph F. Berardino ("Berardino") is a resident of Greenwich, Connecticut, and, until his recent resignation, was the Chief Executive Officer of Andersen. On information and belief, Berardino acted as a direct participant, aider and abettor, and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below. Berardino is sued herein as a direct participant and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth below.

128. On information and belief, Defendants Does 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 committed, participated in, and/or furthered the fraudulent acts, omissions, and scheme set forth below, Andersen's attempted cover-up, and the related spoliation of documents and other evidence relevant thereto. On information and belief, at least some of these Does are residents of Houston, Texas. Plaintiffs will seek leave of court to identify these Does by their true names and capacities when ascertained.

129. Each of these Does is also sued under the doctrine of joint and several liability under RICO.

130. Defendants AWSC, Arthur Andersen LLP, Duncan, Bauer, Cash, Willard, Goddard, Lowther, Goolsby, Odom, Jones, Swanson, Stewart, Temple, Dreyfus, Friedlieb, Berardino, and Does 2 through 1800 are collectively sometimes called the "Accountant Defendants" below.

131. 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.

132. 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.

133. 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") and were at the heart of the massive fraud set forth below. Andersen's relationship with Enron went far beyond "independent" auditing services to include both internal and external auditing and accounting, management consulting, and extensive, active involvement throughout the evaluation, adoption, creation, structuring, organization, implementation documentation, use, furtherance, concealment, and/or the materially incomplete, misleading, and fraudulent reporting and disclosure of the fraudulent acts, omissions, and scheme set forth below.

134. 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."

135. 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.

136. 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 full well that it was a direct participant and co-conspirator in a massive scheme to mislead and defraud Enron employees, shareholders, potential investors, and the securities market as to *inter alia* the value of Enron's securities.

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

138. On dates currently unknown, the Accountant Defendants secretly entered into an agreement, combination, and conspiracy with each other, with the Enron Insiders, Investment Banking and Attorney Defendants, to commit, participate in, and further the unlawful acts, omissions, and scheme set forth below, all with the intent of keeping Enron as a client and continuing to reap multi-million dollar fees.

f. Investment Banking Defendants

(1) Merrill Lynch & Co., Inc.

139. Defendant Merrill Lynch & Co., Inc. ("Merrill Lynch") is one of the world's leading financial management and advisory companies, with offices in 38 countries and total client assets of approximately $1.5 trillion. As an investment bank, Merrill Lynch is a leading global underwriter of debt and equity securities and strategic advisor to corporations, governments, institutions and individuals worldwide. Merrill Lynch's global headquarters are at 4 World Financial Center, 250 Vesey St., New York, NY. Merrill Lynch maintains an office in this district at One Houston Center, Suite 2700, 1221 McKinney, Houston, TX.

(2) J.P. Morgan Chase & Co.

140. Defendant J.P. Morgan Chase & Co. ("J.P. Morgan") is a premier global financial services firm with operations in more than 50 countries. J.P. Morgan serves more than 30 million consumer customers and many of the world's most prominent corporate, institutional and government clients. J.P. Morgan offers commercial and consumer banking and investment management services to clients worldwide, although its branch network is highly concentrated in the Northeast and Texas. J.P. Morgan posted operating net income of $3.4 billion in 2001. J.P. Morgan is headquartered at 270 Park Ave., New York, NY.

(3) Credit Suisse First Boston Corporation

141. Defendant Credit Suisse First Boston Corporation ("CSFB") is a leading global investment bank serving institutional, corporate, government and individual clients. Donaldson, Lufkin & Jenrette ("DLJ") was merged into CSFB in November of 2000. CSFB's businesses include securities underwriting, sales and trading, investment banking, private equity, financial advisory services, investment research, venture capital, correspondent brokerage services and retail online brokerage services. It operates in over 89 locations across more than 37 countries on six continents. CSFB is one of the world's largest securities firms in terms of financial resources, with approximately $12.2 billion in revenues in 2000 and $10 billion in equity and

$410 billion in assets as of December 31, 2000. CSFB is a wholly owned subsidiary of Credit Suisse Group, based in Zurich, Switzerland. CSFB is headquartered in New York, NY. CSFB maintains an office in this district at 1100 Louisiana, Suite 4500, Houston, TX.

(4) Citigroup, Inc.

142. Defendant Citigroup, Inc. ("Citigroup") is the world's second-largest financial services company by assets. Citigroup offers credit card, banking, asset management, insurance, and investment banking services. Citigroup has 270,000 employees in 102 countries. Citigroup is headquartered in New York, NY. Defendant Citigroup also carried out its participation in this scheme through its subsidiaries Citigroup Securities and Salomon Smith Barney.

(a) Defendant Citigroup Securities, Inc. ("Citigroup Securities") was, prior to the merger in 1990, the investment banking arm of Citicorp. Following the merger of Citicorp and Travelers, Inc. in 1990, Citicorp Securities, Inc. was merged into Salomon Smith Barney, Inc.

(b) Defendant Salomon Smith Barney, Inc. ("Salomon Smith Barney") is a New York corporation with its principal place of business in New York County, New York. Defendant Salomon Smith Barney served as one of the underwriters numerous public offerings of Enron securities, as detailed below.

(5) Attorney Defendants

143. Defendant Vinson & Elkins, LLP ("V&E") is based, does business, and is found in Houston, Texas, and is one of the largest and most sophisticated international corporate law firms in the United States and the world, with expertise in all areas of Enron's business. V&E's involvement with corporate transactions, SEC filings, and securities offerings bestowed the imprimatur of legitimacy, confidence, and stability on its many clients, including Enron.

144. Defendant Ronald T. Astin ("Astin") is a resident of Houston, Texas; was and is a partner in V&E who specializes *inter alia* in corporate financing; and was at all relevant times the lead V&E attorney involved in forming, structuring, using, and issuing legal opinions on

certain partnerships and "special-purpose entities" at the heart of the massive fraud set forth herein. Astin is sued herein as a direct participant and/or a co-conspirator in the fraudulent acts, omissions, and schemes set forth herein.

145. Defendant Joseph Dilg ("Dilg") is a resident of Houston, Texas; was and is the managing partner at V&E who specializes *inter alia* in corporate law; and was at all relevant times, for at least a decade, V&E's chief liaison with Enron. Dilg oversaw V&E's relationship with Enron; was personally involved in providing legal services relating to certain partnerships and "special-purpose entities" at the heart of the massive fraud set forth herein; and was aware how the personnel of Enron, V&E, and the Accountant Defendants were working together to form, structure, use, and account for those partnerships and entities. Dilg is sued herein as a direct participant and/or a co-conspirator in the fraudulent acts, omissions, and scheme to defraud set forth herein.

146. Defendant Michael P. Finch ("Finch") is a resident of Houston, Texas; was and is a partner in V&E who specializes *inter alia* in corporate law and securities law; and was at all relevant times the attorney at V&E in charge of some or all of Enron's SEC registration statements and prospectuses. Finch was personally involved in providing legal services relating to certain partnerships and "special-purpose entities" at the heart of the massive fraud set forth herein; and was aware how the personnel of Enron, V&E, and the Accountant Defendants were working together to form, structure, use, and account for those partnerships and entities. Finch is sued herein as a direct participant, an aider and abettor, and/or a co-conspirator in the fraudulent acts, omissions, and scheme to defraud set forth herein.

147. Defendant Max Hendrick III ("Hendrick") is a resident of Houston, Texas; was and is a litigation partner in V&E; and was at all relevant times the attorney at V&E charged with performing the "independent" review of SPEs and related transactions in or about August through October 2001. Hendrick was personally involved in providing legal services relating to the SPEs; knew how the personnel of Enron, V&E, and the Accountant Defendants collaborated

and worked together closely to create, structure, organize, use, and account for the SPEs; ignored an actual conflict of interest in purporting to do an "independent" review of his own firm's legal work in or about August through October 2001; and participated in the acts, omissions, and scheme set forth herein by *inter alia* participating in and aiding and abetting their concealment. Hendrick is sued herein as a direct participant and/or a co-conspirator in the fraudulent acts, omissions, and scheme set forth herein.

148. Defendants V&E, Astin, Dilg, Finch and Hendrick are collectively referred to as the "Attorney Defendants."

149. An extremely close relationship has existed for many years between the Attorney Defendants and Enron at the business level, and between the partners or principals of V&E and key management personnel of Enron on a personal and social level. On information and belief, several former partners or principals in V&E have become directors or officers of Enron, and Enron is reported to be V&E's largest client.

150. The Attorney Defendants have been continuously engaged by Enron for many years to provide legal service, including *inter alia* corporate transactions, securities offerings, SEC filings, shareholder communications, and the formation, structuring, and use of the SPEs at the heart of the massive scheme set forth below. Despite V&E's recent testimony before Congress to the opposite, V&E's website description of its "Practice Areas" touts the firm's expertise in SPE transactions and accounting for those transactions:

> **Structured Finance**
>
> Vinson & Elkins has extensive experience in creating specialized finance structures to achieve targeted financial reporting and tax goals.
>
> * * *
>
> Firm attorneys are well-versed in the use of special-purpose entities such as trusts, partnerships, limited liability companies, and offshore entities in financing transactions. The firm also assists in structuring financings for purposes of achieving true-sale and off-balance-sheet treatment for accounting . . . purposes.

151. According to V&E's own website, V&E acted as counsel to Enron and Enron-related entities in numerous merges and public offerings of stock during 1999 and 2000 in at least the following instances:

Public Offerings:

1999

- An offering of $222 million of Enron Convertible Notes;
- An offering of $235 million of EOTT Energy Partners, L.P.;
- An offering of $1.4 billion in Osprey Trust securities;
- An offering of $752 million of Enron Corp. stock;
- An offering of $56 million of EOTT Energy Partners, L.P. common stock;

2000

- An offering of $504 million of TNPC, Inc. common stock;
- An offering of $750 million of Osprey Trust Senior Secured Notes;
- A foreign offering of $1 billion of Enron bonds;
- An offering of $500 million of Enron Credit Linked Notes;
- An offering of $500 million of Enron Corp. medium term notes;
- An offering of $200 million of Enron Corp. Japanese Yen Notes;
- A second offering of $200 million of Enron Corp. Japanese Yen Notes;
- An offering of $150 million of Portland General Electric Notes;
- An offering of $1 billion of Enron Floating Rate Bonds;
- A third offering of $200 million of Enron Corp. Japanese Yen Notes;
- An offering of $600 million of Azurix Senior Notes.

Mergers and Acquisitions:

1999

- The sale of Portland General Electric by Enron to Sierra Pacific Resources;

- A $107 million acquisition of Philip Utilities Management Corporation by Azurix;
- The sale by Enron of a 49% interest in EastCoast Power, LLC to El Paso Energy;

<u>2000</u>

- The $446 million acquisition by Enron of MG plc;
- The $325 million acquisition of a minority public interest in Azurix Corp.;
- The sale of Enron Nigeria Power Holdings to the AES Corporation.

152. V&E had attorneys permanently stationed in Enron's corporate headquarters in Houston, Texas, for the purpose of continuously monitoring Enron's corporate affairs, communicating, and working directly with Enron's personnel and the Accountant Defendants to create, structure, use, and account for the manifold operations and ventures of Enron, including *inter alia* the SPEs at the heart of the massive fraud and the false and misleading SEC filings set forth herein. V&E's relationship with Enron went far beyond normal corporate legal services to include extensive, active involvement in the consideration, adoption, implementation, documentation, furtherance, and/or concealment of the unlawful acts, omissions, and schemes set forth herein.

153. For purposes of servicing Enron, V&E had attorneys present in Enron's corporate offices and operations continuously for years and at all relevant times, and had continual access to and knowledge of Enron's inside corporate and business information, including *inter alia* the manner in which Enron, the Accounting Defendants, and the Attorney Defendants were collaborating and working together *inter alia* in creating, structuring, using, and accounting for the SPEs and sham transactions accomplished through the SPEs.

154. As a result of the Attorney Defendants' expertise, their close collaboration and working relationship with Enron and the Accountant Defendants, their constant interaction with the Enron Insider Defendants and the Accountant Defendants, and the Attorney Defendants' detailed knowledge of and access to all relevant documents and information, at all relevant times

the Attorney Defendants knew that they were direct participants and co-conspirators in the operation or management of the Enron Enterprise and other illegal enterprises, as defined below in Counts VI and VII.

155. The Attorney Defendants issued several opinion letters (and related consents to their use and dissemination) on the legality, independence, authenticity, and non-sham nature of, and/or other issues relating to, the SPEs at the heart of the subject fraud alleged herein. On information and belief, when the Attorney Defendants issued those documents, and when they did all other work described below, the Attorney Defendants knew or recklessly failed to learn that the SPEs were created, owned, and/or controlled by Enron and certain Director and Officer Defendants and were being used for sham transactions to hide liabilities and overstate income of Enron in SEC filings that the Attorney Defendants prepared.

156. The Attorney Defendants received over $100 million for legal and related services rendered to Enron in the period leading up to Enron's bankruptcy.

IV. THE EMPLOYEE VICTIMS OF DEFENDANTS' ILLEGAL CONDUCT

157. As explained more fully below, the Enron Insider Defendants had, as their ultimate objective in conducting the affairs of Enron and related enterprises, their own personal enrichment above all else. To accomplish this objective, they utilized every device possible to make Enron look successful to the public and Enron's employees, while they looted the company at every opportunity. Employee retirement funds were an integral part of their conspiracy. The Enron Insider Defendants viewed the retirement funds as a vehicle of opportunity to further enrich themselves. By providing employees with compensation in the form of inflated stock, the Enron Insider Defendants were able to keep employees content, and avoid having to use cash to do so. This made available for their use, hundreds of millions in cash that defendants could then use for their own illicit purposes. The retirement plans and other employee stock compensation vehicles that were an integral part of their scheme are described below.

A. The Enron Corp. Savings Plan

158. 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 IRC § 401(k) (26 U.S.C. § 401(k)).

1. Participant Contributions

159. 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

160. Enron matches 50% of all participant before-tax contributions, with the exception of field hourly construction workers and certain of Portland General Electric's ("Portland General" – a subsidiary of Enron) eligible bargaining unit employees, up to a maximum of 6% of base pay. Portland General'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.

161. All Company contributions, except the additional 5% contribution for Portland General 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

162. 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

163. 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

164. 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

165. 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."

166. 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.

167. 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.

168. 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.

169. 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.

170. 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.

171. 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.

172. 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.

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

174. 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.

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

176. 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.

177. 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.

178. Hence, 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.

179. 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.

180. 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.

181. 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 of the following month, 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

182. The Enron Corp. Retirement Plan (the "Retirement Plan"), and its successor, the Enron Corp. Cash Balance Plan (the "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).

183. 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.

184. 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.

185. 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.

186. 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.

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

188. 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.

189. 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.

190. 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.

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

D. Phantom Stock

192. Enron offered one form of so-called compensation in "phantom stock." This phantom stock was treated by Enron as a form of wages and was not part of any ERISA plan.

193. The phantom stock was described in a uniform form letter sent to employees, as follows:

> To:
>
> From: Mary K. Joyce Department: Compensation & Benefits
>
> Subject: Bonus Phantom Stock Award Date: March 21, 2000
>
> As part of the Enron Corp. Bonus Phantom Stock Program, you elected to receive 50% of your bonus in phantom stock. The phantom stock units were granted on January 24, 2000. The closing stock price on the date of grant was $65.00. Your individual bonus phantom stock award and premium phantom stock award agreements are enclosed.
>
> Please review the attached award agreements and retain them for your records. You can follow the example illustrated below to verify the number of phantom stock units that were awarded to you under the Bonus Phantom Stock Program:
>
> Example:
> Employee received a $5,000 annual bonus award.
> Employee elected to receive 20% in phantom stock units; 50% with a 3 year holding period, and 50% with a 5 year holding period.
>
> **Phantom Stock Unit Calculation**
>
> [($5000 Bonus * 20% Phantom Stock Election) * Premium ((50% * (1+(5% * 3 years))) + (50% * (1+ (5% * 5 years))))])Stock Price $65.00 = 19 Total Units*
>
> *Rounded up to the nearest increment of 1
>
> Number of Bonus Phantom Stock Units Awarded = 16
> Number of Premium Phantom Stock Units Awarded = Total Units less Bonus Units = 3

> If you have any questions please contact Renee Ratcliff
> (713) 345-7960, or Sharon Aulds (713) 853-7769.

194. This compensation, provided to thousands of employees, is now worthless as a result of the wrongdoing identified below.

V. FACTUAL ALLEGATIONS

A. Background Information

195. 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.

196. 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 believe.

197. The Enron Insider 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 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.

198. Exacerbating the problems at the Broadband Services Division, the Enron Insider 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.

199. 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 U.S. 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.

200. 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.

201. To facilitate its scheme, 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 and Attorney Defendants participated in the formation and creation of these partnerships.

202. 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.

203. 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

204. 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) and VII, *infra*.

205. 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.

206. On February 23, 1998, Andersen issued its audit report with respect to the financial statements of Enron for the year ending December 31, 1997. 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 Sections V(E) and (F), *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.

207. 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*.

208. 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.

209. Subsequent to issuing its results, defendants, including Lay, Skilling and Fastow, 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.

210. 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.

211. 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(F)(5). The Form S-3/A was signed by (or on behalf of) Causey, Lay, Fastow, Belfer, Blake, Chan, Duncan, Foy, Gramm, Harrison, Jaedicke, LeMaistre and Skilling.

212. On March 5, 1999, Andersen issued its audit report with respect to the financial statements of Enron for the year ending December 31, 1998. Such 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 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.

213. 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 VII, *infra*.

214. On June 9, 1999, defendant 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.

215. 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.

216. 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 as described in Section G(5). The Form S-3 was signed by (or on behalf of) Causey, Lay, Fastow, Belfer, Blake, Chan, Duncan, Foy, Gramm, Harrison, Jaedicke, LeMaistre, Mark-Jusbasche and Skilling.

217. 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.

218. 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.

219. 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.

220. 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.

221. 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.

222. 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.

223. 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*.

224. On March 13, 2000, Andersen issued its audit report with respect to the financial statements of Enron for the year ending December 31, 1999. 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 Sections V(F)-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.

225. 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(E)-(F), *infra.*

226. 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 Section V(F). The Form S-3 was signed by (or on behalf of) Causey, Lay, Fastow, Belfer, Blake, Chan, Duncan, Gramm, Harrison, Jaedicke, LeMaistre, Mark-Jusbasche and Skilling.

227. 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.

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

229. On October 17, 2000, the Enron Insider 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."

230. 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)-(F), *infra*.

231. 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.

232. 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*.

233. 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*.

234. 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(F). The Form S-3 was signed by (or on behalf of) Causey, Lay, Fastow, Belfer, Blake, Chan, Duncan, Gramm, Jaedicke, LeMaistre and Skilling.

235. 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.

236. 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.

237. 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,' Skilling said. 'These are not issues for this stock.'

238. 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.'"

239. 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

240. 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' stock price was likely to increase.

241. 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 Insider Defendants.

242. 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 Insider 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.

243. Further, the Enron Insider 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 …

244. 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.

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

246. 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, <u>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.</u>
>
> * * *
>
> <u>Total net income continues to grow at a very strong rate for the company</u>. 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.
>
> <u>Earnings per share was also up</u>, 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.
>
> * * *
>
> <u>So the Street, and the portfolio managers are continuing to recognize what, what's happening here</u> 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.
>
> * * *
>
> <u>So, overall, the company is in great shape. I think that's why the stock price is doing as well as it is</u>.

247. 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. <u>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</u>…. <u>Second quarter financial performance was very strong</u>, 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.
>
> <u>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</u>.
>
> 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 – <u>if we keep performing, in fact, we will see this stock price quite a bit higher even over the next year to 18 months</u>.

248. 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. <u>We've constructed something very, very special over the last decade</u>, 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.

249. 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, <u>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</u>.

250. 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. (Emphasis added.)

251. 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.

252. 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. <u>I would think we would do very well, regardless of what happens to the Internet stocks</u>.

253. 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.

254. 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.

255. 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.)

256. 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.

257. 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, <u>the Blockbuster deal, but this is truly a great transaction for Enron broadband services</u>. 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 <u>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</u>. 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.

258. 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.

259. At the "All-Employees Meeting" of October 3, 2000, Lay 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, <u>the Blockbuster deal, but this is truly a great transaction for Enron</u>

> 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.

260. 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.

261. 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 defendant Pai, who at the time was one of the highest ranking officers, had sold millions of his Enron stock.

262. 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 This Year's Meeting

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

263. 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: <u>So to summarize, the company's doing great. We're in great shape</u>.
>
> * * *
>
> 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.
>
> <u>So the criticism I think is kind of ridiculous</u>.

264. 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.

265. 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."

266. 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.

267. 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.

268. On August 27, 2001, Lay, after receiving the Sherron Watkins' memo described below, and without the results of V&E'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.

269. 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. <u>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)</u>, 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: <u>I have strongly encouraged our 16B officers to buy</u> 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. <u>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</u>.

* * *

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, <u>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</u>. 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, <u>but they have also been approved at Arthur Andersen's headquarter</u> 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, <u>of which virtually every Fortune 500</u> 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 <u>I or the Board also apply the concept of what appears to be right</u>, 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 <u>an abundance of safeguards</u> 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, <u>there have been all kinds of reckless and unfounded rumors about Enron and the financial condition of Enron</u>. 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.

<u>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</u>. 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.

270. 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, <u>but they have also been approved at AA's headquarter office from some of the world's leading experts on these types of financing</u>."

271. 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."

272. 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 (¶ ___ above), Lay failed to disclose that they were also selling massive quantities of Enron stock. These sales have not yet been reported to the SEC.

273. 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

274. 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.

275. 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.

276. 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, <u>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</u>.

277. 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.

278. 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.

279. 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.

280. 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:

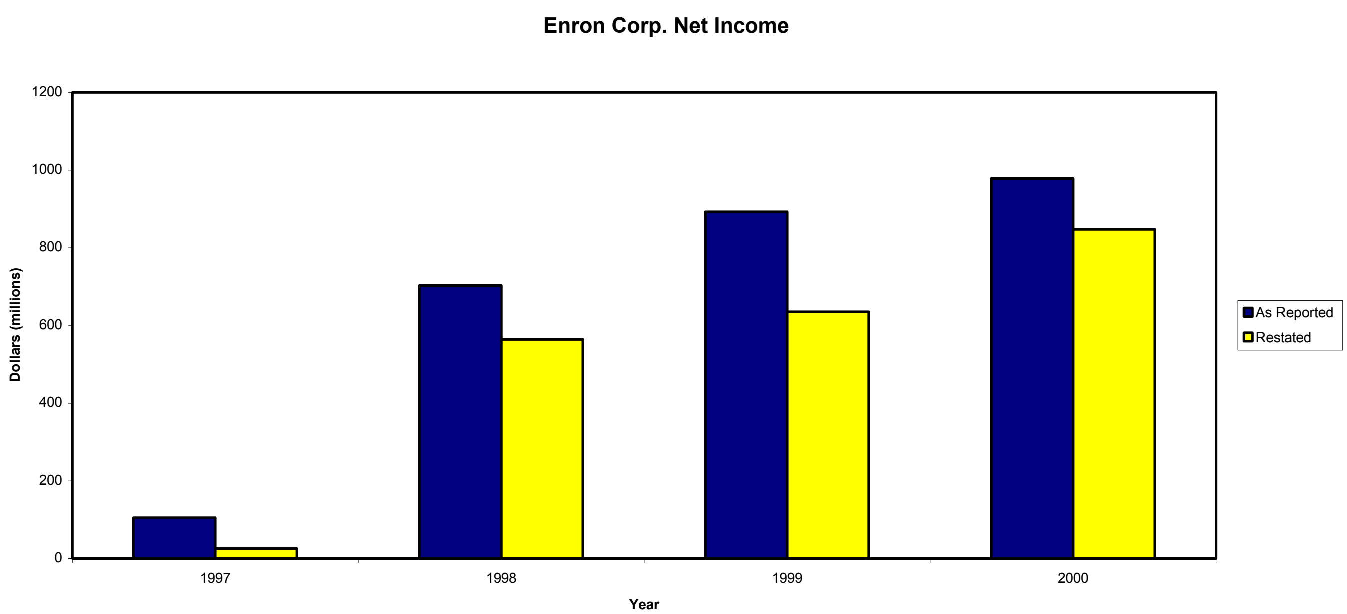
> Enron's current assessment indicates that the restatement will include a reduction to reported net income of approximately $96 million in 1997, $113 million in 1998, $250 million in 1999 and $132 million in 2000, increases of $17 million for the first quarter of 2001 and $5 million for the second quarter 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:



281. On November 19, 2001, defendants 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.

282. 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.

283. 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

284. 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.

285. 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.

286. 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. <u>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</u>. 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").

287. 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.

288. Accounting rules, as detailed below, provide that certain qualifying SPEs do not have to be consolidated into a Company's financial statements if, <u>and only if</u>, 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.

289. 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

290. 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.

291. 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.

292. Defendant 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.

293. 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.

294. Defendant 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.

295. 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 load 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. The Attorney Defendants 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.

296. 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.

297. 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.

298. 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.

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

300. 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. These transactions were also known to the Attorney Defendants, and certain of the Investment Banking Defendants.

2. LJM1 Transactions

301. 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.

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

a. The Rhythm NetConnections Transactions

303. 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.

304. 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, the defendants 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.

305. 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 SwapCo., 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.

306. As admitted by Defendant Berardino 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. Defendant Berardino chalked this violation of GAAP up to an "error in judgment."

307. 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.

308. 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, and were known to the Attorney Defendants, and certain of the Investment Banking Defendants.

3. LJM2 Transactions

309. 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.

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

311. 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.

312. 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.

313. 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

314. 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").

315. 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.)

316. 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).

317. 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.

318. 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

319. 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."

320. 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 the highly trained financial professionals of the Defendant Banks – would realize that this provision dealt squarely with hiding assets (and liabilities) of Enron from the Company's financial statements. Certainly the Defendant Banks 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.

321. Thus, the limited partners, including J.P. Morgan, Merrill Lynch, CSFB, Morgan Stanley and First Union were well aware that Enron had assets and corresponding liabilities greatly in excess of those reported on the Company's financial statements.

322. 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. These limited partners 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.

323. 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.

324. Page 35 of the presentation package also discloses that LJM2 had a fully-drawn credit facility from J.P. Morgan (Chase). It is incomprehensible that J.P. Morgan would make such a loan without carefully scrutinizing LJM2's financial results and projections.

325. 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

326. Defendant 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

327. 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 <u>reduction</u> to shareholders' equity (similar to a shareholder loan), <u>not</u> as an <u>increase</u> in assets and <u>increase</u> 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.

328. 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. <u>In essence, Enron still bore the risk of any losses, and was only "hedging" the transactions with itself</u>. Under GAAP, the income attributable to this "sham" hedge cannot be recognized.

329. 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.

330. 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

331. 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.

332. 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.

333. 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. (Emphasis added.)

334. 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. <u>But once again, the return of the $41 million to LJM2, in both instances, meant that qualification as an SPE was not met</u>, 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

335. 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").[2] 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 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.

336. 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. Attorneys from V&E were also consulted and prepared the transaction documents. 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

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

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."

337. 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.

338. 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 and V&E'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.

339. 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%.

340. 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.

341. 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

342. 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.

343. 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. 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

344. 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.

345. 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.

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

347. 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.

348. 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 well as certain of the Investment Banking Defendants and the Attorney Defendants, as described below.

F. Enron, Andersen, the Investment Banking Defendants and V&E Were Involved in Creating and Implementing Numerous Other Off-Balance-Sheet Arrangements

1. The New Power Scheme

349. With the assistance of CSFB, J.P. Morgan, CIBC, Salomon Smith Barney and other Wall Street firms ("New Power Underwriters"), and with the participation of Andersen and lawyers at V&E, 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 Scheme, described below, was facilitated by the prospectus for the IPO which was prepared by the New Power Underwriters. V&E acted as the attorneys on this offering and were fully aware that many of the transactions that were part of the New Power Scheme lacked a lawful purpose. The New Power Scheme also affected the Raptor III transaction.

350. 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.

351. 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.

352. 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.

353. 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.

354. 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.

355. 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.

356. 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."

357. 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.

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

359. Although New Power was not a stand-alone company with Mr. Lockhart as chief executive, Enron maintained extremely close ties. Mr. Pai, 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.

360. 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."

361. 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.

362. 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."

363. 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.

364. 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)(C).

2. Project "Braveheart"

365. Project Braveheart was a complicated scheme 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.

366. 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.

367. 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.

368. 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.

369. 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.

370. 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.

371. 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.

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

373. 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, <u>even though the Blockbuster venture was only two weeks into its pilot program and not generating any profit at all</u>. 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."[3]

374. 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."

375. 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 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.

376. 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."

377. But by March 2001, Blockbuster and Enron terminated their failing partnership. Termination of the Blockbuster deal created accounting problems for Enron. Braveheart had lost

3 Smith, *Show Business: A Blockbuster Deal Shows How Enron Overplayed Its Hand*, The Wall Street Journal, January 17, 2002, p. A1.

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

378. The Osprey Trust ("Osprey") was another complex arrangement designed to manipulate Enron's reported financial results. In September of 1999, The Osprey Trust 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").

