

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

	)	
SETH ABRAMS and STEVEN FRANK, Individually	)	<b>CIVIL ACTION NO.</b> _____
And On Behalf of All Others Similarly Situated,	)	
	)	
Plaintiffs,	)	
	)	CLASS ACTION COMPLAINT
vs.	)	FOR VIOLATIONS OF
	)	FEDERAL SECURITIES LAWS
ENRON CORP., KENNETH L. LAY, JEFFREY K.	)	
SKILLING and ANDREW S. FASTOW,	)	
	)	<b><u>JURY TRIAL DEMANDED</u></b>
	)	
Defendants.	)	
	)	

**NATURE OF THE ACTION**

1. This is a securities fraud class action on behalf of purchasers of the common stock of Enron Corp. ("Enron") between January 18, 2000 and October 17, 2001, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

**JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission ("SEC") [17 C.F.R. § 240.10b-5].

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337 and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

4. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b). Enron maintains its principal place of business in this District and many of the acts and practices complained of herein occurred in substantial part in this District.

5. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

### **PARTIES**

6. (a) Plaintiff Seth Abrams, as set forth in the accompanying certification, incorporated by reference herein, purchased the common stock of Enron at artificially inflated prices during the Class Period and has been damaged thereby.

(b) Plaintiff Steven Frank, as set forth in the accompanying certification, incorporated by reference herein, purchased the common stock of Enron at artificially inflated prices during the Class Period and has been damaged thereby.

7. Defendant Enron is an Oregon corporation with its principal place of business at 1400 Smith Street, Houston, Texas. Enron conducts electricity, natural gas and communications businesses.

8. Defendant Kenneth L. Lay ("Lay") served at all time relevant hereto as a director of the Company and Chairman of the Board of Directors. Lay also served as the Chief Executive Officer until February 2001.

9. Defendant Jeffrey K. Skilling served at all times relevant hereto as a director of the Company. Skilling also served as the Company's President and Chief Executive Officer until his resignation from those posts in August 2001.

10. Defendant Andrew S. Fastow served at all relevant times hereto as the Chief Financial Officer of the Company.

11. The defendants referenced above in ¶¶ 8-10 are referred to herein as the "Individual Defendants."

12. Because of the Individual Defendants' positions with the Company, they had access to the adverse undisclosed information about its business, operations, products, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

13. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of defendants identified above. Each of the above officers of Enron, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. Said defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading

statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

14. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the New York Stock Exchange (the "NYSE"), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate promptly, accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded securities would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

15. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with Enron, each of the Individual Defendants had access to the adverse undisclosed information about Enron's business prospects and financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about Enron and its business issued or adopted by the Company materially false and misleading.

16. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

17. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Enron common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Enron's business, operations, management and the intrinsic value of Enron common stock; (ii) enabled Enron to sell \$1.25 billion of convertible preferred securities on favorable terms and Enron insiders sell more than \$73 million of their personally-held Enron common stock to the unsuspecting public; and (iii) caused plaintiffs and other members of the Class to purchase Enron securities at artificially inflated prices.

## **PLAINTIFFS' CLASS ACTION ALLEGATIONS**

18. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired the securities of Enron between January 18, 2000 and October 17, 2001, inclusive (the "Class Period") and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

19. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Enron common shares were actively traded on the NYSE. While the exact number of Class members is unknown to plaintiffs at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Enron or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

20. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

21. Plaintiffs will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

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

(a) whether the federal securities laws were violated by defendants' acts as alleged herein;

(b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Enron; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

23. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

## **SUBSTANTIVE ALLEGATIONS**

### **Background Facts**

24. Enron conducts electricity, natural gas and communications businesses. The Company produces electricity and natural gas, develops, constructs and operates energy facilities worldwide and delivers both physical commodities and financial and risk management services to customers.

25. Throughout fiscal year 2000, the price of Enron common 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 ("Broadband Services Division"), which was to trade bandwidth and, as described by the Company, "deploy a global network for the delivery of comprehensive bandwidth solutions and high bandwidth applications." Unbeknownst to investors, however, the Broadband Services Division was not performing as defendants had led the market to believe. Indeed, among other adverse factors detailed herein, Broadband Services was experiencing declining demand for bandwidth and the Company's efforts to create a trading market for bandwidth were not meeting with success as many of the market participants were not creditworthy.

26. Further exacerbating the problems at the Broadband Services Division, Enron had agreed to a series of complicated financial hedge transactions with two limited partnerships, which were controlled by Enron's Chief Financial Officer, defendant Andrew Fastow. These transactions, which Enron has yet to fully detail for investors, purportedly involved hedging transactions in the broadband market and exposed the Company to increased risk and uncertainty given the weakening market for bandwidth.

27. The problems at the Broadband Services Division finally began to be revealed on October 16, 2001. On that date, Enron surprised the market by announcing that the Company was taking non-recurring charges of \$1.01 billion after-tax, or (\$1.11) loss per diluted share, in the third quarter of 2001, the period ending September 30, 2001. Defendant Lay commented on the substantial charge, stating:

After a through review of our businesses, we have decided to take these charges to clear away issues that have clouded our performance and earnings potential of our core energy businesses.

The press release further detailed the charge as follows: \$287 million related to asset impairments recorded by Azurix Corp.; \$180 million associated with the restructuring of the Company's Broadband Services division; \$544 million related to losses associated with certain investments and early termination during the third quarter of certain structured finance arrangements with a previously disclosed entity.