379. DLJ (now CSFB), and specifically Laurence Nath of that firm, worked closely with Enron and Andersen to structure the Osprey Trust and Whitewing structure.

380. 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.

381. 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 believed Enron was succeeding in its shift to becoming a trading firm.

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

383. 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.

384. The private-offering memo was prepared by, and the offering was managed by Donaldson, Lufkin & Jenrette, Lehman Brothers, Deutsche Bank and UBS Warburg LLC as co-managers. These underwriters received a total of $7 million for their services.

385. Enron advised the Osprey investors – but not its public shareholders – 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.

386. 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."

387. 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.*

4. Azurix

388. 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.

389. 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.

390. 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.

391. Prior to Azurix' 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.

392. 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, defendants 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.

393. 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.

394. 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.

395. 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 schemes. When Moody's downgraded Enron's debt rating to junk status on Nov. 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

396. It has been estimated that Enron had at least 3,500 entities that were involved in its off-balance-sheet scheme. 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

397. 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."

398. 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)

399. These improper accounting practices and manipulations were in direct violation of Generally Accepted Accounting Principles ("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.

400. 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

401. Enron did not consolidate the results of several related entities the – "Off-Balance-Sheet-Partnerships" described in Section VII(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.

402. 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.

403. If SPE treatment is not warranted, the relevant provision of GAAP concerning consolidations or combinations of related companies is ARB 51[4] 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:

4 CONSOLIDATED FINANCIAL STATEMENTS, Accounting Research Bulletin No. 51.

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

404. "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 existence of a parent-subsidiary relationship by means other than record ownership of voting stock. 17 C.F.R. § 201.3A-02(a).405. 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 VII(E) of this Complaint, *supra*. Accordingly, LJM1 and LJM2 were required to be consolidated into Enron's financial statements.

406. As described in Section VII(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.

407. 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.

408. As admitted by defendant Berardino, LJM1 also failed this "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.

409. 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

410. 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)

411. 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" was debt and interest incurred

on a consolidated basis with Enron and should have been reported on the financial statements of Enron.

412. Had Enron properly consolidated the financial statements of the partnerships, as they were required to do under GAAP, the partnership's 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

413. 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.

414. 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; <u>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</u>. 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.

415. 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

416. GAAP, specifically EITF 85-1,[5] 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.

417. 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

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

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

418. 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 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 to 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.

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

419. 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 <u>at the time they were issued</u>; and (2) the misstatements were material.

420. The relevant authoritative pronouncement regarding accounting changes is APB Opinion No. 20,[6] 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 <u>that existed at the time the financial statements were prepared</u>. 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. (Emphasis added.) [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].

---

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

Similarly, APB Opinion No. 28 provides that changes in accounting estimates do not provide a basis for restatement of interim financial statements[7]:

> 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 <u>because of an error or fact that was known at the time the financial statements were issued</u>. In short, the financial statements were false and misleading when issued.

421. 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

422. 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.

423. SEC Regulation S-K (Reg. § 229.404. Item 404) requires disclosure of certain relationships and related transactions in the nonfinancial-statement portions of registration

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

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.

424. Enron and the Enron Insider Defendants 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 and the Attorney Defendants were involved in these nondisclosures.

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

425. Defendant Andersen knowingly participated in the Enron ERISA Defendants' breaches of fiduciary duty by actively concealing from the Savings Plan Participants the disastrous financial condition of Enron.

426. Indeed, during part of the relevant time period, Andersen served as ***both*** the auditor of Enron ***and*** the auditor of the Savings Plan. Further, Andersen provided consulting

services to Enron that generated millions of dollars in fees to Andersen, caused 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) cook 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.

427. Andersen completely abandoned its "public watchdog" role and responsibilities to the Savings Plan participants to accommodate its client by acquiescing in Enron's decision to report false and misleading financials. Therefore, Andersen became a direct participant in Enron's misconduct and conducted the affairs of the Enron enterprise as defined below.

428. 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 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.

429. At the time Andersen issued its unqualified opinions, Andersen knew or recklessly disregarded 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.

430. Andersen worked with the Enron Insider Defendants to structure transactions and SPEs so as to take debt off Enron's balance sheet, thereby hiding assets, to further the Enron Insider's scheme as detailed herein. Enron partners and employees sat in Enron's offices and

plotted, often on a whiteboard, how the illicit objectives of the Enron Insiders could be accomplished to benefit the enterprise. This conduct went well beyond normal auditing services by virtue of Andersen's participation in the scheme, which included, but is not limited to, certifying financial statements known to be false, participating in the plans of the SPEs, both of which Andersen knew was at the core of the unlawful scheme.

A. Particular Examples of Andersen's Misconduct

1. The Chewco Transaction

431. As discussed above, one egregious example of Enron's improper failure to consolidate the balances of SPEs involved Chewco Investments, L.P., a limited partnership managed by Defendant Kopper.

432. 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.

433. 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.

434. As Andersen well-knew, under established accounting rules concerning SPEs, 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.

435. However, Enron was unable to find any such outside investor, and instead financed Chewco's purchase of JEDI almost entirely with debt, not equity.

436. In flagrant violation of non-consolidation rules and after receiving a ***separate*** fee for consultation on the Chewco transaction, Andersen 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.

437. 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.

2. The LJM and Raptor Transactions

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

439. 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.

440. The LJM SPEs were involved in a series of phony "hedging" transactions – which were fully blessed by Andersen and greatly harmed the Savings Plan, the ESOP and the Cash Balance Plan by artificially inflating the price of Enron stock.

441. A proper "hedge" involves a contract with a credit-worthy outside party that receives payment for taking on the economic risk of an investment. Thus, if the value of the investment goes down, the outside party will bear the loss.

442. That is not what happened here.

443. Instead, Enron effectively transferred its own stock to a SPE in exchange for a note.

444. The first such "hedging" transaction occurred in June of 1999, and involved LJM1's taking on the risk that the price of the stock of Rhythm NetConnections Inc. ("Rhythms"), an internet service provider, would decline. In exchange, the Fastow partnership LJM1 received Enron stock. LJM1 was used in a phony effort to provide the outside equity necessary for the SPE to qualify for non-consolidation. If LJM1 were required to pay Enron on the Rhythms options, the transferred Enron stock would be the principal source of payment.

445. Hence, in reality there was no risk to LJM1, since Enron had provided the bulk of the capital with which it would pay Enron if the Rhythms investment lost money.

446. Similar "hedging" transactions occurred in 2000 and 2001, and involved SPEs known as the "Raptor" vehicles, together with Fastow's other partnership, LJM2.

447. Once again, the Raptor transactions were funded principally with Enron's own stock that was intended to "hedge" against declines in the value of a large group of Enron's merchant investments.

448. LJM2 was used to provide the alleged outside equity to avoid consolidation requirements.

449. Andersen's improper accounting thereby concealed substantial losses in Enron's merchant investments for some time.

450. However, Andersen's efforts could not avoid the inevitable results of hedges that were supported only by Enron stock in a declining market. Ultimately, with insoluble credit problems, the Raptor entities were terminated in September 2001, resulting in the unexpected announcement on October 16, 2001, of a $544 million after-tax charge against earnings.

451. Moreover, Andersen's CEO has recently admitted in Congressional testimony that Andersen was flat out wrong in 1999 when it concluded that the LJM1 SPE satisfied the non-consolidation requirements.

452. As a result, Enron was forced to restate prior period financials to consolidate LJM1 retroactively to 1999.

453. Having received separate fees for its work on the LJM transactions, Andersen approved the improper non-consolidation of the Raptor and Rhythms transactions in each financial statement issued from 1999 until the fall of 2001.

B. Overall Audit Failures

454. 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 sec. 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*." (Emphasis added.);

(b) Andersen violated SAS No. 45, Related Parties (AICPA, Professional Standards, vol. 1, AU sec. 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 sec. 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 Report 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 that by doing so it was engaging in gross departures from GAAS, thus making its opinion false, and issued such certification with reckless disregard whether or not GAAS was being complied with.

C. Andersen's Role As Auditor Of The Savings Plan

455. For part of the Class Period, Andersen served not only as auditor of Enron, but also as auditor of the Savings Plan.

456. A report of independent public accountants was submitted by Andersen and included in an 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.

457. 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.

458. 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).

459. 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.

460. 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.

461. 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).

462. Andersen did so pursuant to the Retirement Plan Conspiracy, which was designed to give the illusion that the Savings Plan was funded with valuable Enron stock in order to deprive Enron employees and Plan participants of their retirement savings.

D. Andersen's Destruction of Key Audit Documents

463. All accounting firms are aware that retention of documents issued in connection with audit work are a critical part of the auditing process. Andersen was no different. Its Policy Statement No. 760 concerning "Client Engagement Information – Organization, Retention and

Destruction" (the "Destruction Policy") required the "proper consideration at the appropriate level of any reason why [working paper] files should not be destroyed." Among the reasons to retain documents were: "regulatory agency investigations (*e.g.*, by the SEC)"; "legal action in connection with which the files would be necessary or useful"; and "litigation involving AA or the client." The policy also clearly precluded the destruction of any "related information ... in cases of threatened litigation."

464. Additional internal rules were set forth in Andersen's Policy No. 780, "Notification of Threatened or Actual Litigation, Governmental or Professional Investigations, Receipt of a Subpoena, or Other Requests for Documents or Testimony (Formal or Informal)." They included certain procedures to be followed "where professional practice litigation against AA or any of its personnel ... is judged likely to occur, or where governmental investigations that may involve AA or any of its personnel have been commenced or are judged likely." In the event of an investigation of a client by the SEC, the policy required prompt notification of Andersen's legal group so the firm would "be able to resolve or minimize problems before litigation is commenced and/or preserve all of its rights and options." The policy also stated that "any situation that may result in a claim being made against the Firm related to services provided to clients of the Firm previously or currently" was to be reported. Examples of such situations identified in the policy included "the subsequent discovery of material events that cause us to withdraw or amend a previously issued report or opinion" and the "restatement of prior financial results by an attest client." The list was specifically stated that it included such examples but was not limited to them.

465. The Accountant Defendants have engaged in a pattern of fraudulent concealment, by *inter alia* shredding accounting and other records, deleting email and other computer records, and destroying other evidence in Houston, Texas, Chicago, Illinois, Portland, Oregon, London, England and/or other locations, all in a concerted attempt to conceal the fraudulent acts, omissions, and scheme set forth below and their conspiracy to engage in such wrongful and

unlawful conduct. That destruction directly contravened Andersen's Destruction Policy and was conducted in a manner that evidenced the Accounting Defendants' knowledge that information was being destroyed for the purpose of making it unavailable to litigation concerning Enron's accounting, legal action that was inevitable in the wake of massive charges to income and capital as well as the contemplation of the restatement of Enron's financial results for several preceding years.

466. In the summer and fall of 2001, a series of significant developments led to Andersen's foreseeing imminent civil litigation against, and government investigations of, Enron and Andersen.

467. In or about August 2001, Andersen became aware that Enron had discovered a mistake in its accounting that, by virtue of its audit certification, the firm had approved. It also became aware that certain off the book transactions were going to result in a large decrease in earnings for the quarter and that the net effect of these adjustments would result in a loss for the quarter. Various of the Accounting Defendants began having regular meetings with Enron accounting personnel and among themselves to address these errors. Thus, by September Andersen and various of the Accounting Defendants became aware that an approximately $1.2 billion reduction in shareholder equity was in the offing.

468. On or about August 20, 2001, a former "Houston office alum who works in the CFO's group at Enron," Sherron Watkins, contacted James Hecker, an accountant in Andersen's Houston office, to inform him that "she was concerned about the propriety of accounting for certain related-party transactions" at Enron. She identified the entity involved as "LJM," informed Hecker that "at the time of the transactions [it was] at least partly owned by Andy Fastow, Enron's CFO" and that "Fastow's interest in 'LJM' has since been sold to "Michael Kopper, an Enron alum." Hecker noted that she was "even more agitated about the transactions' accounting because ... the related footnote disclosures in the company's [Enron's] consolidated financial statements were difficult to understand and did not tell the 'whole story.'" He noted

that Watkins intended to speak with Enron's CEO, Ken Lay, about these matters. Hecker's memorandum of this conversation, in addition to the above statements, recited more details Watkins provided about the transactions and assured him "that the dollars involved (approximately $500 million) were material." Hecker recognized that Watkins "appeared to have some good questions," and immediately notified various members of the Accounting Defendants. The matter was then, without any delay, referred to Andersen's legal department.

469. On or about August 20, 2001, Watkins wrote a letter addressed to Lay which stated that she was "incredibly nervous" that Enron would "implode in a wave of accounting scandals" and that the fact that "AA&Co. [had] blessed the accounting treatment" was of no comfort because it wouldn't "protect Enron if these transactions are ever disclosed in the bright light of day." She illustrated this point by highlighting Andersen's "late 90's problems of Waste Management – where AA paid $130 mm in litigation re: questionable accounting practices."

470. Andersen knew that Enron had referred Watkins' allegations to V&E, its principal outside counsel, for further investigation and, on information and belief, also knew that the scope of V&E's investigation was of limited scope such that the investigation would not address "the propriety of the accounting treatment employed by Enron and Arthur Andersen." Thus, there was to be no "second guessing of the accounting advice or treatment provided by [Andersen]. On information and belief, Andersen was informed no later than October 15, 2001, that one of the conclusions of V&E's investigation was the obvious, that there "was a serious risk of adverse publicity and litigation."

471. By late September, senior Andersen accountants from other Andersen offices (including John Geron, Richard Corgel, and Lawrence Rieger), as well as Temple, joined the discussions with the PSG and the Houston audit team and participated in sometimes daily conference calls aimed at resolving disagreements. During the course of those discussions, PSG members were reminded of the firm's document policy and the need to comply with that policy.

472. In an October 12 e-mail, Temple wrote to the Houston Practice Director, Michael Odom, that "it might be useful to consider reminding the engagement team of our documentation and retention policy" and that it "will be helpful to make sure that we have complied with the policy." Odom forwarded the e-mail to Duncan on the same day he received it.

473. Temple sent her e-mail four days before Enron's earnings announcement for the third quarter, at a time when Andersen's accountants were working almost around the clock to resolve certain accounting issues that had arisen relating to Enron's Raptor transactions. Andersen's national accounting group in Chicago, known as the Professional Standards Group or PSG, had identified an error in the methodology that the Houston audit team had been using to test for losses on these transactions, and the audit team was working to correct that error. The audit team had drafted a memorandum setting forth the proposed new methodology and had e-mailed the draft to the PSG, other senior Andersen accountants outside of Houston, and Temple for their review. Forty minutes before sending her document policy e-mail to Odom, Temple e-mailed Duncan, Cash and Odom her proposed edits to the draft accounting memorandum. Temple's edits included adding language to the draft to make clear that the Houston audit team had previously used an "inappropriate" accounting methodology and reminding the audit team to document the dates of corrections to their memos.

474. On October 10, Odom himself made a presentation to accountants in Houston and certain other Andersen offices reminding them in rather strong terms of the importance of destroying documents as called for by the firm's policy. Odom explained to the group that in several recent lawsuits Andersen had to produce documents that should not have been retained and that it was "<u>embarrassing and extra work</u>" for Andersen to be retaining any materials not required for the central files. Odom asked that audit managers remind their teams to discard all unnecessary materials when work paper files are completed and sent to storage. Odom then explained that the policy does not permit document destruction when litigation is pending, but that if documents are destroyed and "litigation is filed the next day, that's great … because … we

followed our own policy – and whatever there was that might have been of interest to somebody is gone and is irretrievable."

475. In an October 14 e-mail, Temple commented that under the firm document policy drafts would not be retained once the memos under review were finalized. Temple forwarded without comment a copy of the policy to the PSG on October 19. Temple referred to the policy several times during those discussions, and other Andersen personnel, including Gary Goolsby, the head of Risk Management, also reminded people of the policy. In response to these reminders, beginning the second week of October, and including the week of October 22, various PSG personnel deleted e-mail files they had been keeping relating to Enron consultations.

476. On or about October 16, 2001, Enron issued a press release announcing a $618 million net loss for the third quarter of 2001. That same day, but not as part of the press release, Enron announced to analysts that it would reduce shareholder equity by approximately $1.2 billion. The market reacted immediately and the stock price of Enron shares plummeted.

477. Thus, in addition to the negative financial information disclosed by Enron to the public and to analysts on October 16, 2001, Andersen was aware by this time of additional significant facts unknown to the public.

- On or about October 9, 2001, correctly anticipating litigation and government investigations, Andersen, which had an internal department of lawyers for routine legal matters, retained an experienced New York law firm to handle future Enron-related litigation.
- The approximately $1.2 billion reduction in shareholder equity disclosed to analysts on October 16, 2001, was necessitated by Andersen and Enron having previously improperly categorized hundreds of millions of dollars as an increase, rather than a decrease, to Enron shareholder equity.
- The Enron October 16, 2001, press release characterized numerous charges against income for the third quarter as "non-recurring" even though Andersen

believed the company did not have a basis for concluding that the charges would in fact be non-recurring. Indeed, Andersen advised Enron against using that term, and documented its objections internally in the event of litigation, but did not report its objections or otherwise take steps to cure the public statement.

- Sherron Watkins identified possible fraud that enabled the company to camouflage its true financial condition.
- The Andersen team handling the Enron audit directly contravened the accounting methodology approved by Andersen's own specialists working in its Professional Standards Group. In opposition to the views of its own experts, the Andersen auditors had advised Enron in the spring of 2001 that it could use a favorable accounting method for its "special purpose entities."
- In 2000, an internal review conducted by senior management within Andersen evaluated the Andersen team assigned to audit Enron and rated the team as only a "2" on a scale of one to five, with five being the highest rating.

478. By Friday, October 19, 2001, Enron alerted the Andersen audit team that the SEC had begun an inquiry regarding the Enron "special purpose entities" and the involvement of Enron's Chief Financial Officer. The next morning, Saturday, October 20, 2001, an emergency conference call among high-level Andersen management was convened to address the SEC inquiry. The participants in that call included, among others, Duncan and Temple. During the call, it was decided that documentation that could assist Enron in responding to the SEC was to be assembled by the Andersen auditors.

479. After spending Monday, October 22, 2001 at Enron, Andersen partners assigned to the Enron engagement team launched on October 23, 2001, a wholesale destruction of documents at Andersen's offices in Houston, Texas. Andersen personnel were called to urgent and mandatory meetings.

480. Destruction of Enron-related documents intensified on October 23, 2001, after a series of meetings among the engagement team and the engagement partners Thomas Bauer, Debra Cash, Michael Schultz and Roger Willard, and the lead partner, David Duncan. The October 23 meetings included a morning partners' meeting, a morning meeting part of the team had with one partner, an afternoon meeting of all partners and managers, and meetings later that afternoon and the following morning that three of the partners had with managers, staff and secretaries that worked for them. Within the next three days, at least 26 trunks and another 24 boxes of Enron-related paper was shredded. This volume compared to a weekly average of less than one trunk during the preceding three weeks. In addition, there was also an almost three-fold increase in the volume of e-mail deletions that week. According to the March 28, 2002 declaration of the Assistant United States Attorney for the Northern District of California, Leslie R. Caldwell, at a lengthy meeting with Andersen's attorneys on March 7, 2002, Andersen's counsel "agreed there was no dispute that others in the Houston office had shredded tons of documents."

481. By the time of their October 23 staff meetings, Duncan, the other partners on the Enron engagement, and all accountant defendants, knew that the SEC had made an informal request to Enron for documents and information relating to partnerships involving Enron's former CFO, Andrew Fastow, and that private civil lawsuits had also been filed. They were also aware of confidential allegations by an Enron executive, Sherron Watkins, of accounting irregularities at Enron, which had been reported to Enron's CEO and investigated by its counsel. Duncan and Cash had meetings with Enron personnel on October 22, and had learned and reported to others at Andersen that a second SEC letter request to Enron for accounting related information was expected soon and that Enron had hired new counsel to assist with these requests and to look into the Fastow partnerships. Duncan also learned that senior Andersen officials outside of Houston were sending another Andersen partner with years of previous

experience at the SEC, John Riley, to Houston to assist the engagement team in its dealings with Enron on the SEC inquiry.

482. Contemporaneous notes of one of the October 23 staff meetings contain the directive "clean up – documentation" followed by the explanation "SEC voluntary request/two suits filed, more on way." A typed agenda for one of the October 23 meetings lists as topics to be discussed: "SEC probe/shareholder lawsuits … [and] soft and hard copy file review."

483. The following day, October 24, 2001, the instructions to shred documents and to delete e-mails continued to be passed on by the managers of the engagement team. In an e-mail written that day, certain employees were reminded that the documents that should be destroyed included: "Notes, folders, personal hard drives, networked current year project folders, prior year project folders, CYA (cover your posterior) documentation, personal network folders, etc." The same e-mail made the destruction a priority: "We do expect that people will be able to do this on an overtime basis, if necessary, for the reminder of the week, or for however long it takes …" According to the message, the destruction of documents was being carried out through a "coordination of the audit groups." As part of these "clean-up activities," special access was granted to the server and directories that included the audit workpapers for Andersen's prior year audits. This was but one of the sources of information that was slated for Andersen's unusual, wide-ranging search-and-destroy mission.

484. The document shredding did not end during the week of October 29, but the volume dropped sharply from 26 trunks and 24 boxes the prior week to 3 trunks and 5 boxes that week, and the shredding activity was managed out of Andersen's leased office space in the Enron building, not at Andersen's own Houston office where the team that had arrived to monitor the situation was primarily working. In addition to the trunks and boxes that were sent off-site to be shredded, there was a shredding machine at Andersen's leased Enron space that was also used during this time period.

485. Thus, instead of being advised to preserve documentation so as to assist Enron and the SEC, Andersen employees on the Enron engagement team were instructed by Andersen partners and others to destroy immediately documentation relating to Enron, and told to work overtime if necessary to accomplish the destruction. During the next few weeks, an unparalleled initiative was undertaken to shred physical documentation and delete computer files. Tons of paper relating to the Enron audit were promptly shredded as part of the orchestrated document destruction. The shredder at the Andersen office at the Enron building was used virtually constantly and, to handle the overload, dozens of large trunks filled with Enron documents were sent to Andersen's main Houston office to be shredded. A systematic effort was also undertaken and carried out to purge the computer hard-drives and e-mail system of Enron-related files.

486. In addition to shredding and deleting documents in Houston, Texas, instructions were given to Andersen personnel working on Enron audit matters in Portland, Oregon, Chicago, Illinois, and London, England, to make sure that Enron documents were destroyed there as well. Indeed, in London, a coordinated effort by Andersen partners and others, similar to the initiative undertaken in Houston, was put into place to destroy Enron-related documents within days of notice of the SEC inquiry. Enron-related documents also were destroyed by Andersen partners in Chicago.

487. Destruction of Enron-related documents in the fall of 2001 was not limited to the Houston office. During the same week that shredding activity in the Houston office dramatically increased, the week of October 22, there were communications between the Houston office and at least two other Andersen offices, London and Portland, that resulted in destruction activity there. On October 24, a manager in the Portland office sent an e-mail to a manager in Andersen's Houston office, confirming that in response to the Houston manager's earlier voice-mail, the Portland manager had destroyed and discarded the Enron documents in his possession. As it turns out, however, the instructions on that voice-mail were not followed by most of the Portland office. When the partner and practice director there learned of the

voice-mail, which had been forwarded by the Portland manager to all Portland partners and managers who were working or had worked on Enron, they advised people to disregard it. It also appears that on the morning of October 23, Duncan and Bauer had a telephone conference with an Enron audit partner in the London office, Michael Jones, as a result of which some instructions in the London office were given to clean up files and destroy unnecessary documents. There were a series of subsequent e-mail communications between Jones and personnel in the Houston office during that week concerning cleaning up files and discarding unnecessary Enron materials.

488. On November 9, 2001, Duncan's secretary sent an e-mail to the Enron engagement team notifying them that per Duncan's instructions there was to be "no more shredding." This message followed a voice-mail instruction from Temple that same day notifying the Enron audit team via Duncan that a subpoena from the SEC had been received and that Enron documents should be preserved. On November 10, Temple sent out a written document preservation order confirming her November 9 voice-mail instructions; it required all personnel to preserve all Enron-related documents already in existence and to preserve any newly created documents relating to any of the litigation issues then pending. It appears that with a few exceptions, this preservation order was followed and that shredding activities stopped and e-mail deletion activity was greatly reduced. There are a few isolated instances of Andersen personnel deleting e-mails after the preservation order, but there does not appear to be any pattern to that activity, any substantive significance to any of the materials deleted, or any evidence that anyone did so in willful disregard of the preservation order.

489. On or about November 8, 2001, the SEC served Andersen with the anticipated subpoena relating to its work for Enron. In response, members of the Andersen team on the Enron audit were alerted finally that there could be "no more shredding" because the firm had been "officially served" for documents.

E. Andersen Ignores the Accounting Decisions of Its Internal Experts to Play Along With Enron's Accounting Mistreatments

490. The Professional Standards Group ("PSG") of Andersen is 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.

491. Carl E. Bass ("Bass") was a member of PSG, working in the Houston office of Andersen. When Mr. 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.

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

493. For example, in a December 18, 1999 e-mail, Mr. 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.

494. 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, Mr. 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.

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

495. Mr. 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.

496. Mr. 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.

497. Had Andersen followed their procedures and allowed the PSG – their only oversight group – to perform their 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.

498. Instead of following the guidance of their in-house expert and purported quality control partner Mr. Bass, he was summarily fired from his responsibilities because defendant Causey 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. ANDERSEN'S REPEATED MISCONDUCT

499. Andersen's constant association with repeated financial scandals and accounting irregularities is not a random circumstance, but the natural by-product of the conduct of its partners operating within the firm's policies that has been directed on whole or in part by Andersen LLP and Andersen Worldwide. Andersen "has long been reputed to be the most aggressive of the 'Big Eight' accounting firms in acquiring high-flying new corporate clients." *See* WALL STREET JOURNAL, Sept. 21, 1984, p. 1. Over the years, Andersen has continually failed to change its ways.

500. Andersen Worldwide governs the operations of Andersen and are responsible for ensuring that Andersen LLP and its partners complied with all audit responsibilities. However, they did not do so, instead they condoned an aggressive accounting approach in order continue to generate the large fees earned from these engagements.

501. Andersen, Andersen Worldwide, and the Andersen partners have run Anderson LLP in a manner that has involved a series of unlawful acts, referred to above and some of which are detailed below, has been run as a partnership that has actively participated in a pattern of racketeering activity that involves not only Enron, but other publicly run companies, as outlined below.

A. Waste Management

502. Andersen was the auditor for Waste Management. As auditor to Waste Management, Andersen issued materially false and misleading audit reports on Waste Management, Inc.'s financial statements for the period 1993 through 1996. During this period, the company engaged Andersen to audit its financial statements included in its Annual Reports on Form 10-K filed with the Commission pursuant to the Securities Exchange Act of 1934 ("Exchange Act"). For each year 1993 through 1996, Andersen issued an audit report on Waste Management's financial statements in which it stated that the company's financial statements were presented fairly, in all material respects, in conformity with generally accepted accounting principles ("GAAP") and that Andersen had conducted its audit of those financial statements in accordance with generally accepted auditing standards ("GAAS"). Andersen's representations were materially false and misleading.

503. On June 19, 2001, the SEC issued a finding that details Andersen's misconduct and is set forth in detail because it is a virtual repeat of the type of wrongdoing that occurred at Enron:

> Waste Management's financial statements were not presented fairly, in all material respects, in conformity with GAAP for 1993 through 1996. The company used improper accounting to inflate its operating income and other measures of success, primarily by deferring the recognition of current period operating expenses into the future and by netting one-time gains against current and prior period misstatements and current period operating expenses. For each year 1993 through 1996, Andersen, as a result of the conduct of certain of its partners as described herein, knew or was reckless in not knowing that the company's financial statements were not presented fairly, in all material respects, in conformity with GAAP

> but nonetheless approved the issuance of an unqualified audit report on the financial statements each year. Six Andersen partners were involved, at various times during the relevant period, in the issuance of unqualified audit reports on Waste Management's annual financial statements. Those partners were: Robert E. Allgyer ("Allgyer"), the engagement partner; Edward G. Maier ("Maier"), the concurring partner and the risk management partner for the Firm's Chicago office; Walter Cercavschi ("Cercavschi"), originally a manager and, as of September 1, 1994, an audit partner on the engagement (Allgyer, Maier, and Cercavschi are hereinafter collectively referred to as the "Engagement Partners"); Robert G. Kutsenda ("Kutsenda"), the Practice Director for Andersen's Central Region ("Practice Director"); the Managing Partner of the Firm ("Managing Partner") and the advisory partner to the engagement team; and the Audit Division Head for the Chicago office ("Audit Division Head") (Kutsenda, the Managing Partner, and the Audit Division Head are hereinafter collectively referred to as the "Consulted Partners").

504. In February 1998, Waste Management announced that it was restating its financial statements for the five-year period 1992 through 1996 and the first three quarters of 1997 (the "Restatement"). At that time, the Restatement was one of the largest in history. In the Restatement, the company admitted that through 1996, it had materially overstated its reported pre-tax earnings by $1.43 billion and that it had understated certain elements of its tax expense by $178 million as follows:

Vehicle, equipment and container depreciation expense	$509
Capitalized interest	192
Environmental and closure/post-closure liabilities	173
Purchase accounting related to remediation reserves	128
Asset impairment losses	214
Software impairment reversal	(85)
Other	301
Pre-tax total	$1,432
Income tax expense restatement	$178

505. Andersen audited and issued an unqualified audit report on each of Waste Management's original financial statements and on the financial statements in the Restatement. By issuing an unqualified audit report on the financial statements in the Restatement, Andersen acknowledged that the company's original financial statements for the periods 1992 through 1996 were materially misstated and that its prior unqualified audit reports on those financial statements should not be relied upon. In the Restatement, the company admitted that it had overstated its net after tax income as follows:

Year Ending	Originally Reported (in thousands)	As Restated (in thousands)	% Overstated
12/31/92	$850,036	$739,686	14.9%
12/31/93	$452,776	$288,707	56.8%
12/31/94	$784,381	$627,508	25.0%
12/31/95	$603,899	$340,097	77.6%
12/31/96	$192,085	$(39,307)	100+%

506. The Andersen engagement teams that performed audits of the company's financial statements in the late 1980s first discovered several of the accounting practices resulting in certain of these misstatements. In the course of its original audits for 1993 through 1996, the engagement team had identified and documented numerous accounting issues underlying misstatements that the Restatement ultimately addressed, and had brought certain of those issues to the attention of the Consulted Partners. Because Andersen failed to ensure that all known misstatements were quantified and all likely misstatements were estimated, Andersen knew or was reckless in not knowing that the audits of the financial statements on which the firm issued unqualified audit reports during those years were not conducted in accordance with GAAS.

507. The SEC, based on this conduct, found that:

> As a result of the conduct of its partners, as described herein, Andersen knew or was reckless in not knowing that the unqualified audit reports that it had issued were materially false and misleading because the audits did not conform with GAAS and the financial statements did not conform with GAAP. Andersen thereby engaged in improper professional conduct within the meaning of Rule 102(e).

508. In striking similarity to the Enron situation, the SEC found that Andersen condoned "aggressive" accounting:

> As early as 1988, members of Andersen's audit management team recognized that Waste Management employed "aggressive" accounting practices to enhance its earnings. In fact, certain of these practices violated GAAP. They included, among other things, Waste Management's repeated fourth quarter adjustments to reduce depreciation expense on its vehicles, equipment and containers cumulatively from the beginning of the year. Over time, the Waste Management engagement team identified other non-GAAP accounting practices. These practices included, among other things, the company's adoption of a non-GAAP method of capitalizing interest on landfill development costs, its failure properly to accrue for its tax and self-insurance expenses, its improper use of purchase accounting to increase its environmental remediation reserves (liabilities), its improper charges of operating expenses to the environmental remediation reserves (liabilities), and its refusal to write-off permitting and/or project costs on impaired or abandoned landfills. These accounting practices together increased reported operating income primarily by understating operating expenses. In most instances, the company deferred recognition of current operating expenses to future periods in order to inflate its current period income. Andersen's audit engagement teams identified and documented each of these practices at various times between 1989 and 1992.

509. The Commission also found that:

> **Andersen**
>
> - Andersen knowingly or recklessly issued false and misleading unqualified audit reports on Waste Management's annual financial statements for the years 1993 through 1996. The audit reports stated that the company's financial statements were presented fairly, in all material respects, in conformity with GAAP and that Andersen's audits were conducted in accordance with GAAS. These representations were materially false and misleading.
>
> - In one or more audits during the period 1993 through 1996, Andersen, through Allgyer, Maier and Cercavschi, identified and documented numerous accounting issues giving rise to misstatements and likely misstatements, and brought certain of the issues to the attention of Andersen's Practice Director, the firm's Managing Partner and the Audit Division Head for the firm's Chicago office ("Audit Division Head"). The engagement team also consulted with and relied upon Andersen's waste industry expert in

its Accounting Principles Group (a unit within Andersen available for consultation on significant account issues) concerning certain of the company's improper accounting practices discussed herein.

- With respect to many of the non-GAAP accounting practices that it identified, Andersen failed to quantify and estimate all known and likely misstatements resulting from the accounting issues identified by the engagement team. During the years in question, Andersen quantified only certain of the misstatements. For example, in its 1993 audit, Andersen quantified current and prior-period misstatements of $128 million, the correct of which would have reduced net income before special items by 12%. The engagement team also identified, but did not quantify or estimate, accounting practices that gave rise to other known and likely misstatements. Allgyer and Maier consulted with the Practice Director and the Audit Division Head and informed them of the quantified misstatements and "continuing audit issues," and Allgyer consulted with the Firm's Managing Partner and provided him the same information. The partners determined that the misstatements were not material and that Andersen could issue an unqualified audit report on the company's 1993 financial statements.

- In connection with the 1993 audit, following the consultations noted above, and prior to the company's announcement of its 1993 earnings, Allgyer presented the Action Steps to the company's Chief Executive Officer (later signed and initialed by the company's Chief Financial Officer and Chief Accounting Officer). According to an internal memorandum that Allgyer distributed, the Action Steps were the "minimum changes we have concluded are necessary for [Waste Management] to implement immediately" and concluded that the company's compliance with the "must do" items [in the Action Steps] "brings the company to a minimum acceptable level of accounting …." The action Steps also evidenced the fact that Andersen had identified the non-GAAP accounting practices that gave rise to numerous misstatements in the company's 1993 through 1996 financial statements.

- In 1994, the company continued to engage in accounting practices that gave rise to the quantified misstatements and the other known and likely misstatements. As in 1993, the Practice Director, the Firm's Managing Partner and the Audit Division Head were consulted, and they again concurred in the issuance of an unqualified audit report on the company's financial statements.

- Andersen monitored the company's compliance or lack of compliance with the Action Steps. In 1995, in many instances, the company did not implement the Action Steps and continued to utilize accounting practices that did not conform with GAAP. In its 1995 financial statements, the company used a $160 million gain that it realized on the exchange of its interest in an entity known as Service Master to offset $160 million in unrelated operating expenses and misstatements that, in most instances, had been identified as misstatements in 1994 and earlier. In its income statement, the company offset the misstatements and expenses against the gain. The amount netted represented 10% of 1995 pre-tax income before special charges. The company made no disclosure of the netting.

- After reaching a preliminary determination that the amounts being netted were not material to the financial statements taken as a whole, two partners on the engagement consulted with the Practice Director about the netting and whether Andersen would be required to qualify or withhold its audit report if the company netted the Service Master gain and did not disclose the netting. (The Practice Director understood that only prior-period adjustments would be netted.) He concluded that, although the netting did not conform with GAAP and the netted items would not be disclosed, Andersen did not need to qualify or withhold its audit report. He reasoned that the netting and the non-disclosure of the misstatements and the unrelated gain were not material to the company's 1995 financial statements taken as a whole. In fact, these items were material. Andersen's 1995 unqualified audit report was materially false and misleading.

- Several months after the completion of the 1995 audit and the company's filing of its 1995 Form 10-K with the Commission, Andersen prepared a memorandum articulating its disagreement with the company's use of netting and the lack of disclosure. The memorandum discussed the Service Master transaction of 1995 and gains from other transactions in 1996 that were netted without disclosure. According to the memorandum, Andersen recognized that

  [t]he Company has been sensitive to not use special charges [to eliminate balance sheet errors and misstatements that had accumulated in prior years] and instead has used 'other gains' to bury charges for balance sheet clean ups. [Emphasis in original] …

  We disagree with management's netting of the gains and charges and the lack of disclosures. We have

> communicated strongly to WMX management that this is an area of SEC exposure. We will continue to monitor this trend, and assess in all cases the impact of non-disclosure in terms of materiality to the overall financial statement presentation and effect on current year earnings.

- Despite its concerns about the company's use of netting, Andersen did not withdraw or modify its 1995 audit report or take steps to prevent the company from continuing to use netting in 1996 to eliminate current-period expenses and prior-period misstatements from its balance sheet. The company also continued to employ many of the improper accounting practices to inflate income.

- During the 1996 audit, Andersen quantified misstatements in the company's financial statements, which equaled 7.2% of pre-tax income from continuing operations before special charges. The company also netted and misclassified gains and profits of approximately $85.1 million on the sales of two subsidiaries, which Andersen also identified as improper, and which, if corrected in 1996, would have reduced pre-tax income from continuing operations before special charges by an additional 5.9%.

510. As noted in the SEC order as to Andersen, this conduct took place against the following background:

- Andersen has served as Waste Management's auditors since before Waste Management became a public company in 1971.

- Andersen regarded Waste Management as a "crown jewel" client.

- Until 1997, every chief financial officer ("CFO") and chief accounting officer ("CAO") in Waste Management's history as a public company had previously worked as an auditor at Andersen.

- During the 1990s, approximately 14 former Andersen employees worked for Waste Management, most often in key financial and accounting positions.

- Andersen regarded Allgyer as one of its top "client service" partners. Andersen selected Allgyer to become the Waste Management engagement partner because, among other things, Allgyer had demonstrated a "devotion to client service" and had a "personal style that … fit well with the Waste Management officers." During this time (and continuing throughout his tenure as engagement partner for

Waste Management), Allgyer held the title of "Partner in Charge of Client Service" for Andersen's Chicago office and served as "marketing director." In this position, Allgyer coordinated the marketing efforts of Andersen's entire Chicago office including, among other things, cross-selling non-attest services to audit clients.

- Shortly after Allgyer's appointment as engagement partner, Waste Management capped Andersen's corporate audit fees at the prior year's level but allowed the Firm to earn additional fees for "special work."

- As reported to the audit committee, between 1991 and 1997, Andersen billed Waste Management corporate headquarters approximately $7.5 million in audit fees. Over this seven-year period, while Andersen's corporate audit fees remained capped, Andersen also billed Waste Management corporate headquarters $11.8 million in other fees.

- A related entity, Andersen Consulting, also billed Waste Management corporate headquarters approximately $6 million in additional non-audit fees. Of the $6 million in Andersen Consulting fees, $3.7 million related to a Strategic Review that analyzed the overall business structure of the company and ultimately made recommendations on implementing a new operating model designed to "increase shareholder value." Allgyer was a member of the Steering Committee that oversaw the Strategic Review, and Andersen Consulting billed his time for these services to the company.

- In setting Allgyer's compensation, Andersen took into account, among other things, the Firm's billings to the company audit and non-audit services.

511. The SEC order also specified the misconduct of the individual partners:

Allgyer

- Allgyer is the only defendant charged in connection with Andersen's audit of Waste Management's 1992 financial statements. The Complaint alleges that Allgyer knew or was reckless in not knowing that the Andersen's audit report on the Company's 1992 financial statements was materially false and misleading because in addition to quantified misstatements totaling $93,5 million that, if corrected, would have reduced the Company's net income before accounting changes by 7.4%, he knew or was reckless in not knowing of additional known and likely misstatements that had not been quantified and estimated.

Allgyer further knew that the Company had netted, without disclosure, $111 million of current-period expenses and prior-period misstatements against a portion of a one-time gain from an unrelated initial public offering of securities, which had the effect of understating Waste Management's 1992 operating expenses and overstating the Company's income from operations.

- The Commission's complaint further alleges that Allgyer engaged in similar conduct in connection with the 1993 through 1996 audits: Allgyer knew or was reckless in not knowing that Andersen's unqualified audit report for each of the year 1993 through 1996 was materially false and misleading.

Maier

- The Commission's complaint alleges that, for each of the years 1993 through 1996, Maier knew of the quantified misstatements and of accounting practices that gave rise to additional known and likely misstatements that were not qualified and estimated and approved the issuance of an unqualified audit report. He knew or was reckless in not knowing that Andersen's unqualified audit report for each of the years 1993 through 1996 was materially false and misleading.

Cercavschi

- The Commission's complaint alleges that, for each of the years 1994 through 1996, Cercavschi knew of the quantified misstatements and of accounting practices that gave rise to additional known and likely misstatements that were not qualified and estimated and approved the issuance of an unqualified audit report. He knew or was reckless in not knowing that Andersen's unqualified audit report for each of the years 1994 through 1996 was materially false and misleading.

Kutsenda

- The Commission's order as to Kutsenda finds that, during the 1995 audit, when Kutsenda was informed of the non-GAAP netting of a $160 million one-time gain against unrelated expenses and prior-period misstatements and that the amount represented 10% of the Company's 1995 pre-tax income, he knew or should have known that the Company's use of netting warranted heightened scrutiny. Although not part of the engagement team, when he was consulted by two of the engagement partners, Kutsenda was required under GAAS to exercise due professional care

> so that an unqualified audit report was not issued on financial statements that were materially misstated. The order further finds that Kutsenda wrongly concluded that Andersen was not required to withhold or qualify its audit report and that in reaching this result, he engaged in highly unreasonable conduct that resulted in a violation of applicable professional standards. Based on these findings, the Commission found that Kutsenda engaged in improper professional conduct within the meaning of rule 102(e)(1)(ii) of the Commission's rules of practice.

512. As a direct result of this conduct, Andersen entered into a consent decree with the SEC.

B. Baptist Foundation of Arizona, Inc.

513. Andersen was the auditor for the non-profit Baptist Foundation of Arizona, Inc. ("BFA") from 1984 to 1997. During the same years, Andersen was also engaged in lucrative contracts granted by BFA or its attorneys to perform other accounting, auditing, management consulting and tax services for the company and to conduct at least one special risk assessment review, also known as a "shadow audit." As auditor to BFA, Andersen issued materially false and misleading audit reports on BFA's financial statements in which it stated that the foundation's financial statements were presented fairly, and were, in all material respects, in conformity with GAAP and that Andersen had conducted its audit of those financial statements in accordance with GAAS and that the Andersen audit provided a reasonable basis for its opinions. Andersen's representations were materially false and misleading.

514. BFA was created in 1948 as a nonprofit religious entity to raise money for Southern Baptist ministries. For the most part, BFA managed the retirement funds of retired Christians. BFA purported to be an investment plan that promised higher-than-average returns to investors – most of whom were members of the Baptist Church. By the time of its 1999 collapse into bankruptcy, regulators called it a "Ponzi Scheme" which, with Andersen's willful complicity, had successfully hidden its losses from investors. The bankruptcy was the largest

nonprofit bankruptcy in U.S. history and resulted in the loss of more than $500 million, primarily the life savings of elderly investors.

515. As the outside auditor of the non-profit, Andersen helped to conceal financial fraud at BFA. Andersen was accused of ignoring glaring signs during annual audits and lending its credibility to financial statements which misled investors. From the time of its retention as BFA auditor, Arthur Andersen issued an unqualified or "clean" audit opinion on each of BFA's annual financial statements. These financial statements were disseminated to the state regulators and prospective investors and were incorporated into the various offerings and prospectuses distributed by BFA to promote investment. With Andersen's knowledge, the BFA was using the accounting firm's name and professional standing to deflect scrutiny and to avoid detection of the ongoing fraudulent scheme. BFA's promotional literature represented the following: "Each year, an independent audit of BFA is conducted by one of the leading accounting firms in the nation." The reference to the "leading accounting firm" was to Arthur Andersen.

516. In fact, investors later alleged, Arthur Andersen was so deeply entrenched in the fraudulent conduct and cover up that it joined the ongoing conspiracy and became an active participant in the fraudulent scheme by associating itself with the false and misleading financial statements of BFA that were directly used to induce sales of securities to the investing public.

517. The lawsuits alleged that Andersen prepared financial statements that concealed huge losses that should have been red-flagged to alert investors and that warnings of potential trouble were ignored or inadequately investigated, allowing senior managers of the foundation to mislead the board of directors and to engage in fraud at the expense of the investors.

518. Arthur Andersen had issued "clean" audits of financial statements despite direct knowledge which would contradict BFA's public appearance of financial solvency. Throughout its tenure as BFA's auditor, Arthur Andersen was aware of information indicating that BFA used, but did not disclose, certain off-the-books vehicles or orchestrated sham transactions with related parties to conceal under-performing assets rather than taking write downs or establishing

reserves which would undermine the foundation's façade of financial strength. It was elementary accounting that these practices improperly inflated BFA's financial results and should be adequately disclosed and appropriately reported in BFA's financial statements. Yet Andersen ignored the facts and did not require the disclosures as it continued to issue its unqualified opinions.

519. By early 1997, Andersen was receiving from a variety of sources direct and credible reports of the financial fraud at BFA. In their action against Andersen, regulators alleged that a former BFA employee gave an Andersen auditor a detailed road map to the fraud but that Andersen refused to follow it. When an Andersen tax specialist spotted potential trouble, which she thought could affect Andersen's audit opinion, an Andersen partner allegedly told her to delete her written warning. At least one investor group confided in Andersen their suspicions that the foundation was a fraud and was ignored. Andersen also disregarded other warning signs, including a newspaper series that laid out the scheme in 13 detailed installments. Andersen failed to reasonably investigate – or even to corroborate – any of the allegations.

520. As a direct result of this conduct, Andersen agreed to pay $217 million to settle claims by investors, state agencies and the trustee of the BFA. As part of the settlement, two Andersen auditors with primary responsibility for auditing BFA, relinquished their licenses as Certified Public Accountants; and state regulators will appoint an oversight board of outside experts to monitor the professional standards of Andersen's Phoenix Office. According to the WASHINGTON POST, the settlement was to be paid by a Bermuda-based insurance company owned by Andersen worldwide partners.

C. Sunbeam

521. In May 2001, the SEC filed a civil suit against the Sunbeam Corporation alleging that its chief executive directed a huge accounting fraud, aided by Arthur Andersen, the firm that audited Sunbeam's books. A Sunbeam shareholder class action suit followed. Andersen was named a defendant. The regulators and shareholders charged the company with orchestrating a

sham turnaround of the publicly-traded company which created the illusion of a successful restructuring to facilitate the sale of the company at an inflated price. The shareholders accused Andersen with knowingly participating in the fraud.

522. Andersen paid $110 million to settle the Sunbeam shareholder claims against it. Shareholders accused Arthur Andersen of misleading investors about the Sunbeam Corporation's condition in 1997 and 1998 and participating in the company's effort to inflate the apparent financial strength of the company.

523. Arthur Andersen, as the company's long-time auditor, had consistently issued unqualified opinions regarding the company's financial statements. To do so, Andersen willfully ignored information it had regarding many accounting improprieties at the appliance maker. In addition, in 1997, the auditor did not require the company's income report for the year to comply with accounting rules, a step that affected $62 million of the $189 million in income the company reported for the year.

524. Sunbeam used numerous tactics to gild its earnings. Millions of dollars in expenses in 1997 were wrongly charged to 1996, when the company had taken a large write-off for reorganization. The SEC also said that the reorganization had created what it called "cookie jar" reserves, which could be used to create fake profits in 1997. In addition, Sunbeam unreasonably reduced the value of its inventory so that it could record large profits when the goods were sold. Sunbeam played other games with sales and inventory, including recording sales that were not real, offering deep discounts to persuade customers to buy merchandise that they would not need for many months, and holding inventory. The discounts should have been disclosed and the sales should have been recorded in later quarters, neither of which was done.

525. The chief Andersen partner on the Sunbeam audit uncovered a number of the fraudulent transactions and asked the company to change its financial statements. The company refused to make most of the changes and the auditor agreed to certify the financial statements anyway, convincing itself that the challenged numbers which produced 16 % of the company's

1997 profits were not material and therefore did not have to be corrected. Thus, Andersen ignored the accounting improprieties and did not require Sunbeam to comply with accounting disclosure requirements

526. The reported profits, bolstered by Andersen's unqualified opinion, impressed investors. The stock price quadrupled.

527. In early 1998, however, the company disclosed first quarter losses. Within a few months, BARRON'S began reporting Sunbeam's negative operating cash flow for 1997 and questioned the company's accounting maneuvers for that year, suggesting that all the company's profits for 1997 were phony.

528. Ultimately Andersen, along with another accounting firm, reaudited the Sunbeam books and concluded that the 1997 profits should have been far lower. The company and Andersen, were forced to restate the earnings, slashing half the reported profits from fiscal 1997. Sunbeam shares fell from $52 to $7 in just six months. The company is now in reorganization bankruptcy.

D. Other Instances of Audit Misconduct

529. Andersen's constant association with repeated financial scandals and accounting irregularities is not a random circumstance, but the natural by-product of the conduct of its partners operating within the firm's policies. Andersen "has long been reputed to be the most aggressive of the 'Big Eight' accounting firms in acquiring high-flying new corporate clients." *See* WALL STREET JOURNAL, Sept. 21, 1984, p. 1. Over the years, Andersen has continually failed to change its ways.

- Arthur Andersen paid $110 million in the collapse of Sunbeam.
- In 1999 Arthur Andersen paid over $110 million to settle civil and criminal cases over its work regarding Colonial Realty.
- In 1998 a jury ordered Arthur Andersen to pay $46.2 million to DeLorean's creditors. Arthur Andersen

appealed, but agreed to settle the lawsuit for $27.75 million.

- In 1998 the SEC charged two Arthur Andersen partners with helping to cause a fraud by blessing questionable accounting at Spectrum Information Technologies.
- In 1995 Arthur Andersen paid $9 million to settle claims of the trust overseeing the bankrupt F&C International Inc.
- In 1993 Arthur Andersen paid $82 million to the Resolution Trust Corp. to settle charges regarding several S&Ls including Charlie Keating's Lincoln Savings & Loan.
- In 1992 Arthur Andersen settled ACC/Lincoln Savings bondholder claims for $30 million.

530. In each of the audits and engagements, Andersen used the wires and mails to engage in the schemes outlined above that involved clients overstating income and assets.

531. Despite this repeated pattern of unlawful conduct, the Andersen Defendants continued to run Andersen in a manner that was unlikely to stop the repeated pattern of misconduct that had occurred on the engagements set forth above, and was likely occurring on present engagements, including the Enron engagement.

IX. THE ROLE OF THE ATTORNEY DEFENDANTS IN THE SCHEME

A. V&E's Role in Structuring, Guiding and Planning SPEs and Misleading Disclosures

532. At the heart of the Enron scheme was a complex infrastructure of partnerships, hedges, collars, and off-balance sheet transactions that were all designed, in large part, to hide Enron's true financial condition. Sadly, this could not have been accomplished without the knowing and active assistance of V&E and the Attorney Defendants. In 2001, V&E billed Enron at least $36 million and it had billed Enron $150 million in the five-year period between 1997 and 2001. Enron was V&E's most significant client and many lawyers in the firm were dependent upon Enron's apparent success.

533. At some point in its representation of Enron, V&E lost its independence and at times was either a central participant in the wrongdoing alleged herein, or turned a blind eye and,

by silence or inaction, effectively joined in the wrongful conduct. As detailed herein, the Attorney Defendants were direct participants in planning and creating the SPEs that were used to distort Enron's financial statements. The Attorney Defendants actively participated in creating and/or approving false and misleading disclosures concerning the related party transactions that went to the heart of defendants' scheme to defraud.

534. V&E, for instance, was intimately involved in the Chewco-JEDI transaction that was used to massively overstate Enron's financial results during 1997 through 2001. V&E had knowledge of and drafted key documents relating to this transaction, including documents that were drawn up in November 1997 to form Chewco and associated entities, and documents that were required to fund Chewco's purchase of JEDI. V&E also knew that this transaction involved basic, unresolved conflicts of interest that were adverse to Enron and that neither Enron nor JEDI had looked for potential third-party buyers other than Chewco.

535. In the fall of 1997, when Enron decided to set up an entity to purchase CalPERS' interest in JEDI, V&E partners became aware that the purpose of the transaction was to avoid consolidating JEDI's and Enron's financial statements. At a March 14, 2002 hearing of the Oversight and Investigations Subcommittee of the U.S. House of Representatives Energy and Commerce Committee, defendant Astin testified that he learned that Enron's intention was to have a three percent equity interest in Chewco. According to contemporaneous notes taken by Carol L. St. Clair, who at the time was Assistant General Counsel of one of Enron's business groups, Astin attended at least three meetings in the fall of 1997 where Enron officers discussed the funding of the outside equity interest in Chewco.

536. During the fall of 1997, V&E partners also learned that Enron proposed that defendant Fastow (Enron's CFO) would participate in and control Chewco. After discussions between defendants Astin and Dilg, V&E advised Fastow that his participation in Chewco would require disclosure in Enron's proxy statement, advice that resulted in Michael Kopper, another Enron employee who reported directly to Fastow, supplanting Fastow as Chewco's manager.

V&E knew that the sole reason for that substitution was to avoid proxy statement disclosure of the true extent of Enron's involvement in the Chewco-JEDI transaction. Thus, V&E remained silent in the face of what, to Enron insiders, was known to be a transparent subterfuge of Enron's reporting obligations. Moreover, V&E did nothing to insure that Enron's Board of Directors was informed that Kopper was assuming control for Fastow.

537. In fact, V&E drew up the documents that were required to form Chewco as a Delaware limited liability company, prepared the legal documentation for several other entities that installed Kopper as the sole manager of Chewco, and, on information and belief, also prepared and/or were aware of the bridge financing arrangement used to fund Chewco's purchase of CalPERS' interest in JEDI. V&E was also aware that, on November 5, 1997, Enron's Executive Committee of the Board of Directors had been informed that there would be an outside equity interest in Chewco that was sufficient to avoid consolidation.

538. Despite that knowledge, on or about December 17, 1997, V&E drafted a "Distributions Side Letter" evidencing an agreement between JEDI and Chewco that funds distributed from JEDI would be used to close a loan from Barclay's Bank to Chewco. The Distributions Side Letter specified that the proceeds were to be used

> to fund the following accounts in an aggregate amount equal to $6,580,000.00: (a) the Little River Base Reserve Account No. 050-793896 in an amount of equal to $197,400 and (b) the Big River Base Reserve Account No. 050-793870 in an amount equal to $6,382,600.

In addition to being prepared by V&E, this Distributions Side Letter was sent to and reviewed by defendant Astin. Thus, V&E knew that the use of the funds from JEDI in this manner would result in far less than 3% of an independent equity stake in Chewco. The Distributions Side Letter was signed by Kopper and became effective on or about December 30, 1997.

539. Despite its involvement in and knowledge of this damning detail in the Chewco-JEDI transaction and other information, as discussed above, V&E remained silent on the important financial and legal issues they created. Thus, the Attorney Defendants acceded to, if

not were critical engineers of, Enron's failure to disclose it as a related party transaction, despite the fact that Kopper worked for Fastow and was selected by Fastow as the titular control person for Chewco and its related entities. V&E also appreciated that Enron's stated intention in arranging the Chewco transaction — the non-consolidation of JEDI's financial results — was not met when it drew up and assisted in transacting the Distributions Side Letter. By virtue of its involvement in the formation of Chewco, V&E knew that JEDI's financials would have a material effect on Enron's financial statements if consolidated, and knew Enron had stated that it would be required to be consolidated if a 3% outside equity investment was not obtained. Despite that, for several years, V&E allowed false and misleading financial results to be disseminated and assisted Enron in its future to disclose the Chewco-JEDI deal as a related party transaction. In the fall of 2001, when Enron finally decided to consolidate Chewco's and JEDI's financial results with its own, only one document accounted for that reversal of fortunes: The Distributions Side Letter that V&E drafted as part of setting up Chewco and its related entities.

540. Other transactions between Enron and SPEs greatly impacted Enron. They included the "Raptors" transactions. These transactions were not true economic hedges because Enron was not hedging with a creditworthy, independent outside party. The Attorney Defendants were involved in the structure and creation of the Raptors, and were aware of their true economic purpose, which was to hide Enron's mounting losses.

541. As one example of V&E's extensive involvement in and knowledge about the LJM entities, on or about March 7, 2001, defendant Astin participated in an "LJM Legal Review" that includes an "Overview" of the "'Who, What, Where' of LJM" and its "1999 Activity" and "2000 Activity."

542. Enron's contemporaneous characterizations of the extent of V&E's involvement were consistent with a detailed knowledge of the ins and outs of the SPE deals. In a September 9, 1999 conference between Scott Sefton, the former General Counsel of Enron Global Finance (the Enron entity that was heavily involved in the SPE transactions), and Fastow,

Sefton noted V&E's "full involvement … from beginning to end" with respect to the "people and process" of the LJM deals.

543. With respect to the related party transactions, such as the Raptor transactions, V&E received drafts of all disclosures contained in the Form 10-Qs and Form 10-Ks, and commented on and had input into their accuracy.

544. With respect to the disclosures in proxy statements concerning related party transactions, V&E had substantial input into these disclosures; indeed, Enron's in-house team relied upon V&E to make sure that such disclosures were accurate.

545. The "Certain Transactions" sections of Enron's proxy statements issued in 2000 and 2001 included disclosures of transactions with the LJM partnerships.

546. Enron described the establishment of LJM1 and LJM2 in its May 2000 proxy statement. Each one was described as "a private investment company that primarily engages in acquiring or investing in energy and communications related investments." Concerning LJM1, Enron disclosed that "Andrew S. Fastow, Executive Vice President and Chief Financial Officer of Enron, is the managing member of LJM1's general partner. The general partner of LJM1 is entitled to receive a percentage of the profits of LJM1 in excess of the general partner's proportion of the total capital contributed to LJM1, depending upon the performance of the investments made by LJM1." Essentially the same disclosure was repeated with respect to LJM2. The proxy statement did not give the amount of compensation Fastow had received, or specify the compensation formula in any greater detail.

547. Enron's 2000 proxy statement discussed the Rhythms transaction with LJM1 by describing the details of the "effect" of "a series of transactions involving a third party and LJM Cayman, L.P." The disclosures identified the number of shares of Enron stock and other instruments that changed hands, but did not describe any purpose behind the transactions. The disclosures said that, "[I]n connection with the transactions, LJM1 agreed that Mr. Fastow would

have no pecuniary interest in such Enron Common Stock and would be restricted from voting on maters related to such shares."

548. The proxy statement next disclosed that, "[i]n the second half of 1999, Enron entered into eight transactions with LJM1 and LJM2," and then described them in general terms:

> In six of these transactions, LJM1 and/or LJM2 acquired various debt and equity securities of certain Enron subsidiaries and affiliates that were directly or indirectly engaged in the domestic and/or international energy business. The aggregate consideration agreed to be paid to Enron pursuant to these six transactions was approximately $119.3 million. In the seventh transaction, LJM2 paid $12.9 million for an equity interest in an Enron securitization vehicle (that owned approximately $300 million of merchant assets) and loaned $19.6 million to such vehicle. In the eighth transaction, LJM2 borrowed $38.5 million from an Enron affiliate, which loan was outstanding at year end.

549. Enron's 2000 proxy statement also included representations concerning the supposed arm's-length nature of the transactions with LJM. Concerning LJM1, Enron stated that "[m]anagement believes that the terms of the transactions were reasonable and no less favorable than the terms of similar arrangements with unrelated third parties." With respect to LJM2, Enron included the same representation and added that "[t]hese transactions occurred in the ordinary course of Enron's business and were negotiated on an arm's-length basis with senior officers of Enron other than Mr. Fastow."

550. Enron's 2001 proxy statement again identified Fastow as the managing member of LJM2's general partner and repeated the assertion that the transactions with LJM2 "occurred in the ordinary course of Enron's business and were negotiated on an arm's-length basis with senior officers of Enron other than Mr. Fastow." The transactions themselves were discussed in two groups, and for each Enron combined a general description of the purpose of the transactions with an aggregated summary of the terms. Concerning the acquisition by LJM2 of Enron assets, the proxy statement stated:

> During 2000, [Enron] entered into a number of transactions with [LJM2] . . . primarily involving either assets Enron had decided to sell or risk management activities intended to limit Enron's

> exposure to price and value fluctuations with respect to various assets. . . . In ten of these transactions LJM2 acquired various debt and equity securities, or other ownership interests, from Enron that were directly or indirectly engaged in the domestic and/or international energy or communication business, while in one transaction LJM2 acquired dark fiber from an Enron subsidiary. The aggregate consideration to be paid to Enron pursuant to these eleven transactions was approximately $213 million. Also during 2000, LJM2 sold to Enron certain merchant investment interests for a total consideration of approximately $76 million.

551. Concerning the derivative transactions with LJM2, the proxy statement stated:

> Also, during 2000, Enron engaged in other transactions with LJM2 intended to manage price and value risk with regard to certain merchant and similar assets by entering into derivatives, including swaps, puts, and collars. As part of such risk management transactions, LJM2 purchased equity interests in four structured finance vehicles for a total of approximately $127 million. Enron, in turn, contributed a combination of assets, Enron notes payable, restricted shares of outstanding Enron stock (and the restricted right to receive additional Enron shares) in exchange for interests in the vehicles. Enron and LJM2 subsequently entered into derivative transactions through these four vehicles with a combined amount of approximately $2.1 billion.

552. All of these disclosures were approved by V&E, and the Attorney Defendants participated in decisions made by Enron's officers concerning the adequacy of disclosure.

553. The disclosures were fundamentally inadequate, and were known to be inadequate by V&E. Nonetheless V&E approved these and other disclosures, as well as the New Power offering materials, as part of its participation in the conspiracy and scheme to defraud.

554. The failure to set forth Fastow's compensation from the LJM transactions and the process leading to that decision was a significant omission. Item 404 of Regulation S-K required the disclosure "where practicable" of "the amount of [Fastow's] interest in the transactions." There was significant discussion between the Enron Insider Defendants and the Attorney Defendants about whether Enron could avoid disclosing Fastow's compensation from the related parties. Because it was a participant in the conspiracy and scheme to defraud, V&E agreed to accommodate the strong desire of the Enron Insiders to avoid disclosure.

555. For Enron's 2000 proxy statement, this issue was discussed among members of Enron's Senior Management, its in-house counsel, lawyers at V&E, and Andersen. In the end, the proxy statement simply noted that the general partner of LJM1 and LJM2, of which Fastow was the managing member, was entitled to a share of the profits in excess of its proportional capital investment in the partnership. The rationale, as memorialized in a memorandum written by Jordan Mintz, the General Counsel of Enron Global Finance, was that the "where practicable" language of Item 404 (referred to above) provided the basis for not setting forth the amount of Fastow's compensation from LJM. Because the majority of transactions between Enron and LJM1 or LJM2 were "open" during the proxy reporting period – that is, the ultimate and final determination of obligations and payments remained uncertain – the in-house and outside counsel concluded it was not "practicable" to determine what Fastow had earned as the managing member or the general partner.

556. The same rationale applied to the multiple "open" transactions that were in place at the time Enron's 2001 proxy statement was prepared, although it was acknowledged that some of the transactions had closed in 2000 or early 2001 and the rationale would have little force once most of the transactions closed. V&E did little if any investigation into what proportion of the transactions remained open at the time of the 2001 proxy statement filing.

557. The Rhythms transaction had terminated in early 2000 and V&E understood that Fastow had received compensation from LJM1 for that transaction. Enron and V&E needed a different basis or theory to support the decision not to disclose. Enron's in-house lawyers and V&E developed a new theory for avoiding disclosure: The 2001 proxy would have covered the compensation Fastow received from the unwind in 2000 of the Rhythms position. V&E reasoned that the Rhythms transaction had terminated in 2000 "pursuant to terms allowed for under the original agreement" entered into in 1999. Because the prior proxy statement had addressed the disclosure requirements relating to the Rhythms transaction, V&E decided that no

financial information regarding what Fastow earned in the transaction had to be disclosed in 2001, notwithstanding the fact that it was now more "practicable" to do so.

558. Although the precise amount of compensation to which Fastow ultimately was entitled may still have been subject of adjustment, the magnitude of the amount was material and should have been disclosed. Further, the instructions to Item 404 provide that "[t]he amount of the interest of any person [subject to disclosure] ... shall be computed without regard to the amount of the profit or loss involved in the transaction(s)." This instruction, in addition to the basic purpose of the proxy disclosure rules on the interests of management in transactions with the Company, was ignored by V&E in order to facilitate the scheme to defraud. Enron had an obligation to disclose the "amount of [Fastow's] *interest* in the transaction(s)" (emphasis added), not just his income.

559. Such disclosure decisions concerning Fastow's interest in the LJM transactions were also made without the key participants knowing the amount – or even the magnitude – of the interest in question. This is because not one person – not members of Senior Management, not the Board, and not V&E – ever pressed for the information, and Fastow did not volunteer it. The amount of the interest should have weighed in the disclosure decision and V&E was aware of this and agreed to ignore the issue because V&E (as well as Enron's insiders) knew that an inquiry would result in a disclosure that all wished to avoid.

560. Enron included a footnote concerning "Related Party Transactions" to the financial statements in its reports on Forms 10-Q and 10-K beginning with the second quarter of 1999, when the transactions with the LJM partnerships began, through the second quarter of 2001.

561. The description of LJM1 in the Form 10-Q for the second quarter of 1999 was similar to the one the Company used in the 2000 proxy statement; as described above. The footnote indicated that "[a] senior officer of Enron is managing member of LJM's general partner." This footnote did not identify Fastow as the "senior officer of Enron," nor did the

financial statement disclosure in any subsequent period. This disclosure did not detail how LJM or Fastow would be compensated in the transactions, although it did say that "LJM agreed that the Enron officer would have no pecuniary interest in . . . Enron common shares and would be restricted from voting on matters related to such shares or to any future transactions with Enron." Substantially the same disclosures were made in the third quarter Form 10-Q and in the 1999 Form 10-K.

562. The Company first described LJM2 in the 1999 Form 10-K. Enron stated that "LJM2 Co-Investment, L.P. (LJM2) was formed in December 1999 as a private investment company which engages in acquiring or investing in primarily energy-related or communications-related businesses" and that LJM2 "has the same general partner as LJM[1]."

563. Beginning with the Form 10-Q filed for the second quarter of 1999, Enron discussed the Rhythms transaction with LJM1 much as it did in the 2000 proxy statement. The disclosures identified the number of shares of stock and other instruments that changed hands; the description in the 1999 Form 10-K removed the numbers of shares. In the Form 10-Q for the first quarter of 2000, the footnote described the April 2000 termination of the Rhythms transaction with a number of the transaction particulars.

564. In each of the financial statement footnote disclosures concerning the transactions with LJM, Enron made a representation that was apparently designed to reassure investors that the transactions were fair to the Company. The language of this disclosure changed a number of times during the period at issue.

565. These footnote disclosures failed to achieve a fundamental objective: They did not communicate the essence of the transactions in a sufficiently clear fashion to enable a reader of the financial statements to understand what was going on. The footnotes also glossed over issues concerning the potential risks and returns of the transactions, their business purpose, accounting policies they implicated, and contingencies involved. In short, the volume of details that Enron provided in the financial statement footnotes did not compensate for the obtuseness of

the overall disclosure. FAS Statement No. 57 required Enron to provide "[a] description of the transactions, . . . *and such other information deemed necessary to an understanding of the effects of the transactions on the financial statements*" (emphasis added). V&E actively participated in the decision to make these disclosures obtuse and inadequate.

566. These disclosures, with respect to which V&E played a key role, were the result of a group decision to minimize the disclosures about the related-party transactions. The impulse of the Enron Insiders Defendants to avoid public exposure, coupled with the significance of the transactions for Enron's income statements and balance sheets, should have raised red flags for V&E. This did not occur because V&E had surrendered its independence and become entangled in the desire of the Enron officers, and the Attorney Defendants agreed to participate in the decision to mislead employees and the public concerning Enron's financial status.

567. Through their involvement, participation and leadership in structuring Enron's SPE transactions, the Attorney Defendants also knew that:

(a) Drafts of the Private Placement Memorandum for LJM2 emphasized Fastow's position as Enron's CFO and stated that he and other Enron employees would manage its day-to-day activities. The Private Placement Memorandum also touted Fastow's "access to Enron's information pertaining to potential investments will contribute to superior returns";

(b) Fastow controlled both LJM1 and LJM2;

(c) Enron hedged the value of its position in Rhythm NetCommunications, Inc. ("Rhythm") used a transaction with LJM1 that could not have been entered into with an independent third party;

(d) The hedge transactions for Rhythm involving transfers of Enron assets were not true economic hedges;

(e) LJM1's profit on the initial transactions related to Rhythm red-flagged the fact that it could not have been negotiated at arm's length;

(f) Unwinding the Rhythm transaction resulted in a huge windfall to LJM1 and Swap Sub (one of the entities involved in the Rhythm transaction), indicating that the transaction could not have been negotiated at arm's length;

(g) One of the purposes of the LJM2 partnership was to enter into an accounting transaction in order to circumvent the requirements that its investments be marked to market;

(h) In the LJM2-Talon transaction, LJM2 would receive its full investment amount and a large return as a prerequisite to any hedging transactions;

(i) The LJM2-Talon transaction was agreed to on terms that were to Enron's detriment and that had no business purpose;

(j) Certain derivative transactions that involved the Raptor I organizations were back-dated to avoid large losses that Enron would have been required to recognize had the transactions reflected the true date of closing;

(k) The LJM – Raptor I transaction was not a true economic hedge because it did not transfer any economic risk;

(l) Almost all assets that were involved in the Raptor derivative transactions were declining in value;

(m) A "costless collar" was transacted to protect one of the Raptor-related SPEs – Talon – but on terms that were contrary to the basic valuation of the Enron stock held by Talon such that it was grossly unfair to Enron;

(n) Enron's transactions with Raptor III and its related entities provided LJM2 with a large profit, but for no legitimate business purpose;

(o) Enron transferred stocks of the New Power Company to Porcupine, one of the Raptor III-related entities, at approximately one-half their market value only one week before the initial public offering of New Power stock and at a time when V&E partners were aware the offering was likely to double the stock's value;

(p) Enron's transfer of New Power shares to Porcupine was not a true economic hedge because it was funded with shares of New Power stock and was contingent on the value of that stock and that the New Power shares were Porcupine's only asset to cover a decline in New Power's share price;

(q) The Raptor entities were restructured in the fourth quarter of 2000 using a 45-day cross-guarantee for the sole purpose of hiding large losses in certain of Enron's merchant investments;

(r) Enron paid LJM2 $50,000 to enter into the 45-day cross-guarantee, but it was without any business purpose because LJM2's economic interests were not affected by the cross-guarantee;

(s) That a more permanent restructuring of the Raptor entities in March 2001 used costless collar derivative transactions that were inconsistent with the valuation of Enron shares transferred to those entities and that rendered the transaction fundamentals unfair to Enron; and

(t) Enron entered into several other transactions with the LJM partnerships during the last two quarters of 1999 on terms that were unfair to the company and the LJM partnerships made unwarranted profits in several of those transactions by flipping the assets Enron had sold them even though those assets had declined in value in the meantime. Those transactions included the sale of a portion of Enron's interest in Empresa Productora de Energia Ltda. for $11.3 million to LJM1 and its repurchase for $14.4 million even though the value had declined between the time of Enron's sale and repurchase.

568. The transaction between Enron and LJM2 that greatly impacted Enron were the "Raptors." As set forth above, these transactions were not true economic hedges because Enron was not hedging with a creditworthy, independent outside party. The Attorney Defendants were involved in the structure and creation of the Raptors, and were aware of their true economic purpose, which was to hide Enron's mounting losses.

B. The V&E-Derrick Cover Up Effort

569. Shortly after Skilling's resignation on August 14, 2001, employee Sherron Watkins sent Lay a letter outlining her concerns over "accounting improprieties and valuation issues" arising from the fact of Enron's "aggressive accounting," "most notable the Raptor transactions and the Condor vehicle."

570. Ms. Watkins' letter went to the core of what became, a few months later, the Enron scandal:

> We have recognized over $550 million of fair value gains on stocks via our swaps with Raptor, much of that stock has declined significantly – Avici by 98%, from $178 mm to $5 mm, The New Power Co by 70%, from $20/share to $6/share. The value in the swaps won't be there for Raptor, so once again Enron will issue stock to offset these losses. Raptor is an LJM entity. It sure looks to the layman on the street that we are hiding losses in a related company and will compensate that company with Enron stock in the future.
>
> Is there a way our accounting guru's can unwind these deals now? I have thought and thought about how to do this, but I keep bumping into one big problem – we booked the Condor and Raptor deals in 1999 and 2000, we enjoyed a wonderfully high stock price, many executives sold stock, we then try and reverse or fix the deals in 2001 and it's a bit like robbing the bank in one year and trying to pay back it back 2 years later. Nice try, but investors were hurt, they bought at $70 and $80/share looking for $120/share and now they're at $38 or worse. WE are under too much scrutiny and there are probably one or two disgruntled 'redeployed' employees who know enough about the 'funny' accounting to get us in trouble.

571. In her summary of the "alleged issues," Watkins raised questions about Enron's actions taken to "avoid a . . . a writedown in Q1 2001" when "we 'enhanced' the capital structure of the Raptor vehicles." She further questioned the accuracy and adequacy of the disclosures involving the Raptor transactions:

> My concern is that the footnotes don't adequately explain the transactions. IF adequately explained, the investor would know that the "Entities" described in our related party footnote are thinly capitalized, the equity holders have no skin in the game, and all the value in the entities comes from the underlying value of the derivatives (unfortunately in this case, a big loss) AND Enron

> stock and N/P. Looking at the stock we swapped, I also don't believe any other company would have entered into the equity derivative transactions with us at the same prices or without substantial premiums from Enron. IN other words, the $500 million in revenue in 2000 would have been much lower. How much lower?

572. The referenced footnote disclosures had been drafted and/or approved by the Attorney Defendants.

573. Watkins suggested that an outside law firm investigate the Raptor and Condor transactions, but she urged that V&E not be hired due to a "conflict."

574. Enron's in-house counsel, Derrick, called upon his former law firm and agreed that V&E would "investigate." V&E, like Derrick, knew that the accounting and structure of the transactions were suspect, and had not been adequately described in the disclosure documents. Thus, to cover up, or whitewash the investigation, V&E and Enron agreed that "the initial approach would not involve the accounting advice and treatment provided by Arthur Andersen." This improper agreement was reached despite the fact it was the accounting that was at the core of Watkins' allegations and that V&E purported "to conduct an investigation to determine whether the facts [Watkins] has raised warrant further legal or accounting review." Instead of asking an independent expert to review the issues, V&E asked Andersen itself if it was comfortable with it's own work. No law firm undertaking a meaningful investigation, as opposed to a cover up, would have stopped with this level of inquiry.

575. By limiting the scope of its inquiry, V&E guaranteed that it would not be forced to reveal the suspect accounting and the inadequacy of the disclosure. V&E limited its investigation to interviewing senior Enron executives — for the most part those persons who had a financial interest in the transactions. To continue the cover up, the Attorney Defendants declined to interview third parties, even though one of the Enron executives raised the issue of whether certain investment banks had been pressured into investing in the LJM transactions. V&E did not interview any of the investment banks mentioned or even ask for the names of

those involved. Moreover, the V&E personnel who conducted the interviews were partners who participated in misrepresenting Enron's SPE transactions and concealing the conflicts of interest inherent in those accounting schemes.

576. V&E's "investigation" was in effect the Attorney Defendants' effort to quietly answer Watkins' allegations without revealing the extent of the underlying unlawful conduct that they were aware of and had helped direct.

X. THE ROLE OF THE INVESTMENT BANKS IN THE SCHEME

577. The Enron debacle could also not have occurred without the willing assistance and active participation of some of Wall Street's preeminent investment banks.

578. Because of their expertise in investment banking and underwriting, the Defendant Banks became aware of, and in some cases, sponsored and/or were partners, in the formation and financing of partnerships, which were intended to conceal debt from Enron's financial statements.

579. Many of the Defendant Banks, including CSFB, Citigroup, Merrill Lynch and J.P. Morgan Chase, were provided, as a result of their investment in LMJ2 and other partnerships, with information about Enron and its off balance sheet holdings that were hidden from Enron's investors and employees. These banks were told, in detail, about the company's off-the-book transactions and assets, information that Enron had not disclosed to its public shareholders. Indeed, these partnership investors knew that Enron controlled at least 50 percent more assets than the company had disclosed in its audited financial statements, filed with the SEC and provided to public shareholders.

580. Enron engaged in sophisticated transactions with J.P. Morgan Chase, Citigroup and Credit Suisse First Boston. Enron entered into derivative contracts that mimicked loans but were accounted for in less obvious ways. The loans with J.P. Morgan Chase, as described below, were arranged through a shell company, Mahonia, but the other investment banking defendants made loans directly to Enron. This structure allowed Enron to conceal the true nature

of its debt obligations by treating in substance loans it received as financial hedges. From 1992 through 2001, Enron booked $3.9 billion worth of what were in substance debt transactions, as hedge instruments.

581. Further, by virtue of acting as an underwriter on public offerings of Enron stock, each of the Defendant Banks had an obligation to perform a "due diligence" analysis of the Company's financial condition prior to acting as an underwriter on such issues. During the course of their "due diligence" investigations, each of the Defendant Banks had access to material, adverse, non-public information about Enron's finances and deteriorating financial condition and used that information to their advantage and to the detriment of those relying on Enron's financial statements, including employees.

582. A depiction of the aid the investment banks gave to Enron and their entanglement in the affairs of Enron is depicted below:

Wall Street Firm	Stocks & Convertibles	Debt	Syndicated Loans	Mergers & Acquisitions
Citibank/Salomon Smith Barney	X		X	X
J.P. Morgan Chase			X	X
Credit Suisse First Boston	X	X	X	X
BNP-Paribas		X	X	
Deutsche Bank			X	
Merrill Lynch & Co.	X	X		X
Goldman Sachs Group	X			X
Banc of America Securities	X	X		X
Lehman Brothers		X		X

583. From 1986, top Wall Street firms, including the Defendant Banks, received an estimated $336 million in fees for underwriting stocks and bonds issued by Enron, if not more. This includes over $60 million for Credit Suisse and $61 million for Salomon Smith Barney.

584. The Defendant Banks each joined the conspiracy to hide Enron's true financial condition, because each made tens of millions as a result of Enron related work. As a direct result of defendants' actions, Enron and the Enron Insider Defendants were able to conceal Enron's true financial condition. As a further direct result of the Defendant Banks' joinder in the

concealment of Enron's financial condition, plaintiffs and members of the class accepted and/or retained compensation provided to them in the form of Enron stock.

585. Each of the firms that were involved in underwriting Enron securities and/or in developing off-book partnerships had a duty to review Enron's books before promoting it as a viable investment. None of the investment banking defendants that were substantially involved with Enron conducted adequate reviews of Enron's finances and accounting, and/or they chose to remain silent as to the true state of Enron's finances. Even without (or perhaps with, but in spite of) crucial, adverse information, the investment banking defendants continued to rate Enron as a solid investment, thereby misleading thousands of employees and investors and propping up the price of the stock. The role of each of the Investment Banks or Wall Street Defendants as a participant in the financial schemes alleged herein is outlined below.

A. Merrill Lynch

586. Merrill Lynch is a multinational corporation engaged in investment banking, institutional client portfolio management, and retail client portfolio management on a global basis. On its web site (www.ml.com), Merrill Lynch says,

> We're one of the world's leading financial management and advisory companies, with offices in 38 countries and total client assets of approximately $1.5 trillion. As an investment bank, Merrill Lynch is a leading global underwriter of debt and equity securities and strategic advisor to corporations, governments, institutions and individuals worldwide. Through Merrill Lynch Investment Managers, we're one of the world's largest managers of financial assets.

587. At the very core of Merrill Lynch's corporate being is its expertise in analyzing financial statements and seeing through complex corporate financial transactions. Merrill Lynch was one of Enron's primary investment bankers, having served Enron in that capacity since at least 1990, and was thoroughly knowledgeable about Enron's financial practices.

588. Since 1990, Merrill Lynch has been among the top five underwriters of Enron stock and bond deals, and has sold more than $3.7 billion in Enron securities. Beyond its

underwriting relationship, Merrill Lynch developed a personal relationship with Enron and Merrill Lynch and its officials invested in and helped to structure and market the LJM2 Partnership. Nearly 100 Merrill Lynch executives invested more than $16 million of their own money as part of $22 million Merrill Lynch and its officers made to LJM2. The company also marketed the partnership to other investors and ultimately raised nearly $400 million from three-dozen institutional and individual investors. Throughout its marketing of the LJM2 Partnership, Merrill Lynch had access to Enron's financials as well as to details of the Partnership structure. In fact, Merrill Lynch had access to documents that revealed the extent of Enron's off-balance sheet transactions; this information was not shared with Enron shareholders and employees.

589. Merrill Lynch was not only an investor in Enron, it was also Enron's investment banker. From 1997 through Enron's Bankruptcy, Merrill Lynch was the lead or co-lead underwriter in each of the following issuances of Enron or Enron-related public securities:

- A debt offering on or around January 13, 1997 for $150 million in Enron Capital Resources LP 6.75% Notes;
- A debt offering on or about November 6, 1997 of $200 million in notes;
- A debt offering on or about November 26, 1997 of $100 million of Enron Oil & Gas 6.75% Notes due 2007;
- An offering on or about May 5, 1998 of 15 million shares of Enron stock at $50 per share;
- A debt offering on or about September 28, 1998 of $250 million of Floating Rate Notes due March 30, 2000; and
- An offering on or about August 11, 1999 of 31 million shares of Enron Oil & Gas common stock at $22.25 per share.

590. In addition, Merrill Lynch was the underwriter for the LJM2 Partnership units that were sold to the public, and was probably the underwriter of numerous of the other "off-balance-sheet" partnerships used by Enron. Because these non-public investments do not require any

type of filings with the SEC, the complete extent of their participation in this scheme can only be calculated following discovery.

591. In its capacity as an underwriter for the above referenced securities, Merrill Lynch had access to internal financial information which it did not disclose in the offering materials for Enron securities, but instead perpetuated false and misleading information by presenting incorrect partnership-related information to investors and by promoting the Partnership as a viable and potentially lucrative investment. As a direct result of Merrill Lynch's breached duties, Enron stock was overvalued, employees were misled, and ultimately, employee retirement savings were decimated.

592. Evidencing Merrill Lynch's involvement in, and knowledge of, Enron's partnerships is the LJM2 offering with Merrill Lynch's name on the front cover of the offering document. Also indicative of Merrill Lynch's involvement in the Partnership is the LJM2 prospectus, which was prepared by Merrill Lynch, and provided that the LJM2 limited partners would profit both from Enron's need to move assets off balance sheet and from the expertise of Enron insiders. Furthermore, the Private Placement Memorandum for LJM2 provided that Merrill Lynch had been engaged as placement agent in connection with the formation of the Partnership. These close ties with Enron brought many benefits to Merrill Lynch, but they also brought obligations.

593. Jeff McMahon, Enron President and COO, testified to a House Committee that Merrill Lynch employee Rob Furst told him that "it was felt there was a certain 'linkage' between investments in the LJM partnership and obtaining Enron business." Mr. McMahon also testified that he received a similar call from Mark Devito, another Merrill Lynch employee. These statements could be taken as a threat from Enron or as an expectation from Merrill Lynch. Either way, the statements show that a *quid pro quo* was involved and provide reason to believe that Merrill Lynch was willing to mislead and misinform its customers for a guarantee of future business with Enron.

594. Merrill Lynch's participation with Enron can also be seen in their analysts' ratings. In 2000, Merrill Lynch received more than $20 million in fees from Enron. These fees were extremely important to Merrill Lynch, and Merrill Lynch wanted to keep Enron's business. However, it was an open secret on Wall Street that firms who rated Enron negatively would not win their business. The Enron analyst at Merrill Lynch understood this all too well. As of March 21, 2001, the analyst had rated Enron "near-term buy." In April 17, 2001, the analyst reiterated the "near-term buy" rating. On August 15, 2001, the analyst downgraded Enron from "near-term buy/long-term buy" to "near-term neutral/long-term accumulate." The analyst actually raised his rating on the stock from "near-term neutral/long-term accumulate" to "near-term neutral/long-term buy" on October 9, 2001 just as Enron's house of cards began to fall. Again, on October 16, 2001, Merrill Lynch upgraded Enron from "near-term neutral" to "near-term accumulate." Only in November did the analyst downgrade the rating to "near-term neutral/long-term neutral."

595. Throughout the duration of Merrill Lynch's lucrative relationship with Enron, Merrill Lynch analysts perpetuated the flawed stock valuation by maintaining "accumulate" and "buy" ratings. This information not only influenced the market, but also provided a false sense of security to Enron employees who depended on the value and strength of Enron stock.

596. Merrill Lynch participated in and profited from the wrongful and illegal activities of Enron executives in their use of spurious partnership vehicles, related entities or special purpose vehicles, to manipulate Enron's financial statements. Merrill Lynch itself and dozens, if not hundreds, of Merrill Lynch executives were enriched along with the Enron executives in carrying out these wrongful and illegal activities.

597. The facts demonstrate a criminal enterprise that Enron executives would not have been able to create and carry out by themselves without the help of sophisticated professionals. Merrill Lynch's involvement in LJM2 Co-Investment, L.P. ("LJM2") is just one example of its participation in this enterprise.

598. Merrill Lynch, in its position as Enron's investment banker and as a preparer of the PPM, knew the Purpose and Focus of LJM2 stated above, knew that LJM2 was to be used to remove liabilities from Enron's balance sheets, knew of the conflicts of interest inherent in the structure and operation of the partnerships, and knew that shareholders in Enron stock did not have access to any of the information concerning LJM2 or the Existing Funds. Even more, Enron failed to inform its shareholders in documents mailed to them of about $17 billion in assets it held in 2000. These were assets that had been moved off of Enron's books through the various partnership deals. Merrill Lynch, in preparing the offering containing this data, was aware of the off-balance-sheet liabilities, but did not disclose that information.

599. Further, Merrill Lynch participated in the annual partnership meeting of LJM2, as described above, and was made aware of the material non-public information that directly contradicted Enron's reported financial condition.

600. At the same time that Merrill Lynch was touting the sale of limited partnership interests, which they knew falsely inflated their income, Merrill Lynch analysts had strong buy recommendations on Enron stock.

B. J.P. Morgan Chase & Co.

601. J.P. Morgan has played several roles in Enron's growth, acting as an investment banker, financial advisor, and in the case of the Mahonia transactions – a lender. From 1997 through Enron's Bankruptcy, J.P. Morgan or its current subsidiary Chase Securities was the lead or co-lead underwriter in each of the following issuances of Enron or Enron-related public securities:

- A public offering on or about October 22, 1997 of $100 million of Enron Corp. 6 5/8% Notes due October 15, 2003;
- A public offering on or about April 6, 1998 of $150 million of Enron Oil & Gas 6.65% Notes due April 1, 2028;

- A public offering on or about July 9, 1998 of $250 million of Enron Corp. 6.40% Notes due July 15, 2006;
- A public offering on or about July 9, 1998 of $250 million of Enron Corp. 6.95% Notes due July 15, 2028.

602. J.P. Morgan also advised Enron on a series of acquisitions, including several in Brazil. NEW YORK TIMES, Jan. 22, 2002: "2 Early Enron Leaders Didn't See The End Coming." Additionally, J.P. Morgan also helped to put together a $1 billion loan package for Enron right before it collapsed, backed by Enron's pipeline network. Enron's business was extremely important to J.P. Morgan.

603. Whether it was investing in Fastow partnerships, underwriting bond issues for Enron, or organizing complicated transactions to make Enron appear financially sound, J.P. Morgan was in very close contact with Enron. J. P. Morgan had access to Enron's books, transaction records, and understood well the implications of its "trades" and other transactions with Enron. It is clear that J.P. Morgan used the Mahonia partnerships to increase its own revenues, to take advantage of self-created "losses," to help Enron paint a very misleading financial picture for Enron employees, and ultimately to perpetuate a fraud on Enron's employees.

604. Further, J.P. Morgan attended the October 26, 2000, annual partnership meeting and received the presentation materials thereto as described in Section V(E)(3)(C), *supra*.

605. Like Merrill Lynch's analysts, J.P. Morgan Chase's analysts were very overly confident about Enron, even as it crumbled. On June 9, 1999, J.P. Morgan initiated coverage of Enron entitled "Initiating Coverage With A Buy: Size and Savvy Seize The Day." The report provided:

> 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.

606. On July 10, 2001, J.P. Morgan analysts reiterated its "buy" rating. *See* CNET.com: "Broker Reports." Only on October 24, 2001, did J.P. Morgan Chase downgrade Enron to "long-term buy." *Id.* These exceedingly positive reports resulted in a false sense of security for employees and other investors. Given the fact that J.P. Morgan had access to Enron's inner financial workings – and knew very well that the Mahonia Transactions, as described below, were hiding billions of dollars of debt from Enron's balance sheet, it is clear that J.P. Morgan breached its duties, falsely propped up and overvalued the Enron stock, and misled thousands of Enron employees who depended on the value of the stock for their retirement savings.

607. The so-called "Chinese Wall" that purportedly separates J.P. Morgan's analysts from its investment bankers has been shown to be a complete farce. In testimony before the U.S. Senate Government Affairs Committee on February 27, 2002, Anatol Feygin, a Senior Analyst and Vice President of J.P. Morgan Securities, Inc. admitted that the "Chinese Wall" was imperfect, and that there were instances in which it was disregarded in practice by J.P. Morgan:

> SEN. LIEBERMAN: Were there any occasions since each of your firms, the four of you were doing, each of the firms was doing business with Enron. When you, as analysts, were brought over the wall with regard to any deals or business arrangements with Enron.
>
> MR. FEYGIN: Certainly. In the case of Enron on November 9th, prior to the merger with Enron and Dynegy being announced, a couple of hours prior to that I did receive -- I believe I received the press release of the merger, at which point I was brought over the wall and was frozen and couldn't comment on the stock.
>
> SEN. LIEBERMAN: And you were brought over the wall for what purpose?
>
> MR. FEYGIN: For the purpose of having the information, and being able to respond to investor questions once the deal was announced.

Although Mr. Feygin maintained that the information he received while "over the wall" was never used in his analyst reports, his testimony highlights that the "Chinese Wall" is less than perfect.

1. Operation Mahonia

608. J.P. Morgan conceived, launched and operated Mahonia Ltd. and Mahonia Natural Gas Ltd. (and potentially Stoneville Aegean Ltd., Justice Ltd., and/or Lively Ltd.) for Enron ("Operation Mahonia or the Mahonia Scheme"). Prior to its merger with J.P. Morgan & Co., Chase Manhattan Bank set up an energy trading business in the British Channel Islands named Mahonia, Ltd. ("Mahonia").[8] The business, based in New Jersey, grew to transact billions of dollars of natural-gas trading with other energy companies. Many of its transactions took place just before year-end. Often, the deliveries of natural gas and oil were sold right back to those who delivered them through complex derivative transactions. And about 60% of Mahonia's trades were with Enron Corp.

609. Unlike the hundreds of partnerships Enron constructed on its own to manipulate its financial statements, Mahonia was conceived, launched and operated by J.P. Morgan. In reality, the Mahonia transactions with Enron were nothing more than a sham designed to allow Enron to disguise massive borrowing as commodity trades, thus allowing it to manipulate its income and hide house liabilities from its financial statements.

610. The transactions between Mahonia and Enron typically took the following form: J.P. Morgan would pay Enron between $150 and $200 million for the "future delivery" of natural gas or crude oil. The transaction was constructed as a "trade" rather than as a loan to Enron, thus allowing Enron to recognize trading income on its financial statements that would help to cancel out losses that would otherwise have had to have been reported. Additionally, a loan would have to be accounted for as a liability on Enron's financial statements.

8 The Mahonia transactions were originally structured by Chase Manhattan Bank, which merged with J.P. Morgan on Dec. 31, 2000.

611. Because these transactions were formalistically structured as a "trade" rather than a loan, pursuant to the contract, Enron would eventually have to deliver the oil or gas, usually in $10 to $20 million installments. With each delivery, losses related to the contracts would appear on Enron's general ledger. Because the contracts were structured for delivery to begin in the following year, losses would be carried from one year to the next without showing up on Enron's reported financial statements. In reality, however, neither party to the contract anticipated that Enron would actually deliver the commodity – each party would arrange complicated derivative transactions to negate the liability to deliver the oil and gas.

612. By structuring the loans as commodity trades, Enron was able to keep losses in reserve in case it had an unusually profitable year and wished to smooth its earnings to lower its tax liability. If it didn't need the tax protection, Enron could just "roll the losses forward" by entering into a similar transaction that would generate income to offset the trading losses recognized at delivery. Essentially, this was a "Ponzi Scheme" where the losses could be hidden indefinitely by obtaining bigger and bigger "trade" contracts every year with J.P. Morgan. With significant losses carried forward by Enron from year to year, it was virtually guaranteed that Enron would have to come back to Mahonia the following year for another "trade," or its losses would become public knowledge.

613. The Mahonia "trades" were also a source of "off-balance-sheet" financing that allowed Enron to essentially borrow money without the debt being reflected in their financial statements. Enron was having difficulty raising money in the stock and bond markets, and by mid-1999, this source of funding was vital to Enron's very survival.

614. Beginning in the summer of 1999, Enron officials contacted J.P. Morgan with requests for increasingly large "trades," including a request for a $650 million trade – a large increase from the previous standard of $150 million per trade. By that time, J.P. Morgan was aware that Enron was not using these trades as merely a tax avoidance strategy, but had become dependant upon the Mahonia trades as a source of financing that would not be reflected on the

Company's balance sheet. Even with this knowledge, J.P. Morgan continued to "trade" with Enron.

615. Because these trades were, in reality, just dressed-up bank loans to Enron, J.P. Morgan needed security for these loans, just as they would for any other type of bank loan. J.P. Morgan had been shifting some of this risk to other banks by paying them some of the transaction fees garnered from Enron in exchange for the other banks guaranteeing part of the loan.

616. With Enron's desire to greatly increase the money it obtained from J.P. Morgan through this financing scheme, J.P. Morgan could no longer shoulder the risk itself or find enough banking partners willing to assume the risk of default by Enron. Accordingly, Enron sought and obtained "surety bonds" from eleven insurance companies guaranteeing that Enron would not default on the payment portion of its trades with Mahonia. These surety bonds reduced J.P. Morgan's risks in upping the trade amounts, and allowed J.P. Morgan to finance larger and larger trades for Enron.

617. But these "trades" were commodity trades only in the form of the contract. In reality, Enron and J.P. Morgan had conspired to disguise bank loans as commodity trades to allow Enron to misrepresent its financial condition to plan participants. For example on December 28, 2000, Enron and Mahonia entered into a commodity trade (the "Dec. 28, 2000 Contract"), and on that very same day, Enron entered into an agreement with an entity called Stoneville Aegean Limited ("Stoneville") to purchase from Stoneville the identical quantities of gas that Enron was that same day agreeing to sell to Mahonia, to be delivered to Enron on the very same future dates as Enron was supposed to deliver the same quantities of gas to Mahonia.

618. The fact that Enron would be simultaneously buying from Stoneville the very gas it was selling to Mahonia becomes even more suspicious when considered in light of the further evidence adduced by Defendants to the effect that both Mahonia and Stoneville – offshore

corporations set up by the same company, Mourant & Company – have the same director, Ian James, and the same shareholders.

619. Mahonia agreed in the Dec. 28, 2000 Contract to pay Enron $330 million for the gas at the moment of contracting, but Enron, in its agreement with Stoneville, agreed to pay Stoneville $394 million to buy back the same quantities of gas on the same delivery schedule – but with the $394 million to be paid at specified future dates. Taken together, it is clear that these arrangements were nothing but a disguised loan.

620. From 1997 to 2000, J.P. Morgan used Mahonia Ltd and its related companies to provide for or arrange more than $2.2 billion of "back-to-back" transactions where Mahonia-related companies signed forward contracts for delivery of oil and gas from Enron. The operation and the tangled Mahonia transactions that were a part of it were intended by the Enron defendants to inflate Enron's financial statements. J.P. Morgan aided and facilitated this manipulation of Enron's financial statements.

621. After Enron's bankruptcy, J.P. Morgan was left holding the bag, being owed more than $2 billion from Enron related to the Mahonia trades. The eleven insurers have refused to make any payments under the surety bonds, claiming that the "trade" transactions were merely a sham, and that the underlying transactions were, in reality, bank loans. The insurers maintain that Mahonia and J.P. Morgan were aware that "these contracts did not represent actual obligations to deliver product to Mahonia and Mahonia Gas in the future."

622. Chase filed suit against the eleven insurers seeking to recover more than $1 billion from the surety contracts. On March 8, 2002, Judge Rakoff of the U.S. District Court for the Southern District of New York found these exact facts to provide a "sufficient indicia" that the transactions were nothing but disguised loans, and refused to grant J.P. Morgan's motion for summary judgment against the insurers. *J.P. Morgan Chase Bank v. Liberty Mut. Ins. Co.*, 2002 U.S. Dist. Lexis 3526 at *13-14 (S.D.N.Y. Mar. 2, 2002).

623. Thus, J.P. Morgan aided and abetted Enron's fraud on the plan participants by aiding and abetting Enron's false financial results. The amount of the borrowings was so great, that Chase must have been aware that Enron's financial results were materially misstated as a result. Chase was a willing participant in this scheme because Chase raked in about $100 million in fees and interest from Enron's transactions with Mahonia from 1997 through 2000.

624. Vice-chairman Marc Shapiro admitted that J.P. Morgan has known all along of the extent of its Enron vulnerability, stating in December 2001 that, "It's not an issue of what we knew, but what was appropriate to disclose."

C. Credit Suisse First Boston

625. Defendant Credit Suisse First Boston ("CSFB") on its own and through Donaldson, Lufkin & Jenrette ("DLJ"), which was merged into CSFB in 2000, was one of the leading underwriters of Enron securities, managing $7.4 billion of the $25 billion of stocks and bonds it issued. This included a $700 million equity offering in February 1999, on which CSFB and DLJ served as joint bookrunners.

626. From 1997 through Enron's Bankruptcy, CSFB or DLJ was the lead or co-lead underwriter in at least the following issuances of Enron or Enron-related public securities:

- A public offering on or about July 28, 1997 of $198 million of Enron Capital Resources LP 6.75% Notes;
- A public offering on or about November 26, 1997 of $100 million of Enron Oil & Gas 6.50% Notes due 2007;
- A public offering on or about May 5, 1998 of 15 million shares of Enron common stock at $50 per share; and
- A public offering on or about February 12, 1999 of 12 million shares of Enron Corp. common stock at $62 per share;

627. In addition, DLJ served as the financial advisor to Enron related to its acquisition of Enron Global Power & Pipelines, L.L.C. in 1997, for which it received an undisclosed fee.

The March 14, 2002 edition of *Business Week* reported that CSFB received 44.9% of all of Enron's highly lucrative M&A advisory assignments since 1999.

628. CSFB was important to Enron because of its structured products group, a team of about ten bankers who had been hired by DLJ from Citibank in 1998. This group provided solutions to one of Enron's biggest financial problems … asset portfolios that were not generating the necessary amounts of cash. Enron did not want to finance underperforming assets by raising straight debt in the bond market, because that would damage its credit rating and thereby jeopardize the company's trading business. CSFB helped Enron to move assets off balance sheets and into partnerships. These partnerships concealed debt and made Enron appear to be generating cash from operations rather than from its financing activities. It is thought that CSFB helped Enron create approximately 3,500 "off-balance-sheet" partnerships. CSFB/DLJ bankers (particularly Laurence Nath) made numerous personal trips to Enron's Houston headquarters to help develop and implement partnership transactions. The result of CSFB's efforts is that excessive debt, accounting irregularities, and true company performance measurements were hidden from employees and investors.

629. One such deal that was structured by CSFB was the Osprey Trust/Whitewing transaction set forth in Section ___, *supra*. In structuring this elaborate deal, CSFB was aware that significant undisclosed "triggers" existed in the Osprey Trust agreement that left Enron contingently as a guarantor of all investors in the Osprey Trust. This material contingency was required to be disclosed by Enron, but was never disclosed until November 14, 2001. This contingency was not disclosed in Enron's Form S-3/A filed on or about July 13, 2001 in which CSFB was specifically listed as a "selling shareholder" in the shelf registration.

630. Another such transaction designed by DLJ was the Marlin Water Trust off-balance sheet scheme related to Enron's investment in Azurix. There again, DLJ designed this transaction and was intimately aware that a "trigger" existed leaving Enron contingently liable for hundreds of millions of dollars in investment guarantees. But again, no disclosure was made

in Enron's shelf registration statement on July 13, 2001 listing CSFB as a "selling shareholder" of $105 million of bonds and 605,000 shares of Enron stock.

631. A CSFB spokesman admitted that CSFB was well aware of the triggers in "the partnership structures we worked on," as reported in the February 28, 2002 FINANCIAL TIMES.

632. CSFB reportedly received over $20 million in Enron fee income for the year 2000. As described above, a subsidiary of CSFB was a limited partner of LJM1. Furthermore, two CSFB units, DLJ Fund Investment Partners III LP and Merchant Capital Inc., apparently invested $5 million and $10 million, respectively, in LJM2. As a limited partner in both LJM1 and LJM2, CSFB had access to nonpublic material financial information about the undisclosed financial condition of Enron. CSFB attended and received the presentation materials for the October 26, 2000 annual meeting of LJM2.

633. CSFB also lent Enron money using trades in derivatives. In 2000, the bank gave Enron $150 million to be repaid over two years. Enron's payment would vary with the price of oil. Technically, the transaction was a swap, but because CSFB paid Enron up front, the transaction took on the characteristics of a loan. Enron posted the bank loan as "assets from price risk management, and posted the repayments as "liabilities from price risk management." CSFB had a very close relationship with Enron. The bank knew about Enron's efforts to mislead investors by removing debt from its books. In fact, CSFB played an integral role in helping Enron create a façade while the company rotted from within.

634. Bankers at CSFB found ways for Enron to remove lagging assets from its balance sheet by selling bonds backed by Enron's stock. Deutsche Banc and DLJ managed a sale of Marlin bonds in 1998 that were backed by a promise that Enron would issue stock to the partnership to make up for shortfalls in the value of its assets. The bonds were sold in a private placement to institutional investors after the transaction passed muster with the ratings agencies. To get the credit rating they needed to raise money by selling bonds to investors, the bankers had

to promise Enron stock to them if certain "trigger" events occurred. DLJ made representations to these investors as to the strong financial position of Enron.

635. This trigger was also a feature of a $1.4 billion bond sale that DLJ managed for the Osprey Trust, an Enron partnership, in late 1999. This Osprey transaction effectively refinanced the smaller Nighthawk deal that Citigroup had done for Enron the year before. Of the money raised, $578 million went to buy out Nighthawk's equity interest in Osprey. The banks raised almost $4 billion for the three partnerships. The triggers reassured investors who bought the Osprey and Marlin bonds and gave the ratings agencies reason to assign the debt a higher rating. This reassurance, however, was based on false numbers and misleading information.

636. In a February 28, 2002, WSJ article, Curt Launer (managing director of equity research at CSFB) was quoted as saying: "Without accurate and complete financial reporting from a company…I simply do not have the proper tools to do my job." Launer had rated Enron a "strong buy" until Nov. 28, when he downgraded the company to a "hold" rating. Although CSFB was privy to the "accurate and complete financial reporting" of Enron by virtue of its role as Enron's investment banker and as a limited partner of LJM1 and LJM2, CSFB continued to issue false and misleading analyst reports. *See* THE WALL STREET JOURNAL, Feb. 28, 2002: "Wall Street Analysts Faulted on Enron." It was this false and misleading information, perpetuated by analysts who had monetary interests in supporting Enron, that resulted in an overvalued and underanalyzed Enron stock, and in a stock crash that destroyed the life savings of thousands of Enron employees.

637. The so-called "Chinese Wall" that purportedly separates CSFB's analysts from its investment bankers has been shown to be a complete farce. In testimony before the U.S. Senate Government Affairs Committee on February 27, 2002, Mr. Launer maintained that he did not have any inside information about Enron, but admitted that the "Chinese Wall" was imperfect, and that there were instances in which it was disregarded in practice by CSFB:

> SEN. LEIBERMEN: But, Mr. Launer, I think you used the term, and we've all heard it here in these discussions, being brought over the wall. I take it, am I correct, that there are occasions when you, as analysts, are brought over the wall into other parts of your firm's business? Is that correct?
>
> MR. LAUNER: Yes.

638. A news article in the *New York Observer* further questioned CSFB's ability to maintain this "Chinese Wall." That article told the story of a prominent analyst that downgraded a number of companies she followed, much to the dismay of senior investment bankers in the firm, according to sources. Although consistently given a high ranking by industry publications for her work, the analyst was fired less than a month later.

D. Citigroup

639. Citigroup, Inc. ("Citigroup"), is a diversified financial services company providing insurance, banking and investment banking services through various of its subsidiaries. Citigroup provided banking services – including lending huge sums of money to Enron – as well as investment banking services through its subsidiary Salomon Smith Barney.

640. Citigroup was a major lender to Enron. Therefore, in performing its lending "due diligence," it had access to Enron's financial information. At the same time it had access to information regarding Enron's crumbling financial house of cards. Citigroup sold hundreds of millions of dollars in overpriced Enron securities to an unsuspecting market.

641. Furthermore, Citigroup found ways for Enron to remove lagging assets from its balance sheet by selling bonds backed by Enron stock. To do this, Citigroup set up paper companies that offered five-year notes. When the companies, incorporated as trusts, opened for business, they sold investors a type of credit derivative called credit-linked notes. Investors received a steady stream of fixed payments on the notes. Citigroup invested the investors' money in a combination of highly rated corporate and government securities. If the notes' five-year terms elapsed without incident, Citigroup promised to return the investors' principal. But, if

Enron ever went bankrupt, Citigroup would take possession of the highly rated securities and give the investors unsecured Enron debt instead.

642. In order to protect itself, Citigroup created securities that functioned like an insurance policy. As a result of this, the investors would be left to fight for repayment in any bankruptcy proceedings. These off the books stock backed partnerships or trusts removed certain items from plain view, and thereby enhanced the appearance of Enron's balance sheet. The bulk of this hedge was created in May 2001 and was then identified as a record issue of credit-linked notes: $855 million worth, in three currencies. The terms of this $855 million issue were unusually good for Citigroup and poor for investors. While the memorandums describing the trusts clearly stated that "the notes are subject to the same credit risks" as Enron's regular bonds, the interest rates offered to investors were lower than those paid on issues by other companies deemed just as safe as Enron. When Citigroup organized the issue last May, Enron had a credit rating of Baa1 from Moody's. Moody's and Standard and Poor's assigned similar ratings to the credit linked trusts. Yet the notes paid a rate similar to what was being paid by corporate bonds that Moody's viewed as much safer. The rates were similar to the average interest then being paid by Aaa-rated bonds: 7.37 percent. The average for companies with Enron's rating, Baal, was 8.07 percent. Enron allowed Citigroup to sell the notes at below-market rates in order to encourage the bank to make more loans to Enron in the future.

643. Citigroup, through its Citicorp Securities, Inc. subsidiary, also functioned as lead underwriter of a public issue of $150 million of Enron Corp. bonds on or about August 8, 1997.[9]

644. From late 1999 through early 2001, Citigroup lent Enron $2.4 billion in a series of transactions known as prepaid swaps. In a swap, two parties trade the future returns on investments over a set period of time. For example, one party might pay a small amount to receive a fixed interest rate on a corporate bond in lieu of uncertain gains on the same corporation's stock. The counterparty accepts the payment and swaps the return on the bond for

9 Citicorp Securities, Inc. was subsequently merged into Salomon Smith Barney.

the return on the stock. Neither party actually needs to hold the underlying assets, as long as the payments are made.

645. Typically, neither party in a swap exchange receives all the agreed payments up front. In these transactions, though, Citigroup paid an estimate of the fair value of its portion of the swaps – hundreds of millions of dollars each time – immediately. Enron was obliged to repay the cash over five years, though its payments might have varied with market conditions. The transactions, though technically derivatives trades known as prepaid swaps, perfectly replicated loans.

646. Citigroup, like the other banks that were heavily involved with Enron, knew of, and helped create, the partnerships that ultimately caused Enron's downfall. As a result of Citigroup's efforts to help Enron appear more stable than they actually were, Enron employees suffered tremendous financial losses. Citigroup directed the plan and perpetuated the myth that eventually caused Enron's stock meltdown, and that destroyed the life savings of thousands of individuals.

1. Salomon Smith Barney

647. Citigroup also had extensive business relationships with Enron through its Salomon Smith Barney subsidiary.

648. For example, Defendant Salomon Smith Barney served as underwriter on a 1999 offering of 12 million shares of Enron common stock with a $1 billion offering in debt securities, preferred stock and depositary shares.

649. Defendant Salomon Smith Barney also acted as the financial advisor to Enron regarding its acquisition of Portland General Electric and was paid $7.5 million for its role in that acquisition.

650. Defendant Salomon Smith Barney also provided professional services in regard to the regulatory registration of Rhythm NetConnections Inc. during 1999 and 2000 – an entity

involved in the LJM1 "Special Purpose Entity" transactions which were wrongfully "off book" and not consolidated into the Enron financial statements.

651. Defendant Salomon Smith Barney served as a paid "advisor" to Enron on its acquisition of 33% interest in Azurix in 2000 – one of the "unconsolidated" affiliates of Enron.

652. Indeed, the financial relationship between Enron and Defendant Salomon Smith Barney was so intertwined that Defendant Salomon Smith Barney provided hundreds of millions of dollars in secured financing when Enron was on the verge of financial collapse. More specifically, between November 16 and 21, 2001, Enron obtained secured credit lines from Defendant Salomon Smith Barney and defendant J.P. Morgan for a total of $1 billion. The credit lines were secured by assets of Enron's Northern Natural Gas Company and of Enron's Transwestern Pipeline Company.

653. Indeed, Salomon Smith Barney was so enmeshed in propping up Enron that as late as October 19, 2001, it was still promoting Enron: "We reiterate our Buy rating on Enron after untangling part of a complicated story involving their balance sheet, cash flow and business practices."

654. There is no way Salomon Smith Barney could have made the above statements after the due diligence it was required to perform. It is reasonable to infer these statements were made to keep the Enron enterprise afloat.

655. Playing out its role in the scheme of propping up Enron, on October 9, 2001, Salomon praised virtually every aspect of the company:

October 9, 2001	**Still the best of the best.** With perceptions far below reality, we see major catalysts in third-quarter results and increased disclosure in coming months. We strongly
Recommended List	
Large-Cap Growth	
Price: US$33.45	
Target price: US$48	
S&P 500: 1051	
United States	

We expect Enron shares to recover dramatically in the coming months.

We view the current period as an extremely rare opportunity to purchase the shares of a company that remains extremely well positioned to grow at a substantial rate and earn strong returns in the still-very-young and evolving energy convergence space. We strongly reiterate our Recommended List rating on Enron stock.

We spoke recently with most of top management; our confidence level is high

We spoke recently with top management including the CEO, CFO, chief accounting officer, and the head of wholesale services. We challenged top management on the wide range of investor concerns that have weighed heavily on the shares and believe that the majority of market speculation is groundless, and that which has some truth to it, to be exaggerated.

Misconceptions abound and perceptions are far below reality, in our view We believe that investors have virtually given up on Enron (down 60% year to date) and its prospects based on the long list of extremely negative stories about the company and its financial condition. The company's limited transparency on its sources of earnings, its cash flow, and financials in general has hurt investor perceptions as management has declined to be more specific in refuting outrageous claims that have been assumed a life of their own.

We believe Enron's fundamentals are still strong despite the weak economy. We view Enron as one of the best companies in the economy, let alone among the companies in our energy convergence space. We are confident in the company's ability to grow earnings more than 20% annually for the next five years, despite its already large base. Despite superior long-term growth prospects, Enron stock trades at only 15.6X our recently reduced $2.15 2002 REPS connt.

656. Salomon Smith Barney was required, under its professional obligation as an underwriter, to conduct due diligence reviews of Enron prior to issuance of the subject debt securities. Based on the above, Salomon knew that the information contained in, and

incorporated by reference in the Prospectuses and related Registration Statements were false and misleading.

XI. INSIDER TRADING AND OTHER PROFITEERING BY THE ENRON INSIDER DEFENDANTS

657. One of the main objectives of the Enron Insider Defendants was to use Enron as a vehicle for personal enrichment beyond the dreams of mere mortals and honest corporate executives. A major objective of these defendants was to conduct the affairs of the Enron enterprise in a fashion that masked Enron's true financial status, but which allowed them the opportunity to loot the company at every opportunity. This looting is partially described below.

658. 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, these defendants were cashing in on enormous quantities:

INSIDER SELLING

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
Pai, Lou L.	Sold	01/08/99	$31.920	49,850	$1,591,212
Chairman & CEO	Sold	04/19/99	$34.720	640	$22,221
Enron Excelerator	Sold	01/21/00	$72.080	6,400	$461,312
	Sold	01/21/00	$72.080	82,060	$5,914,885
	Sold	01/21/00	$72.080	18,900	$1,362,312
	Sold	01/21/00	$72.080	150,170	$10,824,254
	Sold	01/21/00	$72,080	42,470	$3,061,238
	Sold	02/25/00	$65.040	5,200	$338,208
	Sold	02/25/00	$65.040	4,800	$312,192
	Sold	03/07/00	$72.020	100,000	$7,202,000
	Sold	03/22/00	$74.570	124,321	$9,269,946
	Sold	03/22/00	$74.570	461.468	$34,411,669
	Sold	03/22/00	$74.570	55,820	$4,162,497
	Sold	03/23/00	$73.740	298,400	$22,004,016
	Sold	04/20/00	$71.500	36,400	$2,602,600
	Sold	04/25/00	$72.310	473,600	$34,246,016
	Sold	04/26/00	$74.000	20,000	$1,480,000
	Sold	05/02/00	$76.000	70,000	$5,320,000
	Sold	05/04/00	$75.000	100,000	$7,500,000
	Sold	05/10/00	$74.630	300,000	$22,389,000
	Sold	05/11/00	$77.740	100,000	$7,774,000
	Sold	05/15/00	$77.760	15,868	$1,233,896
	Sold	05/15/00	$77.760	84,132	$6,542,104
	Sold	05/16/00	$78.170	66,050	$5,163,129

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	05/16/00	$77.830	100,000	$7,783,000
	Sold	05/17/00	$78.080	200,000	$15,616,000
	Sold	05/17/00	$77.710	33,950	$2,638,255
	Sold	05/18/01	$54.140	300,000	$16,242,000
	Sold	05/23/01	$55.710	90,000	$5,013,900
	Sold	05/24/01	$54.030	160,000	$8,644,800
	Sold	05/25/01	$53.110	101,472	$5,389,178
	Sold	05/25/01	$53.110	198,528	$10,543,822
	Sold	06/06/01	$52.300	32,811	$1,716,015
	Sold	06/06/01	$52.280	22,818	$1,192,925
	Sold	06/07/01	$50.520	6,086	$307,465
				5,031,105	$353,712,438
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
	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
	Sold	11/13/00	$78.250	500	$39,125

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	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
	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

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	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
	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
	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

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	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
	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

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	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
	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
	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

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	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
	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

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	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
	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
	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

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	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
	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

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	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
	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
	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

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	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
				1,410,262	$79,526,787
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
	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
Rice, Kenneth D.	Sold	10/30/98	$26.375	3,480	$91,785
President & CEO	Sold	11/17/98	$27.011	33,240	$897,856
Enron Broadband	Sold	11/23/98	$28.156	1,186	$33,393
Services, Inc.	Sold	11/23/98	$28.063	15,600	$437,775
	Sold	01/07/99	$30.830	52,380	$1,614,875
	Sold	11/09/99	$39.080	27,140	$1,060,631
	Sold	02/17/00	$70.390	63,600	$4,476,804
	Sold	02/17/00	$70.390	14,722	$1,036,282
	Sold	02/17/00	$70.390	38,560	$2,714,238
	Sold	02/17/00	$70.390	1,600	$112,624
	Sold	04/19/00	$70.490	100,000	$7,049,000
	Sold	08/29/00	$86.850	50,000	$4,342,500
	Sold	08/29/00	$86.850	13,920	$1,208,952
	Sold	08/29/00	$86.850	60,182	$5,226,807
	Sold	12/13/00	$76.690	70,000	$5,368,300
	Sold	12/13/00	$76.690	30,000	$2,300,700

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	01/03/01	$77.000	1,000	$77,000
	Sold	01/03/01	$76.000	1,000	$76,000
	Sold	01/03/01	$77.620	1,000	$77,620
	Sold	01/03/01	$76.000	500	$38,000
	Sold	01/04/01	$71.130	500	$35,565
	Sold	01/04/01	$73.630	500	$36,815
	Sold	01/05/01	$72.880	500	$36,440
	Sold	01/05/01	$71.630	500	$35,815
	Sold	01/08/01	$71.370	500	$35,685
	Sold	01/08/01	$71.690	500	$35,845
	Sold	01/09/01	$72.120	500	$36,060
	Sold	01/09/01	$70.000	500	$35,000
	Sold	01/10/01	$68.880	500	$34,440
	Sold	01/10/01	$70.370	500	$35,185
	Sold	01/11/01	$69.060	500	$34,530
	Sold	01/11/01	$70.000	500	$35,000
	Sold	01/12/01	$67.810	500	$33,905
	Sold	01/12/01	$70.000	500	$35,000
	Sold	01/16/01	$68.190	500	$34,095
	Sold	01/17/01	$69.250	500	$34,625
	Sold	01/17/01	$70.000	500	$35,000
	Sold	01/18/01	$72.000	500	$36,000
	Sold	01/18/01	$70.880	500	$35,440
	Sold	01/19/01	$71.000	500	$35,500
	Sold	01/19/01	$71.130	500	$35,565
	Sold	01/22/01	$73.500	500	$36,750
	Sold	01/22/01	$73.250	500	$36,625
	Sold	01/23/01	$78.560	500	$39,280
	Sold	01/23/01	$77.080	1,500	$115,620
	Sold	01/23/01	$77.560	500	$38,780
	Sold	01/24/01	$80.500	2,000	$161,000
	Sold	01/24/01	$79.440	500	$39,720
	Sold	01/25/01	$80.880	500	$40,440
	Sold	01/25/01	$80.000	2,000	$160,000
	Sold	01/26/01	$82.000	500	$41,000
	Sold	01/26/01	$81.310	2,000	$162,620
	Sold	01/29/01	$80.320	500	$40,160
	Sold	01/29/01	$81.030	2,000	$162,060
	Sold	01/30/01	$79.500	500	$39,750
	Sold	01/30/01	$80.480	2,000	$160,950
	Sold	01/31/01	$79.750	500	$39,875
	Sold	01/31/01	$80.000	2,000	$160,000
	Sold	02/01/01	$78.650	500	$39,325
	Sold	02/01/01	$77.750	1,500	$116,625
	Sold	02/02/01	$79.550	500	$39,775
	Sold	02/02/01	$80.000	2,000	$160,000
	Sold	02/05/01	$81.000	500	$40,500
	Sold	02/05/01	$80.000	2,000	$160,000
	Sold	02/06/01	$81.000	2,000	$162,000

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	02/06/01	$80.470	500	$40,235
	Sold	02/07/01	$80.000	2,000	$160,000
	Sold	02/07/01	$80.730	500	$40,365
	Sold	02/08/01	$80.680	2,500	$201,700
	Sold	02/09/01	$80.500	500	$40,250
	Sold	02/09/01	$80.800	2,000	$161,600
	Sold	02/12/01	$80.300	500	$40,150
	Sold	02/12/01	$80.000	2,000	$160,000
	Sold	02/13/01	$80.280	500	$40,140
	Sold	02/13/01	$80.000	2,000	$160,000
	Sold	02/14/01	$80.550	2,000	$161,100
	Sold	02/14/01	$80.050	136,300	$10,910,815
	Sold	02/14/01	$81.200	2,000	$162,400
	Sold	02/14/01	$80.000	500	$40,000
	Sold	02/15/01	$76.000	500	$38,000
	Sold	02/15/01	$76.510	1,500	$114,765
	Sold	02/15/01	$76.600	1,500	$114,900
	Sold	02/16/01	$76.000	1,500	$117,000
	Sold	02/16/01	$77.000	1,500	$115,500
	Sold	02/16/01	$75.910	500	$37,955
	Sold	02/20/01	$75.850	1,500	$113,775
	Sold	02/20/01	$76.040	1,500	$114,060
	Sold	02/20/01	$75.830	500	$37,915
	Sold	02/21/01	$75.390	1,500	$113,085
	Sold	02/21/01	$74.750	500	$37,375
	Sold	02/21/01	$75.000	1,500	$112,500
	Sold	02/22/01	$72.650	500	$36,325
	Sold	02/22/01	$73.250	500	$36,625
	Sold	02/23/01	$71.500	500	$35,750
	Sold	02/23/01	$70.340	500	$35,170
	Sold	02/26/01	$70.570	1,000	$70,570
	Sold	02/27/01	$70.340	1,000	$70,340
	Sold	02/28/01	$69.150	500	$34,575
	Sold	03/01/01	$68.000	500	$34,000
	Sold	03/02/01	$69.510	500	$34,755
	Sold	03/02/01	$70.000	500	$35,000
	Sold	03/05/01	$70.900	500	$35,450
	Sold	03/05/01	$70.010	500	$35,005
	Sold	03/06/01	$70.430	500	$35,215
	Sold	03/06/01	$69.140	500	$34,750
	Sold	03/07/01	$70.000	500	$35,000
	Sold	03/07/01	$69.580	500	$34,790
	Sold	03/08/01	$70.250	500	$35,125
	Sold	03/08/01	$70.150	500	$35,075
	Sold	03/09/01	$70.590	500	$35,295
	Sold	03/09/01	$69.150	500	$34,575
	Sold	03/12/01	$65.100	500	$32,550
	Sold	03/13/01	$60.750	500	$30,375
	Sold	03/14/01	$61.370	500	$30,685

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	03/15/01	$64.630	500	$32,315
	Sold	03/16/01	$65.140	500	$35,570
	Sold	03/19/01	$62.110	500	$31,055
	Sold	03/20/01	$62.100	500	$31,050
	Sold	03/21/01	$59.660	500	$29,830
	Sold	03/22/01	$53.930	500	$26,965
	Sold	03/23/01	$57.730	500	$28,865
	Sold	03/26/01	$61.320	500	$30,660
	Sold	03/27/01	$60.510	500	$30,255
	Sold	03/28/01	$58.860	500	$29,430
	Sold	03/29/01	$56.800	500	$28,400
	Sold	03/30/01	$56.610	500	$28,305
	Sold	04/02/01	$57.500	500	$28,750
	Sold	04/03/01	$55.900	500	$27,950
	Sold	04/04/01	$54.060	500	$27,030
	Sold	04/05/01	$54.880	500	$27,440
	Sold	04/06/01	$54.750	500	$27,375
	Sold	04/09/01	$54.540	500	$27,270
	Sold	04/10/01	$58.100	500	$29,050
	Sold	04/11/01	$59.700	500	$29,850
	Sold	04/12/01	$57.850	500	$28,925
	Sold	04/16/01	$58.240	500	$29,120
	Sold	04/17/01	$60.770	500	$30,385
	Sold	04/18/01	$61.690	500	$30,845
	Sold	04/19/01	$61.320	500	$30,660
	Sold	04/20/01	$60.830	500	$30.415
	Sold	04/23/01	$60.940	500	$30,470
	Sold	04/24/01	$62.180	500	$31,090
	Sold	04/25/01	$62.050	500	$31,025
	Sold	04/26/01	$63.210	500	$31,605
	Sold	04/27/01	$62.980	500	$31,490
	Sold	04/30/01	$63.060	500	$31,530
	Sold	05/01/01	$63.050	500	$31,525
	Sold	05/02/01	$61.770	500	$30,885
	Sold	05/03/01	$58.730	500	$29,365
	Sold	05/04/01	$58.860	500	$29,430
	Sold	05/07/01	$58.670	500	$29,335
	Sold	05/08/01	$57.000	500	$28,500
	Sold	05/09/01	$57.090	500	$28,545
	Sold	05/10/01	$58.350	500	$29,175
	Sold	05/11/01	$57.560	500	$28,780
	Sold	05/14/01	$58.510	500	$29,255
	Sold	05/15/01	$58.080	500	$29,040
	Sold	05/16/01	$57.120	500	$28,560
	Sold	05/17/01	$55.050	500	$27,525
	Sold	05/18/01	$53.750	500	$26,875
	Sold	05/21/01	$55.160	500	$27,580
	Sold	05/22/01	$55.060	500	$27,530
	Sold	05/23/01	$55.660	500	$27,830

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	05/24/01	$55.110	500	$27,555
	Sold	05/25/01	$53.810	500	$26,905
	Sold	05/29/01	$53.360	500	$26,680
	Sold	05/30/01	$52.950	500	$26,475
	Sold	05/31/01	$53.030	500	$26,515
	Sold	06/01/01	$52.660	500	$26,330
	Sold	06/04/01	$53.880	500	$26,940
	Sold	06/05/01	$54.080	500	$27,040
	Sold	06/06/01	$52.790	500	$26,395
	Sold	06/07/01	$50.670	500	$25,335
	Sold	06/08/01	$50.210	500	$25,105
	Sold	06/11/01	$51.160	500	$25,580
	Sold	06/12/01	$50.930	500	$25,465
	Sold	06/13/01	$50.890	500	$25,445
	Sold	06/14/01	$48.820	500	$24,410
	Sold	07/13/01	$48.580	120,000	$5,829,600
	Sold	07/13/01	$48.580	178,530	$4,247,641
	Sold	07/13/01	$48.500	87,436	$8,658,705
	Sold	08/02/01	$45.240	19,133	$865,577
				1,234,009	$76,825,145
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
	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

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	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
	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

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	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
	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
Frevert, Mark A. Chairman, Enron North America Corp.	Sold	10/27/98	$26.395	41,540	$1,096,448
	Sold	10/27/98	$26.438	11,110	$293,721
	Sold	10/27/98	$26.395	38,278	$1,010,355
	Sold	10/27/98	$29.000	60,000	$1,740,000
	Sold	01/04/99	$29.150	15,120	$440,748
	Sold	01/04/99	$29.150	40,850	$1,190,778
	Sold	01/08/99	$31.510	40,000	$1,260,400
	Sold	04/30/99	$37.000	57,940	$2,143,780
	Sold	04/30/99	$37.000	12,060	$446,220
	Sold	04/30/99	$37.000	80,000	$2,960,000
	Sold	04/30/99	$37.620	100,000	$3,762,000
	Sold	01/20/00	$65.500	60,000	$3,930,000
	Sold	01/21/00	$72.500	30,000	$2,175,000
	Sold	05/11/00	$78.010	3,780	$29,488
	Sold	05/11/00	$78.010	52,512	$4,096,461
	Sold	05/11/00	$78.010	43,708	$3,409,661
	Sold	09/11/00	$86.010	60,000	$5,160,600
	Sold	09/12/00	$86.040	60,000	$5,162,400
	Sold	12/18/00	$79.020	76,292	$6,028,594
	Sold	12/18/00	$79.020	23,708	$1,873,406
	Sold	12/19/00	$79.980	1,948	$155,801
	Sold	12/19/00	$79.980	34,552	$2,763,469
	Sold	12/20/00	$79.000	43,500	$3,436,500
				986,898	$54,831,220

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
Horton, Stanley C. Chairman & CEO Enron Transportation Services Co.	Sold	10/19/98	$26.376	72,000	$1,899.083
	Sold	01/07/99	$29.970	38,900	$1,165,833
	Sold	03/18/99	$34.320	48,000	$1,647,360
	Sold	04/29/99	$36.040	33,340	$1,201,574
	Sold	04/29/99	$36.040	17,608	$634,592
	Sold	06/11/99	$40.470	540	$21,854
	Sold	06/11/99	$40.000	32,290	$1,291,600
	Sold	07/21/99	$42.690	40,000	$1,707,600
	Sold	11/10/99	$39.560	50,000	$1,978,000
	Sold	12/20/99	$41.000	25,000	$1,025,000
	Sold	12/20/99	$41.000	4,402	$180,482
	Sold	01/24/00	$67.010	70,000	$4,690,700
	Sold	03/07/00	$70.010	10,000	$700,100
	Sold	03/07/00	$70.010	30,000	$2,100,300
	Sold	03/28/00	$75.200	25,000	$1,880,000
	Sold	04/25/00	$73.780	25,000	$1,844,500
	Sold	05/09/00	$74.460	40,000	$2,978,400
	Sold	08/24/00	$85.750	54,100	$4,639,075
	Sold	08/25/00	$85.890	20,000	$1,717,800
	Sold	08/28/00	$86.030	20,900	$1,798,027
	Sold	09/14/00	$86.940	20,000	$1,738,800
	Sold	09/28/00	$88.630	20,002	$1,772,777
	Sold	12/27/00	$80.960	25,000	$2,024,000
	Sold	01/29/01	$80.510	25,000	$2,012,750
	Sold	03/07/01	$69.710	13,334	$929,513
	Sold	05/14/01	$58.600	20,028	$1,173,641
	Sold	06/01/01	$52.360	50,000	$2,618,000
				830,444	$47,371,361
Sutton, Joseph W. Vice Chairman	Sold	11/04/98	$27.750	14,036	$389,499
	Sold	11/09/98	$29.125	50,000	$1,456,250
	Sold	11/09/98	$29.219	10,000	$292,188
	Sold	01/08/99	$32.000	30,000	$960,000
	Sold	02/24/99	$34.000	40,000	$1,360,000
	Sold	04/28/99	$36.020	81,288	$2,927,994
	Sold	04/28/99	$36.020	18,672	$672,565
	Sold	02/10/00	$68.450	61,900	$4,237,055
	Sold	02/11/00	$68.020	26,100	$1,775,322
	Sold	02/14/00	$68.000	12,000	$816,000
	Sold	03/21/00	$70.110	18,672	$1,309,094
	Sold	03/21/00	$70.110	4,668	$327,273
	Sold	03/21/00	$70.110	76,660	$5,374,633
	Sold	05/02/00	$76.000	100,000	$7,600,000
	Sold	09/14/00	$87.000	50,000	$4,350,000
	Sold	09/15/00	$88.140	50,000	$4,407,000

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	09/19/00	$89.940	15,000	$1,349,100
	Sold	09/27/00	$87.000	15,000	$1,305,000
	Sold	09/28/00	$88.190	6,000	$529,140
	Sold	09/28/00	$88.130	9,000	$793,170
				688,996	$42,231,283
Baxter, John C.					
Vice Chairman	Sold	11/10/98	$28.625	2,740	$78,433
	Sold	12/31/98	$28.177	91,688	$2,583,447
	Sold	01/04/99	$28.970	2,000	$57,940
	Sold	01/04/99	$28.970	8,000	$231,760
	Sold	01/04/99	$28.900	5,464	$157,910
	Sold	01/04/99	$29.060	10,000	$290,600
	Sold	02/04/99	$31.250	32,120	$1,003,750
	Sold	02/04/99	$31.340	262	$8,211
	Sold	02/24/99	$32.610	5,814	$189,595
	Sold	02/24/99	$32.610	25,000	$815,250
	Sold	12/30/99	$43.420	25,000	$1,085,500
	Sold	12/30/99	$43.420	45,844	$1,990,546
	Sold	12/30/99	$43.420	2,064	$89,619
	Sold	01/25/00	$64.000	7,000	$448,000
	Sold	01/25/00	$64.000	37,194	$2,380,416
	Sold	01/25/00	$64.000	11,778	$753,792
	Sold	01/25/00	$64.000	5,814	$372,096
	Sold	01/31/00	$60.190	50,837	$3,059,879
	Sold	01/31/00	$60.190	31,250	$1,880,938
	Sold	03/22/00	$75.000	12,500	$937,500
	Sold	07/11/00	$70.820	2,064	$146,172
	Sold	10/31/00	$79.320	31,250	$2,478,750
	Sold	01/02/01	$81.310	25,000	$2,032,750
	Sold	01/02/01	$81.310	37,194	$3,024,244
	Sold	01/02/01	$81.310	45,844	$3,727,576
	Sold	01/11/01	$69.440	36,989	$2,568,516
	Sold	01/29/01	$80.530	12,500	$1,006,625
	Sold	01/31/01	$80.000	16,688	$1,335,040
				619,898	$34,734,854
Hirko, Joseph M.	Sold	02/18/00	$69.390	5,430	$376,788
Senior VP	Sold	02/18/00	$69.390	15,390	$1,067,912
	Sold	02/18/00	$69.390	4,907	$340,497
	Sold	02/18/00	$69.390	30,000	$2,081,700
	Sold	02/18/00	$69.390	20,000	$1,387,800
	Sold	02/18/00	$69.390	17,460	$1,211,549
	Sold	04/20/00	$70.700	130,650	$9,236,955
	Sold	05/11/00	$78.050	192,000	$14,985,600
	Sold	05/12/00	$77.240	58,000	$4,479,920
				473,837	$35,168,721

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
Fastow, Andrew S.	Sold	11/04/98	$27.625	1,600	$44,200
Executive VP & CFO	Sold	11/04/98	$27.625	2,800	$77,350
	Sold	11/04/98	$27.625	19,570	$540,621
	Sold	11/04/98	$27.625	24,620	$680,128
	Sold	11/04/98	$27.625	1,410	$38,951
	Sold	11/10/98	$28.594	20,000	$571,875
	Sold	01/08/99	$32.000	32,578	$1,042,496
	Sold	01/08/99	$32.000	60,000	$1,920,000
	Sold	03/18/99	$34.555	44,044	$1,521,940
	Sold	04/30/99	$37.010	29,500	$1,091,795
	Sold	04/30/99	$37.010	37,690	$136,567
	Sold	04/30/99	$37.010	31,688	$1,172,773
	Sold	04/30/99	$37.010	62,500	$2,313,125
	Sold	04/30/99	$37.010	29,116	$1,077,583
	Sold	04/30/99	$37.010	46,492	$1,720,669
	Sold	04/30/99	$37.010	8,720	$322,727
	Sold	03/27/00	$75.520	10,174	$768,340
	Sold	03/27/00	$75.520	2,180	$164,634
	Sold	03/27/00	$75.520	26,254	$1,982,702
	Sold	03/27/00	$75.520	5,048	$381,225
	Sold	03/27/00	$75.520	45,844	$3,462,139
	Sold	03/27/00	$75.520	10,500	$792,960
	Sold	05/17/00	$75.500	31,547	$2,381,799
	Sold	05/17/00	$75.500	46,494	$3,510,297
	Sold	05/17/00	$75.500	4,996	$377,198
	Sold	11/01/00	$83.000	24,196	$2,008,268
	Sold	11/07/00	$83.000	27,884	$2,314,372
				687,445	$33,675,004
Causey, Richard A.	Sold	03/04/99	$32.560	18,464	$601,188
Executive VP &	Sold	03/04/99	$32.565	12,000	$390,780
Chief Accounting	Sold	03/04/99	$32.560	30,526	$993,927
Officer	Sold	03/04/99	$32.565	8,380	$272,895
	Sold	03/04/99	$32.560	4,256	$138,575
	Sold	01/21/00	$72.000	25,000	$1,800,000
	Sold	01/21/00	$71.000	9,232	$655,472
	Sold	01/21/00	$71.000	5,040	$357,840
	Sold	01/21/00	$71.000	3,600	$255,600
	Sold	01/21/00	$71.000	2,128	$151,088
	Sold	05/02/00	$75.080	7,814	$586,675
	Sold	09/28/00	$87.890	10,174	$894,193
	Sold	09/28/00	$87.890	19,656	$1,727,566
	Sold	09/28/00	$87.890	21,155	$1,859,313
	Sold	09/28/00	$87.890	2,128	$187,030
	Sold	09/28/00	$87.890	7,000	$615,230
	Sold	09/28/00	$87.890	5,048	$443,669
	Sold	09/28/00	$87.890	15,592	$1,370,381

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	05/14/01	$58.760	482	$28,322
	Sold	08/02/01	$45.180	1,265	$57,153
				208,940	$13,386,896
Derrick, James V. Jr.	Sold	02/05/99	$31.000	18,470	$572,570
Executive VP &	Sold	01/24/00	$65.250	10,710	$698,828
General Counsel	Sold	01/25/00	$64.000	10,710	$685,440
	Sold	12/28/00	$86.000	30,770	$2,646,220
	Sold	06/06/01	$53.200	10,000	$532,000
	Sold	06/07/01	$50.920	60,000	$3,055,200
	Sold	06/11/01	$50.880	18,000	$915,840
	Sold	06/12/01	$50.560	18,000	$910,080
	Sold	06/13/01	$50.590	18,000	$910,620
	Sold	06/14/01	$49.000	18,000	$882,000
	Sold	06/15/01	$47.080	18,000	$847,440
				230,660	$12,656,238
Koenig, Mark E.	Sold	01/25/00	$61.600	23,260	$1,432,815
Executive VP,	Sold	01/25/00	$61.600	2,358	$145,253
Investor Relations	Sold	01/25/00	$61.600	21,880	$1,347,808
	Sold	03/23/00	$74.250	11,630	$863,528
	Sold	03/23/00	$74.250	10,050	$746,213
	Sold	08/24/00	$86.420	2,873	$248,285
	Sold	08/24/00	$86.420	18,462	$1,595,486
	Sold	08/24/00	$86.420	1,838	$158,840
	Sold	08/24/00	$86.420	15,212	$1,314,621
	Sold	05/03/01	$58.250	3,232	$188,264
	Sold	05/03/01	$58.250	6,154	$358,471
	Sold	05/03/01	$58.250	7,606	$443,050
	Sold	05/03/01	$58.250	2,873	$167,352
	Sold	05/03/01	$58.250	1,725	$100,481
				129,153	$9,110,466
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

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
Kean, Steven J.	Sold	05/10/00	$74.440	4,560	$339,446
Executive VP &	Sold	01/31/01	$80.000	42,922	$3,433,760
Chief of Staff	Sold	01/31/01	$79.840	17,450	$1,393,208
				64,932	$5,166,414
Buy, Richard B.	Sold	05/01/00	$73.470	16,000	$1,175,520
Executive VP &	Sold	05/01/00	$73.470	1,252	$91,984
Chief Risk Officer	Sold	05/01/00	$73.470	2,182	$160,312
	Sold	05/01/00	$73.470	5,154	$378,664
	Sold	05/01/00	$73.470	15,280	$1,122,622
	Sold	05/01/00	$73.470	4,476	$328,852
	Sold	05/01/00	$73.470	5,660	$415,840
	Sold	05/01/00	$73.470	11,320	$831,680
	Sold	05/01/00	$73.470	12,821	$941,959
	Sold	05/01/00	$73.470	4,098	$301,080
	Sold	05/01/00	$73.470	13	$955
	Sold	01/02/01	$81.900	5,660	$463,550
	Sold	01/02/01	$81.900	5,715	$468,059
	Sold	01/02/01	$81.900	2,238	$186,292
	Sold	01/02/01	$81.900	11,320	$927,108
	Sold	01/02/01	$81.900	15,280	$1,251,432
	Sold	01/26/01	$82.000	7,511	$615,902
	Sold	03/05/01	$70.000	1,433	$100,310
	Sold	03/05/01	$70.000	12,821	$897,470
				140,234	$10,656,595
McMahon, Jeffrey	Sold	03/16/00	$69.120	4,476	$309,381
Executive VP,	Sold	03/16/00	$69.120	3,828	$264,591
Finance & Treasurer	Sold	03/16/00	$69.120	5,206	$359,839
	Sold	03/16/00	$69.120	15,280	$1,056,154
	Sold	03/16/00	$69.120	9,692	$669,911
	Sold	03/16/00	$69.120	1,148	$79,350
				30,960	$2,739,226
McConnell, Michael S.	Sold	03/27/00	$76.440	3,500	$267,540
Executive VP,	Sold	03/27/00	$76.440	748	$57,177
Technology	Sold	03/27/00	$76.440	6,978	$533,398
	Sold	03/27/00	$76.440	1,734	$132,547
	Sold	03/27/00	$76.440	940	$71,854
	Sold	03/28/00	$76.440	19,060	$1,443,795
				30,960	$2,353,431
Duncan, John H.	Sold	05/09/01	$57.420	35,000	$2,009,700
Director				35,000	$2,009,700
Blake, Norman P. Jr.	Sold	10/31/00	$60.440	4,720	$379,677
Director	Sold	10/31/00	$60.440	3,600	$289,584
	Sold	10/31/00	$60.440	3,840	$308,890
	Sold	10/31/00	$60.440	3,920	$315,325

Insider	Transaction	Date	Split Adjusted Price	Split Adjusted Shares Sold	Proceeds
	Sold	10/31/00	$60.440	5,120	$411,853
				21,200	$1,705,328
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
	Sold	01/21/00	$71.500	2,448	$175,032
				31,320	$1,639,590
Metts, J. Mark	Sold	11/06/00	$81.810	13	$1,064
Executive VP,	Sold	11/06/00	$81.810	3,208	$262,283
Corporate Development	Sold	11/06/00	$81.810	1,670	$136,623
	Sold	11/06/00	$81.810	12,822	$1,048,968
				17,711	$1,448,937
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
				10,328	$278,892
			TOTALS:	20,788,957	$1,190,479,472

659. It is known that Lay and others sold additional shares after July 31, 2001, but those sales have not been reported.

660. 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.

A. Lavish Bonuses

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

	CHECK AMOUNT	**DATE**
	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
	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

B. Excessive Compensation Packages

662. In addition to these lavish bonuses and as part of their scheme, the Enron insiders awarded themselves with unusual compensation packages that included lavish equity stakes in business units and bonuses worth tens of millions of dollars, even as the units they ran piled up losses.

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

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

665. 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," according to Elizabeth Warren, a Harvard University law professor and expert on business ethics. "They looked for any excuse to pay themselves."

666. 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. Enron call 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 stake into $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 the unit.

667. 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 $268 million in shares he sold before leaving the company in June 2001.

668. 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.

669. 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%.

670. The stated goal of its board of directors was to pay 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.

671. 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 former 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.

672. Rebecca Mark, 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 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.

673. The defendants were successful in using every possible vehicle to enrich themselves. The stock sales, bonuses, and other forms of compensation, enriched the Enron Insider Defendants to the tune of between $1.5 billion and $2.0 billion.

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

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

674. 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 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.

675. The failure of the Enron 401(k) Plan to qualify as a § 404(c) plan means that at all times Enron and the Administrative Committee 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 Compensation Committee of Enron's Board Breached Their Duty To Select and Monitor the Plan's Fiduciaries

676. Under the terms of the Enron Savings Plan, 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), §§ XIII.1, XV.2. It is one of the Plan's "named fiduciary[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.

677. 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.

678. Under the terms of the Plan, the Committee members were selected and monitored by "Enron Corp." Plan, § XIII.1. On information and belief, selection and monitoring of the Committee members was performed by the Compensation and Management Development Committee of the Board of Directors ("Compensation Committee"), Lay and others. Enron itself acted as a fiduciary in selecting, monitoring and removing other plan

fiduciaries, such as the members of the Administrative Committee, and overseeing their investment of Plan assets.

679. Enron, Lay and the Compensation Committee misled the Administrative Committee as to the true financial condition of the Company, failed to ensure the Committee was monitoring the prudence of Enron stock as a Plan investment and indeed by directly and indirectly preventing them exercising their duty to question the use of Company stock as a Plan investment.

C. Olson, Prentice and the Administrative Committee Breached Their Duty To Monitor Enron Stock And Ensure That It Was A Prudent Investment For The Plans

680. 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. Plan, § 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. Id.*

681. By contrast, the Plan document specifically provides that the Company match will be made in Company stock. *See* Plan § 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*") (emphasis added).

682. 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, *id.,* by Mr. Skilling, who also "took away a lot of the Human Resource functions that [she] had."

683. 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. *Id.* 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." *Id.* The article questioned Enron's "opaque accounting and dubious rationalizations" for its then-generous stock valuation ($76 a share). *Id.* "The company remains largely impenetrable to outsiders," said the article. *Id.* "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." *Id.* All this amounted to a "red flag" that "may increase the chance of a nasty surprise." *Id.*

684. 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.

685. 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.

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

687. 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.

688. 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.

689. 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.

690. Olson admitted that she was 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, in direct breach of fiduciary duties she owed to thousands of Plan participants, that she kept that information to herself and Lay.

691. Any prudent, disinterested fiduciary would have immediately convened an emergency meeting of the Plan Administrative Committee; made full disclosure of Watkins' allegations to the Committee, the Plan's counsel, the Plan's investment consultant and the Plan's participants; and taken actions to promptly suspend any further the use of Enron stock as a Plan investment (based either on employee or employer contributions) pending a 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.

692. Had the Committee so acted, 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 realized even assuming a precipitous drop in the stock's price resulting from a disclosure of Watkins' allegations of accounting improprieties at Enron.

693. Additionally, had Olson and the Committee immediately discontinued Enron stock as an investment option for new contributions as was so plainly required pending further investigation of. Watkins' allegations, employees would been prevented from throwing another $100 million in good money after bad, 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.

694. 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).

695. Indeed, not only did Olson failure 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 later August and then again in September 2001 as she heard Lay exhort them to purchase even *more* Enron stock and explicitly promise them that 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."

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

697. 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.*

698. 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

699. Prentice's admission that he and the other 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.

D. Olson, Prentice and the Administrative Committee Failed To Diversify The Plan's Assets

700. 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 was expressly charged with the duty of "diversifying the investments of the Plan so as to minimize the risk of large losses." Plan, § XV.3. 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.

701. With respect to the Committee's efforts to diversify the assets of the 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 as such 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.

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

E. Olson Failed to Act on Watkins' Assertions of Massive Accounting Irregularities

703. 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.

704. 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 Ms. Olson to arrange a meeting with Lay. Olson subsequently arranged a meeting between Lay and Watkins, which was held on Wednesday, August 22, 2001.

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

706. 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.

707. 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 Remains Silent While Lay Exhorts Employees to Purchase More Enron Stock and Fails to Correct His Material Misrepresentations to Them About Enron's Off-Balance Sheet Deals

708. 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 believe, Lay made statements to employees at this meeting similar to the ones he made in email 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." *Id*. Following the August 27th employee meeting, Mr. Lay sent employees another email, 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."

709. 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.

710. 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.

711. 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."

712. Olson 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 widespread accounts, on the strength of Lay's recommendation.

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

713. 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.

714. 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 freeze was to last nearly one month.

715. 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 lockdown would prevent participants who otherwise wished to do so from selling their Enron stock and moving the proceeds. After several reschedulings, the lockdown period 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.

716. 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.

717. 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 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.

718. Given these stories, and a slew of complaints from Class Members to Northern Trust urging Northern Trust to postpone the lockdown, 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 Plans participants and beneficiaries.

719. 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, changes Enron's credit outlook to "negative" from "stable."

720. 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 lockdown. So many complaints about the impending lockdown were received that the Company was forced to consider postponing the lockdown.

721. Indeed, Enron made inquiry into the possibility of postponing the lockdown 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.

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

723. 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.

724. Enron told employees on October 25th email, 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.

725. 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."

726. For its part, Northern Trust concurred with Olson and Enron, and recommended that the lockdown go forward as planned – even though (i) Northern Trust knew or should have known that the lockdown 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 lockdown from going forward as scheduled.

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

728. From the beginning to the end of the ESOP lockdown, Enron stock lost more than *two-thirds* of its value.

XIII. CLASS ALLEGATIONS

729. 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 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 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) All persons who are or were employees of Enron during the period January 20, 1990 through October 18, 2001 and who received compensation from Enron in the form of "phantom" stock (the "Phantom Stock Class").

730. 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.

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

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

733. 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.

734. 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.

735. 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.

736. 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 RICO;

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

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

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

XIV. 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 Lay, Skilling and Andersen)

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

739. At all relevant times, Enron, and each of the Enron ERISA Defendants, 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 their participants and beneficiaries, were and acted as fiduciaries.

740. 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.

741. 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.

742. At all relevant times, Enron, each of the Enron ERISA Defendants and Lay and Skilling also was, and 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, 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.

743. As detailed in part in Section XII, *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 – all at a time when Enron, the Enron ERISA Defendants and Lay and Skilling knew or should have known that Enron stock was not a prudent investment option.

744. 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.

745. 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 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.

746. 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).

747. 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.

748. 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.

749. 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.

750. 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, Lay and Skilling)

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

752. At all relevant times, Enron, the Enron ERISA Defendants, Lay, Skilling, 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.

753. As detailed in part in Section XII(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 participants from directing the Plans' fiduciaries to sell the Plans' Enron stock allocated to their individual accounts 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.

754. 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).

755. 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.

756. The Lockdown of the Savings Plan did not officially begin 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.

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

758. As detailed in part in Section XII(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

the Lockdown. 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.

759. Whether the Lockdowns should have been postponed or not, the Defendants had a duty to provide timely and informative notice of the Lockdown 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.

760. 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.

761. 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.

762. 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.

763. 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 ASSETS IN ACCORDANCE WITH THE TERMS OF THE PLAN

(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 Against Enron, the Enron ERISA Defendants Lay, Skilling and Northern Trust)

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

765. At all relevant times, each of the Enron ERISA Defendants and Northern Trust (excluding Gathmann, the ESOP Administrative Committee and the Cash Balance Administrative Committee) 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. Defendants Lay and Skilling, by virtue of their encouragement and promotion of Enron stock to the Savings Plan and the Plans' participants and beneficiaries, were and acted as fiduciaries.

766. 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.

767. The express terms of the Savings Plan – the key "document[] ... governing the plan" – at all relevant times provided that "[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). Neither the Plan 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 Plan's 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).

768. Nevertheless, as detailed in part in Section XII(C), *supra*, the Defendants did nothing to comply with this key provision of the Plan, with the result that throughout the relevant time period, the Plan was dangerously over weighted in Enron stock.

769. As a direct and proximate result of the Defendants' failure to follow the terms of the Plan 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.

770. 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)

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

772. 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 are

entitled to benefits based upon the sum of different percentages of finale 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.

773. 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.

774. 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.

775. 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).

776. 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.

777. 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 his 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.

778. 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 Compensation Committee Defendants)

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

780. At all relevant times, Enron and the Compensation Committee 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 included the duty to monitor the manner in which those fiduciaries were investing the Plans' assets.

781. 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.

782. 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.

783. 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.

784. 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.

785. 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.

786. 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

(VIOLATIONS OF SECTION 1962(C) AND (D) OF RICO)

(Claims Against the Enron Insider Defendants, the Accountant Defendants and/or Andersen, Investment Banking Defendants and Attorney Defendants)

787. The preceding paragraphs are realleged and incorporated by reference.

A. Description of Civil RICO Claims and Liable Persons

788. This claim arises under Section 1964(c) of RICO, and plaintiffs assert claims for violations of Section 1962(c) and (d) of RICO. This claim is brought on behalf of the classes against the Enron Insider Defendants, the Accountant Defendants and/or Andersen, the Attorney Defendants, and certain of the Investment Banking Defendants.

789. At all times relevant hereto, the Savings Plan, the ESOP, the Cash Balance Plan, and each member of the classes is and has been a "person," as that term is defined in Section 1961(3) of RICO. At all times relevant hereto, each of the defendants referred to in the preceding paragraph is and has been a "person," as that term is defined in Section 1961(3) of RICO. In violation of Section 1962(c) and (d), the defendants named in this count conducted or participated and/or conspired to conduct or participate, directly or indirectly, in the conduct of certain enterprises' affairs through a pattern of racketeering activity, thereby proximately causing injury to plaintiffs' and Class members' business or property. Each of these defendants knew the essential nature and scope of the enterprise or enterprise(s) that he, she, or it was employed by or associated with, and each of the defendants intended to participate in the affairs of the particular enterprise or enterprise(s).

B. Conducting the Affairs of the RICO Enterprises

790. In accordance with Fed. R. Civ. P. 8(e)(2), plaintiff alleges that there have existed at least the following "enterprise(s)," as that term is defined in Section 1961(4) of RICO, and the defendants referenced below committed, aided and abetted, and/or conspired to commit violations of Section 1962(c).

791. Alternatively, there existed the following RICO enterprises:

(a) ***The Association-in-Fact Enterprise***: There existed an Association-in-Fact Enterprise consisting of the Enron Insider Defendants, the Enron ERISA Defendants, the Accountant Defendants and/or Andersen, the Lawyer Defendants, the Investment Banking Defendants, and other investment banks (Canadian Imperial Bank of Commerce, Deutsche Bank, Bank America, Lehman Brothers, Barclays Bank, UBS Warburg, First Union Wachovia, Bear Stearns and Morgan Stanley Dean Witter), which is referred to herein as the "Association-in-Fact Enterprise." Each of the members of the Association-in-Fact Enterprise are persons or legally incorporated entities that conducted (and conduct) business activities throughout the United States and overseas. The activities of the Association-in-Fact Enterprise affected interstate or foreign commerce. Notwithstanding Enron's bankruptcy, the Accountant Defendants and/or Andersen, the Lawyer Defendants, and the Investment Banking Defendants continue their professional and business activities. As alleged in Parts VII, IX and X of this Complaint, the members of the Association-in-Fact Enterprise performed separate, discrete roles in conceiving and carrying out the schemes to defraud alleged herein, and they made decisions on a hierarchical and consensual basis. The Association-in-Fact Enterprise had a hierarchical decision-making structure headed by the Enron Finance Group (defendants Fastow, Skilling, Causey, Buy and Derrick). The Association-in-Fact Enterprise also had a consensual decision-making structure because the Enron Insider Defendants, the Accountant Defendants and Andersen, the Lawyer Defendants, and the Investment Banking Defendants voluntarily agreed to join the enterprise and played an active role in its affairs. Each of them was motivated by the desire to earn fees and receive payments derived from the schemes to defraud. The Enron Insider Defendants, the Accountant Defendants and/or Andersen, the Lawyer Defendants and certain of the Investment Banking Defendants (Merrill Lynch, J.P. Morgan Chase, CSFB and Citigroup) conducted and/or conspired to conduct the affairs of the Association-in-Fact Enterprise through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); Section 1512 (obstruction of justice); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of this count.

(b) ***The Enron Enterprise:*** Enron Corp. is and has been a RICO enterprise, and it is referred to herein as the "Enron Enterprise." Enron is an Oregon corporation with its principal place of business located in Houston, Texas. At all times relevant hereto, the activities of the Enron Enterprise affected interstate or foreign commerce. The Enron Insider Defendants, the Accountant Defendants and/or Andersen, the Attorney Defendants, and certain of the Investment Banking Defendants (Merrill Lynch, J.P. Morgan Chase, CSFB and Citigroup) were employed by and/or associated with the Enron Enterprise. In violation of Section 1962(c) of RICO, the Enron Insider Defendants, the Accountant Defendants and/or Andersen, the Attorney Defendants, and the above-referenced Investment Banking Defendants conducted and/or conspired to conduct the affairs of the Enron Enterprise through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); Section 1512 (obstruction of justice); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of this count.

(c) ***The Savings Plan/ESOP/Cash Balance Plan Enterprise:*** The Savings Plan, the ESOP, and the Cash Balance Plan are and have been RICO enterprise(s). (For purposes of simplicity, they are collectively referred to herein as the "Savings Plan/ESOP/Cash Balance Plan Enterprise.") At all times relevant hereto, the activities of the Savings Plan/ESOP/Cash Balance Plan Enterprise affected interstate or foreign commerce. The Enron Insider Defendants and the Accountant Defendants and/or Andersen conducted and/or conspired to conduct the affairs of the Savings Plan/ESOP/Cash Balance Plan Enterprise through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); Section 1512 (obstruction of justice); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of this count.

(d) ***The Enron-Andersen Enterprise***: At all times relevant hereto, an association-in-fact consisting of Enron and Andersen is and has been a RICO enterprise, and is referred to herein as the "Enron-Andersen Enterprise." As alleged herein, Enron and Andersen were legally incorporated entities that conducted business activities throughout the United States and overseas. The activities of the Enron-Andersen Enterprise affected interstate or foreign commerce.

(i) For the 16 years preceding January 2002, Enron retained Andersen to be its auditor; that relationship between client and auditor was originally formed for legal purposes. However, as previously alleged, Enron and Andersen also had a continuous and ongoing relationship that was formed for illicit or illegal purposes in or about 1998 and functioned as a continuing unit until Enron filed for bankruptcy in December 2001 and fired Andersen in January 2002. The legal activity of the Enron-Andersen Enterprise was to provide essential management, accounting and consulting services to Enron and to the Savings Plan, the ESOP, and the Cash Balance Plan.

(ii) Within Enron's headquarters in Houston, Andersen established a workspace for the Andersen team that had primary responsibility for performing work for Enron. During the period between 1998 and December 2001, Enron and Andersen maintained an extremely close, interlocking and illicit relationship for the purpose of executing the scheme to defraud plaintiffs and Class members that is detailed herein. Enron delegated essential tasks to Andersen and Andersen personnel performed these tasks, which included the certification of financial statements for Enron and the Savings Plan/ESOP/Cash Balance Plan that Andersen knew were false and misleading.

(iii) Over time, Andersen's participation in Enron-Andersen Enterprise became more regularized, involving a core group of Andersen partners and employees who specialized in performing these tasks. From at least 1998 to at least December 2001, the Enron Insider Defendants and Andersen made joint decisions about the conduct of the Enron-Andersen Enterprise on a consensual basis. In exchange for Andersen's essential role in perpetrating the activities of the Enron-Andersen Enterprise, Andersen received tens of millions of dollars in fees and expenses.

(iv) At all times relevant hereto, the Enron Insider Defendants, the Accountant Defendants, and Andersen conducted and/or conspired to conduct the affairs of the Enron-Andersen Enterprise through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); Section 1512 (obstruction of justice); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of this count.

(e) ***The Andersen Enterprise:*** Andersen is and has been a RICO enterprise, and it is referred to herein as the "Andersen Enterprise." The Andersen Enterprise is a partnership with its headquarters located in Chicago, Illinois, and offices located throughout the world, including Houston, Texas. At all times relevant hereto, the activities of the Andersen Enterprise affected interstate or foreign commerce. Andersen Worldwide and the Andersen Partners were employed by and/or associated with the Andersen Enterprise. In violation of Section 1962(c) of RICO, Andersen Worldwide and the Andersen Partners conducted and/or conspired to conduct the affairs of the Andersen Enterprise through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); (c) Section 1512 (obstruction of justice); and (d) Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of this count, and other acts of racketeering are set forth in Section XII.

(f) ***The LJM1 Enterprise:*** LJM Cayman, L.P. (commonly known as "LJM1"), is and has been a RICO enterprise, and is referred to herein as the "LJM1 Enterprise." The LJM1 Enterprise, which was formed in June 1999, is a limited partnership with its principal place of business located in Houston, Texas. LJM Partners, L.P. was the general partner of LJM1, and LJM1 had at least two limited partners. During 1999-2001, LJM1 and LJM2 (defined below) entered into more than 20 distinct transactions with Enron and, as a result, the activities of the LJM1 Enterprise affected interstate or foreign commerce. At all times relevant hereto, the Enron Insider Defendants and the Accountant Defendants and/or Andersen, were employed by and/or associated with the LJM1 Enterprise. In violation of Section 1962(c) of RICO, the Enron Insider Defendants and the Accountant Defendants and/or Andersen, conducted and/or conspired to conduct the affairs of the LJM1 Enterprise through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); Section 1512 (obstruction of justice); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of this count.

(g) ***The LJM2 Enterprise:*** LJM2 Co-Investment, L.P. (also known as "LJM2") is and has been a RICO enterprise, and is referred to herein as the "LJM2 Enterprise."

The LJM2 Enterprise, which was formed in October 1999, is a limited partnership with its principal place of business located in Houston, Texas. The general partner of LJM2 were LJM2 Capital Management, L.P. LJM2 had approximately 50 limited partners, including Merrill Lynch, J.P. Morgan, Citicorp, First Union, Deutsche Bank, G.E. Capital and Dresdner Kleinwort Benson. During 1999-2001, LJM1 (defined above) and LJM2 entered into more than 20 distinct transactions with Enron and, as a result, the activities of the LJM2 Enterprise affected interstate or foreign commerce. At all times relevant hereto, the Enron Insider Defendants, the Accountant Defendants and/or Andersen, the Attorney Defendants and Merrill Lynch were employed by and/or associated with the LJM2 Enterprise. In violation of Section 1962(c) of RICO, the Enron Insider Defendants, the Accountant Defendants and/or Andersen, the Attorney Defendants and Merrill Lynch conducted and/or conspired to conduct the affairs of the LJM2 Enterprise through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); Section 1512 (obstruction of justice); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of this count.

(h) ***The Enron-Merrill Lynch Enterprise(s):*** At all times relevant hereto, an association-in-fact of Enron and Merrill Lynch is and has been a RICO enterprise, and it is referred to herein as the "Enron-Merrill Lynch Enterprise." Since 1990 Enron, Merrill Lynch and their respective executives formed a close working relationship in which Merrill Lynch served as Enron's investment banker. In addition, Merrill Lynch and its officers invested in and helped to structure and market the LJM2 Partnership. At all times relevant hereto, the activities of the Enron-Merrill Lynch Enterprise affected interstate or foreign commerce. The Enron Insider Defendants and Merrill Lynch were employed by and/or associated with the Enron-Merrill Lynch Enterprise. In violation of Section 1962(c) of RICO, the Enron Insider

Defendants and Merrill Lynch conducted and/or conspired to conduct the affairs of the Enron-Merrill Lynch Enterprise through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of this count.

(i) ***The Enron-J.P. Morgan Chase-Mahonia Enterprise:*** At all times relevant hereto, an association-in-fact of Enron and J.P. Morgan Chase is and has been a RICO enterprise, and it is referred to herein as the "Enron-J.P. Morgan Chase Enterprise." At all times relevant hereto, Mahonia Ltd. and Mahonia Natural Gas Ltd. (collectively "Mahonia") are and have been a RICO enterprise, and it is referred to herein as the "Mahonia Enterprise." Since at least 1997, Enron and J.P. Morgan Chase and their respective executives conceived, launched, operated and used Mahonia as a sham in order to manipulate Enron's financial statements. At all times relevant hereto, the activities of the Enron-J.P. Morgan Chase Enterprise and the Mahonia Enterprise affected interstate or foreign commerce. The Enron Insider Defendants and J.P. Morgan Chase were employed by and/or associated with the Enron-J.P. Morgan Chase Enterprise and the Mahonia Enterprise. In violation of Section 1962(c) of RICO, the Enron Insider Defendants and J.P. Morgan Chase conducted and/or conspired to conduct the affairs of the Enron-J.P. Morgan Chase Enterprise and the Mahonia Enterprise through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of this count.

(j) ***The Enron-CSFB Enterprise:*** At all times relevant hereto, an association-in-fact of Enron and CSFB is and has been a RICO enterprise, and it is referred to herein as the "Enron-CSFB Enterprise." As alleged herein, since at least 1999 Enron and CSFB and their respective executives created approximately 3,500 off-balance-sheet partnerships which were used to hide Enron's deteriorating financial condition. At all times relevant hereto, the activities of the Enron-CSFB Enterprise affected interstate or foreign commerce. The Enron Insider Defendants and CSFB were employed by and/or associated with the Enron-CSFB Enterprise. In violation of Section 1962(c) of RICO, the Enron Insider Defendants and CSFB conducted and/or conspired to conduct the affairs of the Enron-CSFB Enterprise through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of this count.

(k) ***The Enron-Citigroup Enterprise:*** At all times relevant hereto, an association-in-fact of Enron and Citigroup is and has been a RICO enterprise, and it is referred to herein as the "Enron-Citigroup Enterprise." As alleged herein, since at least 2000 Enron and CSFB and their respective executives created off-balance-sheet partnerships that were used to hide Enron's deteriorating financial condition. At all times relevant hereto, the activities of the Enron-Citigroup Enterprise affected interstate or foreign commerce. The Enron Insider Defendants and Citigroup were employed by and/or associated with the Enron-Citigroup Enterprise. In violation of Section 1962(c) of RICO, the Enron Insider Defendants and Citigroup conducted and/or conspired to conduct the affairs of the Enron-Citigroup Enterprise through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of this count.

(l) ***The TNPC-New Power Enterprise***: TNPC-New Power is and has been a RICO enterprise, and it is referred to herein as the "New Power Enterprise." As alleged herein, TNPC-New Power is a corporation. At all times relevant hereto, the activities of New Power affected interstate or foreign commerce. At all relevant times hereto, Enron, the Accountant Defendants and/or Andersen, the Attorney Defendants, CSFB, J.P. Morgan Chase, CIBC, and Salomon were employed by and associated with the New Power Enterprise. In violation of Section 1962(c) of RICO, Lay, Fastow, Skilling, Pai, the Accountant Defendants and/or Andersen, the Attorney Defendants, CSFB and J.P. Morgan Chase conducted and/or conspired to conduct the affairs of the TNPC-New Power Enterprise through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit the following violations of Title 18 of the U.S. Code: Sections 1341 and 1343 (mail and wire fraud) and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of this count.

C. Defendants' Pattern of Racketeering Activity

792. The defendants named in this count committed, aided and abetted and/or conspired to commit violations of 18 U.S.C. § 664; violations of the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343; violations of certain obstruction of justice statutes, 18 U.S.C. § 1512(b)(2); and interstate transportation offenses, in violation of 18 U.S.C. § 2314. These offenses and violations of federal law constituted a "pattern of racketeering activity," as that term is defined in 18 U.S.C. § 1961(1) and (5).

1. Violations of Section 664 (Criminal Misuse of Plan Assets: Embezzlement and Conversion)

793. Section 664 of Title 18 of the U.S. Code provides that "[a]ny person who embezzles, steals or unlawfully and willfully abstracts or converts to his own use or to the use of another, any of the moneys, funds . . . or other assets of any [ERISA] plan . . . shall be [guilty of a felony]." 18 U.S.C. § 664. The Enron Insider Defendants committed, aided and abetted and/or conspired to commit repeated violations of Section 664 by embezzling 401(k) and ESOP Plan assets within the meaning of the statute and/or by unlawfully and willfully abstracting or converting them to their own use and/or the use of others. The Accountant Defendants and/or Andersen and the Investment Banking Defendants aided and abetted those violations of Section 664 and/or conspired with the Enron Insider Defendants to commit those violations.

794. The Enron Insider Defendants embezzled Plan assets within the meaning of Section 664 by intentionally investing and continuously reinvesting Plan assets in Enron stock, and by diverting Plan assets away from other available investment vehicles, in a manner inconsistent with the fiduciary purposes and objectives of the Plans, ERISA, and the governing Plan documents and instruments in that these investment were made principally for the Enron Insider Defendants' own benefit and/or not for the sole and exclusive benefit of Plan participants. The Enron Insider Defendants knew that they were investing Plan assets in artificially inflated company stock but did so anyway to save Enron money; to maintain demand for Enron stock and hence maintain the artificially high stock price; and as part of the Enron Insider Defendants' overall explicit and implicit representations to the market that Enron was a legitimate and profitable business and a sound investment, safe enough to serve as the foundation of its employees' retirements. Heavily investing the Plans in Enron stock was integral to the Enron Insider Defendants' perpetration and perpetuation of the scheme to defraud. Indeed, had the Enron Insider Defendants complied with their fiduciary duties and divested the Plans' holdings of Enron stock or otherwise discontinued use of Enron stock as a Plan investment, the

market would have instantly been alerted to the wrongdoing and the scheme would have unraveled.

795. Each and every act of investing or reinvesting Plan assets in Enron stock, whether at the direction of participants induced to invest their salary deductions in company stock or involving the investment of company matching contributions in company stock, constituted an act of embezzlement in violation of 18 U.S.C. § 664.

796. The Enron Insider Defendants also unlawfully and willfully converted Plan assets to their own use and/or the use of others within the meaning of Section 664 by intentionally investing and continuously reinvesting Plan assets in Enron stock that the Enron Insider Defendants knew was worth a mere fraction of the price the Enron Insider Defendants caused the Plans to pay for it. In this way, the Enron Insider Defendants intentionally "misused or abused" the property entrusted to them for their own gain and profit and/or knowingly used the Plans' assets, placed in their custody for limited use, in a manner and extent which was unauthorized by ERISA and the governing Plan documents – *i.e.*, to support their scheme to defraud.

797. Each and every act of investing or reinvesting Plan assets in artificially inflated Enron stock, whether at the direction of participants induced to invest their salary deductions in company stock or involving the investment of company matching contributions in company stock, constituted an act of conversion in violation of 18 U.S.C. § 664.

2. Violations of Sections 1341 and 1343

798. The pattern of racketeering committed and/or aided and abetted by the Enron Insider Defendants, the Accountant Defendants and/or Andersen, the Attorney Defendants, and the Investment Banking Defendants involves hundreds, if not thousands, of separate instances of using the United States mail and/or interstate and international wire facilities in furtherance of the unlawful scheme in order to (i) encourage Enron employees to invest money in the Savings Plan; (ii) encourage Enron employees to accept over-valued Enron stock as compensation in the Savings Plan; (iii) induce Enron employees to hold and maintain overvalued Enron stock in the

Savings Plan and the ESOP; (iv) structure, create and operate SPEs; and (v) certify financial statements for Enron and the Savings Plan/ESOP/Cash Balance Plan that defendants knew were false and misleading and disseminate such false and misleading statements to government regulators and others. Plaintiffs were an intended target of the unlawful use of the mails and wires. Defendants' violations of Sections 1341 and 1343 include, but were not limited to, monthly and quarterly statements or representations that were disseminated to participants in the Savings Plan, the ESOP, and the Cash Balance Plan; written and oral representations made by the Enron Insider Defendants to participants in the Savings Plan, the ESOP, and the Cash Balance Plan; and written and oral communications between the Enron Insider Defendants, the Accounting Defendants and/or Andersen, the Attorney Defendants, and the Investment Banking Defendants that were intended to further the unlawful scheme and conspiracy alleged herein. Many of the precise dates of defendants' acts of mail and wire fraud have been hidden and cannot be alleged without access to defendants' books and records. Indeed, an essential part of the successful operation of the schemes to defraud at issue was dependent upon secrecy, and defendants took steps that were effective in keeping their wrongdoing secret. However, plaintiffs can generally describe the occasions on which mail and wire fraud occurred, and how those acts were in furtherance of the scheme to defraud, and do so below. As alleged herein, in deciding to accept over-valued Enron stock as compensation, and in choosing to hold and maintain such stock in the above-referenced plans, plaintiffs and the members of the classes relied upon oral and written representations made by the Enron Insider Defendants, and the Enron ERISA Defendants, and on the integrity of the Savings Plan, the ESOP, and the Cash Balance Plan. Defendants' known uses of the U.S. mail and interstate wire facilities are enumerated below:

(a) Defendants' use of the wires and mails occurred during the period from 1998 through the present and include, but are not limited to:

(i) Use of the wires and mails by the Enron Insider Defendants in connection with "All Employee Meetings";

(ii) Use of wires and mails by the Insider Defendants to disseminate internal Enron business news letters to employees;

(iii) Use of wires and mails by and between many of the Enron Insider Defendants, the Accountant Defendants, the Attorney Defendants to structure the off-balance sheet partnerships, including the Raptor, Chewco, and JEDI partnerships;

(iv) The use of the mails and wires between Enron and the Attorney Defendants to facilitate the masking of the true assets and liabilities of Enron, including:

(1) A memorandum dated September 1, 2000 from Stuart Zigman to Mark Jaedicke;

(2) An e-mail from Ronald Astin to Bob Baird dated October 4, 1999;

(3) E-mail from Carl Jordan of V&E to Sharon Butcher dated August 24, 2001;

(4) A memorandum dated December 7, 2000 from Jordan Mintz to Rick Buy, sent by mail to Ron Austin;

(5) The use of mails on or about March 7, 2001 to discuss disclosures regarding LJM in 2001.

(6) A memorandum from Jordan Mintz to Rick Buy dated March 8, 2001 on the subject of LJM sent to V&E via mail;

(7) A memorandum from Jordan Mintz to Andy Fastow, with a copy to Ron Astin; and

(8) A memorandum from Mintz to Baxter, Causey dated April 16, 2001.

(v) Merrill Lynch, the Enron Insider Defendants, the Accountant Defendants and/or Andersen, and the Attorney Defendants used the wires and mails in connection with setting up the LJM partnerships and offering materials;

(vi) Merrill Lynch used the wires and mails in connection with the fee it earned on the LJM partnership;

(vii) Merrill Lynch used the wires and mails on dozens of occasions between 1998 and 2001 to promote Enron stock to clients, including members of the classes, both telephonically and over the wires through written reports;

(viii) On or about October 1999, various Enron Insider Defendants, in connection with meetings of the Board of Directors, used the wires and mails to waive any conflict and allow Fastow to participate in LJM2;

(ix) Fastow, Kopper and Merrill used the mails and wires to obtain investors in LJM2;

(x) Merrill Lynch used the wire and mails to invest its own money in the LJM partnership;

(xi) CSFB used the wires and mails to help the Enron Insider Defendants create approximately 3,500 off balance sheet partnerships whose major purpose was to hide Enron debt and in so doing used the mails and wires on thousands of assets;

(xii) CSFB used the wires and mails to invest in LJM1 and LJM2;

(xiii) CSFB used the wires and mails to engage in swaps with Enron during the year 2000;

(xiv) CSFB used the wires and mails to sell Marlin bonds in 1998 that were used to help bolster Enron's balance sheet;

(xv) CSFB used the wires and mails to help create and market the Osprey Trust, a vehicle for removing additional Enron liabilities from Enron's balance sheet;

(xvi) Citigroup used the wires and mails to remove assets from Enron's financial statements in connection with the sale of credit-linked notes in May 2001. In connection with these transactions, Citigroup used the wires and mails to communicate with the Enron Insider Defendants;

(xvii) Salomon Smith Barney used the wires and mails in connection with the Rhythm NetConnections transactions; including wires and mails between Salomon and Enron officials;

(xviii) Salomon used the wires to promote Enron stock to its clients, and used the mails for that purpose as well;

(xix) Andersen used the mails and wires on thousands of occasions in connection with its auditing of the financial statements of Enron and various Enron-related entities, including TPNC;

(xx) On February 23, 1998, Andersen used the wires and mails to issue an audit report for Enron;

(xxi) On January 19, 1999, defendant Lay used the wires to issue a press release;

(xxii) On January 19, 1999, Lay, Fastow and Skilling used the wires to facilitate their scheme in a conference call with analysts;

(xxiii) On March 5, 1999, Andersen used the wires and mails in connection with the audit for 1998;

(xxiv) On or about January and February 1999, Causey, Lay, Fastow, Belfer, Blake, Chan, Duncan, Foy, Gramm, Harrison, Jaedicke, LeMaistre and Skilling used the wires and mails to plan an offering of $1 billion in Enron debt securities;

(xxv) On or about March 13, 2000, Andersen used the wires and mails in connection with its audit for the year ending December 31, 1999;

(xxvi) On or about June and July 2000, Causey, Lay, Fastow, Belfer, Blake, Chan, Duncan, Gramm, Harrison, Jaedicke, LeMaistre, Mark and Skilling used the wires and mails to plan for the sale of Enron debt securities;

(xxvii) On or about June and July 2001, Causey, Lay, Fastow, Belfer, Blake, Chan, Duncan, Gramm, Jaedicke, LeMaistre and Skilling used the wires and mails to plan an offering of Enron debt securities;

(xxviii) On or about August 14 and August 21, 2001, Lay used the wires to discuss Enron's finances with the media and analysts;

(xxix) On May 18, 1999, July 13, 1999, December 1, 1999, February 28, 2001, April 27, 2000, June 29, 2000, October 2000, February 21, 2001, August 14, 2001, Lay Skilling, Fastow, Olson and other Enron officers, as identified above, used the wires to transmit statements to Enron employees about the financial condition of Enron and its stock price;

(xxx) On or about November 1997, Andersen and V&E used the mails to approve the Chewco transaction;

(xxxi) During the life of the LJM partnership, Fastow and others used the wires to facilitate hedging transactions;

(xxxii) On June 6, 1999 and June 28, 2000, Andersen used the wires to file Form 11-Ks with the SEC;

(xxxiii) Between August 20, 2001 and November 2001, the Attorney Defendants used the wires to "investigate" the Watkins letter;

(xxxiv) As detailed above, between October 2001 and November 2001, Andersen used the mail and wires to facilitate the destruction of documents; and

(xxxv) During the period 1998 through November 2001, as part of the scheme, the Enron Insider Defendants used the wires and mails to sell Enron stock and to obtain the bonuses and special compensation as set forth in Section XI of this Complaint.

(xxxvi) J.P. Morgan used the interstate wires and mails to transact trades with Mahonia on hundreds of occasions.

(xxxvii) J.P. Morgan used the interstate wires and mails to engage in Mahonia-related transactions in communications with Enron on hundreds of occasions including but not limited to dozens of occasions in the summer of 1999 when Enron began to increase its "trades" with Mahonia.

(xxxviii) J.P. Morgan used the wires and mails to execute the "December 28, 2000 contract" and to execute the Stoneville Aegean Limited One to enter into related agreements.

(xxxix) ***Each use of the U.S. mail or the interstate wire facilities constitutes a separate violation of 18 U.S.C. § 1341 or 18 U.S.C. § 1343.***

3. Obstruction of Justice

799. As alleged above, in violation of 18 U.S.C. § 1512(b)(2), the Accounting Defendants and/or Andersen knowingly, intentionally and corruptly persuaded and attempted to persuade Andersen employees with the intent to cause and induce such persons to (i) withhold records, documents and other objects from official proceedings (including, but not limited to, the SEC investigation), and (ii) alter, destroy, mutilate and conceal objects with the intent to impair those objects' integrity or availability for use in such official proceedings. ***Every document that was shredded or destroyed constitutes a separate violation of 18 U.S.C. § 1512(b)(2).***

4. Interstate Transportation Offenses

(a) In violation of 18 U.S.C. § 2314, the Enron Insider Defendants, the Accounting Defendants and/or Andersen and certain of the Investment Banking Defendants (Merrill Lynch, J.P. Morgan Chase, CSFB and Citigroup) committed, aided and abetted and/or conspired to commit interstate transportation offenses. These defendants' violations of Section 2314 included (i) transmitting or transferring in interstate commerce money, of the value of $5,000 or more, knowing the same to have been converted or taken by fraud, consisting of

Savings Plan participants' contributions to the Savings Plan and/or investment in stock offered by the Savings Plan; and (ii) transporting, causing to be transported, or inducing persons (namely, Enron employees) to travel in or be transported in interstate commerce in the execution or concealment of the wrongful scheme alleged herein, by causing Enron employees to travel to Houston, Texas, to attend meetings conducted by the Enron Insider Defendants at which ECSP participants were reassured that their 401(k) funds were safely invested and that they should hold and maintain their investments in Enron stock. As alleged herein, such meetings were held on May 18, 1999; July 13, 1999; December 1, 1999; February 28, 2000; and October 3, 2000, among other dates. ***Each such transfer or transmittal of funds, and each such instance of interstate travel constitutes a separate violation of 18 U.S.C. § 2314.***

800. Defendants' violations of 18 U.S.C. §§ 664, 1341, 1343, 1512 and 2314 constituted a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO, because the acts were related to each other and had continuity. As alleged herein, defendants' violations of these federal statutes had the same or similar purposes, results, participants, victims, or methods of commission; they were interrelated and not isolated events. Defendants' violations of these federal statutes evidenced continuity because they amounted to a closed period of repeated conduct or conduct that extended temporally from the past into the future with a threat of repetition. But for Enron's bankruptcy filing in December 2001, defendants' violations of these federal statutes would have continued indefinitely.

D. Plaintiffs' Standing to Sue

801. Plaintiffs and the members of the Class are persons who or that have been injured in their business or property by reason of defendants' violations of Section 1962(c) and (d) of RICO, as set forth in Section IV and Section V(C) of this Complaint. Pursuant to Section 1964(c) of RICO, plaintiffs and the members of the Class are entitled to assert this claim and to recover threefold the damages sustained and the costs of bringing suit, including reasonable attorney's fees.

COUNT VII

(For Violations of Section 1962(a) and (d) of RICO)

(Against the Enron Insider Defendants, the Accountant Defendants and/or Andersen, and the Investment Banking Defendants)

802. The preceding paragraphs of this Amended Complaint are realleged and incorporated by reference.

803. This claim arises under Section 1964(c) of RICO. Plaintiffs assert claims for violations of Section 1962(a) and (d) of RICO, 18 U.S.C. § 1962(a) and (d). This claim is brought on behalf of the classes against the Enron Insider Defendants, the Accountant Defendants and/or Andersen, and the Investment Banking Defendants.

804. At all times relevant hereto, the Savings Plan, the ESOP, the Cash Balance Plan and each member of the classes is and has been a "person," as that term is defined in Section 1961(3) of RICO. At all times relevant hereto, each of the defendants referred to in the preceding paragraph is and has been a "person," as that term is defined in Section 1961(3) of RICO. In violation of Section 1962(a) and (d), these defendants received income that was derived, directly or indirectly, from a pattern of racketeering activity in which each defendant has participated as a principal, and used or invested, directly or indirectly, part of such income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of, an enterprise or enterprise(s) that is or are engaged in, or the activities of which affect, interstate or foreign commerce, thereby proximately causing injury to plaintiffs' and Class members' business or property.

E. Acquisition, Establishment, or Operation of the RICO Enterprise(s)

805. At all times relevant hereto, there have existed the following "enterprise(s)," as that term is defined in Section 1961(4) of RICO, and the defendants referenced below committee, aided and abetted, and/or conspired to commit violations of Section 1962(a).

806. Alternatively, there existed the following RICO enterprises:

(a) ***The Association-in-Fact Enterprise***: There existed an Association-in-Fact Enterprise consisting of the Enron Insider Defendants, the Enron ERISA Defendants, the Accountant Defendants and/or Andersen, the Lawyer Defendants, the Investment Banking Defendants, and other investment banks (Canadian Imperial Bank of Commerce, Deutsche Bank, Bank America, Lehman Brothers, Barclays Bank, UBS Warburg, First Union Wachovia, Bear Stearns and Morgan Stanley Dean Witter), which is referred to herein as the "Association-in-Fact Enterprise." Each of the members of the Association-in-Fact Enterprise are persons or legally incorporated entities that conducted (and conduct) business activities throughout the United States and overseas. The activities of the Association-in-Fact Enterprise affected interstate or foreign commerce. Notwithstanding Enron's bankruptcy, the Accountant Defendants and/or Andersen, the Lawyer Defendants, and the Investment Banking Defendants continue their professional and business activities. As alleged in Parts VII, IX and X of this Complaint, the members of the Association-in-Fact Enterprise performed separate, discrete roles in conceiving and carrying out the schemes to defraud alleged herein, and they made decisions on a hierarchical and consensual basis. The Association-in-Fact Enterprise had a hierarchical decision-making structure headed by the Enron Finance Group (defendants Fastow, Skilling, Causey, Buy and Derrick). The Association-in-Fact Enterprise also had a consensual decision-making structure because the Enron Insider Defendants, the Accountant Defendants and Andersen, the Lawyer Defendants, and the Investment Banking Defendants voluntarily agreed to join the enterprise and played an active role in its affairs. Each of them was motivated by the desire to earn fees and receive payments derived from the schemes to defraud. The Enron Insider Defendants, the Accountant Defendants and/or Andersen, the Lawyer Defendants and certain of the Investment Banking Defendants (Merrill Lynch, J.P. Morgan Chase, CSFB and Citigroup) conducted and/or conspired to conduct the affairs of the Association-in-Fact Enterprise through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); Section 1512 (obstruction of justice); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of this count.

(b) ***The Enron Enterprise:*** As alleged herein, activities of the Enron Enterprise affected interstate or foreign commerce. In violation of Section 1962(a) of RICO, the Enron Insider Defendants received income derived, directly or indirectly, from a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO, and used or invested, directly or indirectly, such income, or the proceeds of such income, in the establishment or operation of the Enron Enterprise. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of Count VI.

(c) ***The Savings Plan/ESOP/Cash Balance Plan Enterprise:*** As alleged herein, activities of the Savings Plan/ESOP/Cash Balance Plan Enterprise affected interstate or foreign commerce. In violation of Section 1962(a) of RICO, the Enron Insider Defendants received income derived, directly or indirectly, from a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO, and used or invested, directly or indirectly, such income, or the proceeds of such income, in the establishment or operation of the Savings Plan/ESOP/Cash Balance Plan Enterprise. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of Count VI.

(d) ***The LJM1-LJM2 Enterprise:*** As alleged herein, the activities of the LJM1 Enterprise and the LJM2 Enterprise affected interstate or foreign commerce. The Enron Insider Defendants, the Accountant Defendants and/or Andersen, and Merrill Lynch received income derived, directly or indirectly, from a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO. The Enron Insider Defendants and the Accountant Defendants and/or Andersen used or invested, directly or indirectly, such income, or the proceeds of such income, in the establishment or operation of the LJM1 Enterprise. The Enron Insider Defendants, the Accountant Defendants and/or Andersen, and Merrill Lynch used or invested, directly or indirectly, such income, or the proceeds of such income, in the establishment or operation of the LJM2 Enterprise. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); Section 1512 (obstruction of justice); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of Count VI.

(e) ***The Accountant Defendants Enterprise:*** At all times relevant hereto, there existed an association-in-fact enterprise consisting of the Accountant Defendants, which is referred to herein as the "Accountant Defendants Enterprise." As alleged herein, the activities of the Accountant Defendants Enterprise affected interstate or foreign commerce. In violation of Section 1962(a) of RICO, the Accountant Defendants received income derived, directly or indirectly, from a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO, and used or invested, directly or indirectly, such income, or the proceeds of such income, in the establishment or operation of the Accountant Defendants Enterprise. The Accountant Defendants committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); Section 1512 (obstruction of justice); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of Count VI.

(f) ***The Enron-J.P. Morgan Chase-Mahonia Enterprise:*** At all times relevant hereto, an association-in-fact of Enron and J.P. Morgan Chase is and has been a RICO enterprise, and it is referred to herein as the "Enron-J.P. Morgan Chase Enterprise." At all times relevant hereto, Mahonia Ltd. and Mahonia Natural Gas Ltd. (collectively "Mahonia") are and have been a RICO enterprise, and it is referred to herein as the "Mahonia Enterprise." At all times relevant hereto, the Enron Insider Defendants, the Accountant Defendants and/or Andersen, and J.P. Morgan Chase received income derived, directly or indirectly, from a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO, and used or invested, directly or indirectly, such income, or the proceeds of such income, in the establishment or operation of the Enron-J.P. Morgan Chase Enterprise and the Mahonia Enterprise. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of Count VI.

(g) ***The Enron-CSFB Enterprise:*** At all times relevant hereto, an association-in-fact of Enron and CSFB is and has been a RICO enterprise, and it is referred to herein as the "Enron-CSFB Enterprise." At all times relevant hereto, the activities of the Enron-CSFB Enterprise affected interstate or foreign commerce. At all times relevant hereto, the Enron Insider Defendants, the Accountant Defendants and/or Andersen, and CSFB received income, directly or indirectly, through a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO, and used or invested, directly or indirectly, such income, or the proceeds of such income, in the establishment or operation of the Enron-CSFB Enterprise. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of Count VI.

(h) ***The Enron-Citigroup Enterprise:*** At all times relevant hereto, an association-in-fact of Enron and Citigroup is and has been a RICO enterprise, and it is referred to herein as the "Enron-Citigroup Enterprise." At all times relevant hereto, the activities of the Enron-Citigroup Enterprise affected interstate or foreign commerce. At all times relevant hereto, the Enron Insider Defendants and Citigroup received income, directly or indirectly, from a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO, used or invested, directly or indirectly, such income, or the proceeds of such income, in the establishment or operation of the Enron-Citigroup Enterprise. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit violations of the following provisions of Title 18 of the U.S. Code: Section 664 (pension offenses); Sections 1341 and 1343 (mail and wire fraud); and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of Count VI.

(i) ***The TNPC-New Power Enterprise***: TNPC-New Power is and has been a RICO enterprise, and it is referred to herein as the "TNPC-New Power Enterprise." At all times relevant hereto, the activities of the TNPC-New Power Enterprise affected interstate or foreign commerce. At all relevant times hereto, Lay, Fastow, Skilling, Pai, the Accountant Defendants and/or Andersen, CSFB and J.P. Morgan Chase received income, directly or indirectly, from a "pattern of racketeering activity," as that term is defined in Section 1961(1) and (5) of RICO, and used or invested, directly or indirectly, such income, or the proceeds of such income, in the establishment or operation of the TNPC-New Power Enterprise. The defendants identified in this paragraph committed, aided and abetted and/or conspired to commit the following violations of Title 18 of the U.S. Code: Sections 1341 and 1343 (mail and wire fraud), and Section 2314 (interstate transportation offenses). These defendants' acts of "racketeering activity" are alleged in Part C of Count VI.

F. Investment Or Use Injury

807. Plaintiffs and the members of the Class were injured by defendants' use or investment of the income that defendants received, directly or indirectly, income from the pattern of racketeering activity in the Enron Enterprise, the Savings Plan/ESOP/Cash Balance Plan Enterprise, the LJM1-LJM2 Enterprises, the Accountant Defendants Enterprise, the Enron-J.P. Morgan Chase-Mahonia Enterprises, the Enron-Citigroup Enterprise, and the TNPC-New Power Enterprise. As alleged herein, the hundreds of millions of dollars (if not billions of dollars) that the Enron Insider Defendants and the Accountant Defendants were able to save Enron by the repeated act of contributing virtually worthless Enron stock instead of the contributions to the Savings Plan and the Cash Balance Plan that Enron was contractually and legally obligated to make was invested in and permitted the continuing operation of the Enron Enterprise, the Savings Plan/ESOP/Cash Balance Plan Enterprise, the LJM1 and LJM2 Enterprises, and the SPEs. In addition, that money was used to pay excessive salaries, bonuses and investment returns to the Enron Insider Defendants, as well as millions of dollars in fees to the Accountant Defendants. As alleged herein, those RICO enterprises were used as vehicles to carry out fraudulent transactions that had no economic substance. The money that was invested by defendants in the above-referenced RICO enterprises was not available to plaintiffs and Class members.

G. RICO Conspiracy

808. The Enron Insider Defendants, the Accountant Defendants and/or Andersen, and each of the Investment Banking Defendants named in this count agreed to receive income derived, directly or indirectly, from a pattern of racketeering activity and to use or invest, directly or indirectly, such income in the establishment or operation of the RICO enterprise(s) identified in this count. Each of these defendants knew the essential nature and scope of the enterprise or

enterprise(s) and each of the defendants intended to receive, use, or invest such income. Under Section 1962(d), each of the defendants may be held liable for conspiring to violate Section 1962(a) of RICO.

809. Plaintiffs and the members of the Class are persons who or that have been injured in their business or property by reason of defendants' violations of Section 1962(a) and (d). Pursuant to Section 1964(c) of RICO, plaintiffs and the members of the Class are entitled to assert this claim and to recover threefold the damages sustained and the cost of suit, including reasonable attorney's fees.

COUNT VIII

NEGLIGENCE

(Claim Under Texas Common Law on Behalf of the Participants and Beneficiaries of the Savings Plan and the ESOP Against the Andersen Defendants)

810. Plaintiffs incorporate by reference all of the preceding paragraphs o this Amended Complaint as if fully set forth above.

811. 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.

812. 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 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.

813. Furthermore, notwithstanding the fact that the Savings Plan explicitly mandated that the Plan's assets be diversified, Andersen overlooked this plain requirement in certifying the Plan's books notwithstanding the Plan's heavily-overweighted holdings in Enron stock.

814. 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.

815. 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.

816. Defendants knew that Enron intended to – and did – supply their audit data to the ESOP, the Savings Plan, their participants and their fiduciaries.

817. 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.

818. 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.

819. 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.

820. 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.

821. 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.

822. 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.

COUNT IX

CIVIL CONSPIRACY

(Claim on Behalf of All Classes Against Andersen, Enron Insider Defendants, Attorney Defendants and Investment Banking Defendants)

823. Plaintiffs incorporate the proceeding allegations as if fully set forth above,

824. This claim is asserted on behalf of all Classes.

825. This claim is asserted against Enron, the Enron Insider Defendants, Andersen, the Investment Banking Defendants and the Attorney Defendants.

826. As set forth in detail above, the non-Enron Defendants, and each of them, conspired with Enron and the Enron Insider Defendants for the unlawful purpose of masking the true financial condition of Enron, thereby deceiving Enron employees into (i) accepting over-valued Enron stock and "phantom stock" as compensation, and (ii) keeping their retirement assets in artificially inflated Enron stock.

827. Defendants consciously conspired and deliberately pursued a common plan or design to commit tortious acts, subjecting each to joint liability.

828. Defendants each committed an unlawful act or acts in furtherance of this conspiracy.

829. The Defendants, and each of them, knew that their conduct as detailed throughout this Complaint would serve to artificially inflate Enron's reported profits and/or mask Enron's enormous debt; nonetheless, each Defendant knowingly participated in the conspiracy because each Defendant received immense profits as a result of their participation in the conspiracy.

830. Each Defendant also knew that Enron, Enron Insiders and others within the company would use the falsified financial picture generated by the conspiracy in order to (i) keep Enron employees satisfied and motivated to continue to work hard; (ii) accept compensation in the form of essentially worthless Enron stock, stock options and "phantom stock"; (iii) accept an offset to their Cash Balance Plan payments based on the artificially inflated price of Enron stock held by the ESOP; (iv) continue to direct that their retirement plans be heavily concentrated in Enron stock which provided further benefits to Enron and, indirectly, to its co-conspirators; and (v) continue to offer Enron securities to the market.

831. As a necessary, inevitable and intended part of the conspiracy (and as detailed throughout this Complaint), each of the Investment Banking Defendants structured, arranged

and/or otherwise participated in fraudulent transactions designed to conceal Enron's debt and/or artificially inflate Enron's profits.

832. As another necessary, inevitable and intended part of the conspiracy, V&E (i) advised Enron on how to structure business transactions in order to hide debt and inflate profit; and (ii) intentionally structured such transactions in a manner that successfully hid debt and inflated profit. Indeed, when Sherron Watkins' August 2001 memo raised questions about these transactions and the off-balance accounting they were used to justify, Lay turned to V&E to "investigate" the allegations; pursuant to the conspiracy, however, V&E further blessed the fraudulent transactions and found nothing amiss.

833. As a further necessary, inevitable and intended part of the conspiracy (and as detailed throughout this Complaint), Andersen, Lay, Skilling and others each made materially false representations about the financial condition of Enron. Further, each defendant either knew the representations to be false, or recklessly made such representations as positive assertions without any knowledge of their truth. In so doing, these Defendants intended to induce the Plaintiffs and the Classes to act on their representations, and each of the Class members justifiably relied upon the representation, and material omissions concerning the conduct of the conspirators. Each member of the classes suffered massive financial injuries as a result of the conspiracy to defraud them.

834. Plaintiffs are entitled to a presumption of reliance on the false representations, concealments and nondisclosures by Defendants. The Class Members were ignorant of Defendants' representations and were ignorant of the full and true facts suppressed by Defendants, and such reliance was justified.

835. As a direct, proximate result of this conspiracy, Plaintiffs and Class Members have been injured, as they have suffered and continue to suffer economic losses and general and specific damages, all in an amount to be determined according to proof.

XV. 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, the Cash Balance Plan Class and Phantom Stock Class;

B. That this Court order that each of the Enron ERISA Defendants, the Compensation Committee, Lay, Skilling, and Northern Trust, are liable to the to the Savings Plan, the ESOP and the Cash Balance Plan for violating the duties, responsibilities and obligations imposed them as fiduciaries and co-fiduciaries by ERISA with respect, and that Andersen is liable in equity for its knowing participation in the afore-mentioned 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 enjoin the Enron ERISA Defendants and the Compensation Committee 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;

E That this Court order the RICO Defendants to pay an amount equal to three times the damages caused each of the Classes by the Defendants' racketeering activity pursuant to 18 U.S.C. §§ 1964(c) and (d);

F That this Court enjoin each of the defendants from engaging in further racketeering pursuant to 18 U.S.C. § 1964;

G That this Court order the Andersen Defendants, the Enron Insider Defendants, the Attorney Defendants and the Investment Banking Defendants to pay compensatory and punitive damages to all of the Classes as a result of the damages caused by Defendants' willful, egregious and repeated violations of the common law of Texas;

H That this Court award to plaintiffs reasonable costs and attorneys' fees; and

I. That this Court Grant such other relief as may be just and proper.

Plaintiffs demand a trial by jury on all claims except Counts I-V.

DATED this 8th day of April, 2002.

Respectfully submitted,

Robin L. Harrison
State Bar No. 09120700
Southern District No. 4556
4000 Two Houston Center
909 Fannin Street
Houston, Texas 77010
Phone: (713) 752-2332
Fax: (713) 752-2330

ATTORNEY-IN-CHARGE FOR PLAINTIFFS

OF COUNSEL:

CAMPBELL, HARRISON & DAGLEY L.L.P.
Justin M. Campbell, III
4000 Two Houston Center
909 Fannin Street
Houston, Texas 77010
Phone: (713) 752-2332
Fax: (713) 752-2330

HAGENS BERMAN LLP

By ___________________________________
Steve W. Berman
Clyde A. Platt
Kevin P. Roddy
Karl P. Barth
Andrew M. Volk
Jeniphr A.E. Breckenridge
Christopher A. Jarvis
1301 Fifth Avenue, Suite 2900
Seattle, Washington 98101
Phone: (206) 623-7292
Fax: (206) 623-0594

HAGENS BERMAN LLP
Kevin P. Roddy
700 S. Flower Street, Suite 2940
Los Angeles, California 90017-4101
Phone: (213) 330-7150
Fax: (213) 330-71252

KELLER ROHRBACK, L.L.P.
Lynn Lincoln Sarko
Britt Tinglum
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Phone: (206) 623-1900
Fax: (206) 623-3384

Co-Lead Counsel

THE BASKIN LAW FIRM
James D. Baskin, III
919 Congress Avenue, Suite 100
Austin, TX 78701
Phone: (512) 381-6301
Fax: (512) 322-9280

THE CUNEO LAW GROUP
Jonathon W. Cuneo
317 Massachusetts Ave. NE, Suite 300
Washington, D.C. 20002
Phone: (202) 789-3960
Fax: (202) 789-1813

DALTON GOTTO SAMSON & KILGARD, P.L.C.
R. Douglas Dalton
Ron Kilgard
National Bank Plaza, Suite 900
3101 North Central Avenue
Phoenix, Arizona 85012
Phone: (602) 248-0088
Fax: (602) 248-2282

THE EMERSON FIRM
John G. Emerson
2600 S. Gessner, Suite 600
Houston, Texas 77063
Phone: (832) 723-8850
Fax: (713) 789-0033

GOTTESDIENER LAW FIRM
Eli Gottesdiener
3901 Yuma Street NW
Washington, D.C. 20016
Phone: (202) 243-1000
Fax: (202) 537-1989

OF COUNSEL:

MCCLANAHAN & CLEARMAN, L.L.P.
Scott M. Clearman
State Bar No. 04350090
Southern District No. 11041
Michael D. Myers
State Bar No. 00791331
Southern District No. 19938
Dwaine M. Massey
State Bar No. 00791199
Southern District No. 18418
Robert H. Espey II
State Bar No. 24007163
Southern District No. 23947
4100 Bank of America Center
700 Louisiana
Houston, Texas 77002
Phone: (713) 223-2005
Fax: (713) 223-3664

DIES & HILE, L.L.P.
Martin W. Dies, III
State Bar No. 05853800
Southern District No. 4283
Richard C. Hile
State Bar No. 09620500
Southern District No. 16570
Don Carona
State Bar No. 03832600
Southern District No. 11000
1009 W. Green Avenue
Orange, Texas 77630
Phone: (409) 883-4394
Fax: (409) 883-4814

SPIVEY & AINSWORTH, P.C.
Broadus A. Spivey
State Bar No. 00000076
Southern District No. 11146
48 East Avenue
Austin, Texas 78701
Phone: (512) 474-6061
Fax: (512) 474-1605

WHITTENBURG WHITTENBURG & SCHACHTER, P.C.
George Whittenburg
State Bar No. 21397000
Susan L. Burnette
State Bar No. 03437200
Karl L. Baumgardner
State Bar No. 01931940
C. Jared Knight
State Bar No. 00794107
P.O. Box 31718 (1010 Harrison, 79101)
Amarillo, Texas 79120
Phone: (806) 372-5700
Fax: (806) 372-5757

WHITTENBURG WHITTENBURG & SCHACHTER, P.C.
Cary Ira Schachter
State Bar No. 17717700
Raymond P. Harris, Jr.
State Bar No. 09088050
Cynthia Schiffer
State Bar No. 24025634
2300 Plaza of the Americas
600 North Pearl, L.B. 133
Dallas, Texas 75201
Phone: (214) 999-5700
Fax: (214) 999-5757

SCHATZ & NOBEL, P.C.
Robert A. Izard
330 Main St.
Hartford, CT 06106
Phone: (860) 493-6295
Fax: (860) 493-6290

WHATLEY DRAKE, LLC
Joe R. Whatley, Jr.
2323 Second Avenue North, Suite 1100
Birmingham, AL 35203-4601
Phone: (205) 328-9576
Fax: (205) 328-9669

FRANK W. MORGAN & ASSOCIATES, P.C.
Frank W. Morgan
1776 Woodstead Court, Suite 228
The Woodlands, TX 77380
Phone: (281) 367-9200
Fax: (281) 367-2453

SQUITIERI & FEARON, LLP
Lee Squitieri
521 Fifth Avenue, 26th Floor
New York, NY 10175
Phone: (646) 487-3049
Fax: (646) 487-3095

LAW OFFICES OF KENNETH A. ELAN
Kenneth A. Elan
217 Broadway, Suite 404
New York, NY 10007
Phone: (212) 619-0261
Fax: (212) 385-2707

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing First Consolidated and Amended Complaint was served on all counsel on the attached service list by first class mail or by hand on this 8th day of April, 2002.

Steve W. Berman