28. An article in The Wall Street Journal, on October 17, 2001, further explained the nature of the "structured finance arrangements with a previously disclosed entity," which was mentioned in the Company's earnings release. According to the article, the structured finance arrangements involved limited partnerships that were managed by Enron's Chief Financial Officer, defendant Fastow.

The article stated in pertinent part 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.

29. The next day, on October 18, 2001, The Wall Street Journal further reported on the nature of defendant Fastow's financial arrangements with the Company. The article reported that, "Enron had shrank its shareholder equity by \$1.2 billion as the Company had 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 to defendant Fastow. The article stated in pertinent part as follows:

According to Rick Causey, Enron's chief accounting officer, these shares were contributed to a "structured finance vehicle" set up about two years ago in which Enron and LJM2 were the only investors. In exchange for the stock, the entity provided Enron with a note. The aim of the transaction was to provide hedges against fluctuating values in some of Enron's broadband telecommunications and other technology investments.

30. In response to the news that Enron would be eliminating more than \$1 billion of shareholder equity and that it might impact the Company's credit rating, on October 18, 2001, the price of Enron common stock declined sharply, falling from \$32.20 per share to \$29.00 per share on extremely heavy trading volume. As the market continued to digest the information, the price of Enron stock continued to decline, trading as low as \$25.87 per share on October 19, 2001.

31. As now revealed, at all times during the Class Period, defendants issued false and misleading statements and press releases concerning Enron's financial results, the performance of its Broadband Services Division and the Company's outlook and prospects. During the Class Period, before the disclosure of the true facts, defendants Skilling and Lay and certain Enron insiders sold their personally-held Enron common stock generating more than \$73 million in proceeds and the Company raised \$1.25 billion in a convertible notes offering.

**Materially False And Misleading  
Statements Issued During The Class Period**

32. The Class Period begins on January 18, 2000. On that date, Enron issued a press release announcing its financial results for the fourth quarter of 1999 and fiscal year 1999. The Company reported that for fiscal 1999 it earned \$957 million and had revenues of \$40 billion.

Defendant Lay commented on the results, stating in pertinent part as follows:

Our strong results in both the fourth quarter and full year 1999 reflect excellent performance in all of our operating businesses. . . In addition, Enron continues to develop innovative, high-growth new businesses that capitalize on our core skills, as demonstrated by the early success of our new broadband services businesses. Overall, a great year -- one in which our shareholders received a total return of 58 percent.

33. On January 20, 2000, Enron issued a press release announcing that the Company had hosted its annual analyst conference in Houston that same day. With respect to the Broadband Services Division, the press release 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.

34. On April 12, 2000, Enron issued a press release announcing its financial results for the first quarter of 2000, the period ending March 31, 2000. The Company reported net income of \$338 million, or \$0.40 per share, and revenues of \$13.1 billion. Defendant Lay highlighted the Company's Broadband business, stating in pertinent part as follows:

In our newest business, we significantly advanced deployment of our broadband network and saw strong response to our bandwidth intermediation and content delivery products.

The press release further described the developments in the Broadband business as follows:

Enron is replicating its unique business model and skills to deploy a global network for the delivery of comprehensive bandwidth solutions and high bandwidth applications.

During the first quarter, Enron significantly advanced its network development. New agreements have been signed with over 20 broadband distribution partners . .

35. On July 24, 2000, Enron issued 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 the 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.

36. On October 17, 2000, Enron issued 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 Broadband Services, 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."

37. On January 22, 2001, Enron issued a press release announcing its financial results for the fourth quarter of 2000 and fiscal year 2000, the period ending December 31, 2000. The Company reported earnings of \$0.41 per share for the fourth quarter of 2000. Defendant Lay commented on the results stating in pertinent part as follows:

Our strong results reflect breakout performances in all of our operations, . . . Our wholesale services, retail energy and broadband businesses further expanded their leading market positions, as reflected in record levels of physical deliveries, contract originations and profitability. Our shareholders had another excellent year in 2000, as Enron's stock returned 89 percent, significantly in excess of any major investment index.

With respect to Broadband Services, the press release stated:

In addition, Enron Broadband Services reported a \$32 million IBIT loss. These results include costs associated with building this new business, partially offset by the monetization of a portion of Enron's broadband delivery platform.

\* Enron Broadband Services delivered 2,393 DS-3 month equivalents of capacity, representing a 71 percent increase over the third quarter of 2000. In addition, transaction levels also significantly increased to 236 transactions in the fourth quarter, compared to 59 transactions in the third quarter of 2000.

38. On January 30, 2001, Enron issued a press release announcing that it had priced an offering of 20-year zero coupon convertible senior debt securities, raising \$1.25 billion.

39. On April 17, 2001, Enron issued a press release announcing its financial results for the first quarter of 2001, the period ending March 30, 2001. The Company reported earnings per share of \$0.47 per share. Defendant Skilling commented on the results, stating in pertinent part as follows:

Enron's wholesale business continues to generate outstanding results. Transaction and volume growth are translating into increased profitability . . . In addition, our retail energy services and broadband intermediation activities are rapidly accelerating.

With respect to Broadband Services, the press release stated, among other things, as follows:

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.

40. On July 12, 2001, Enron issued a press release announcing its financial results for the second quarter of 2001, the period ending June 30, 2001. The Company reported diluted earnings of \$0.45 per share. Defendant Skilling downplayed any concerns investors might have about Broadband Services, stating in pertinent part as follows:

In contrast to our extremely strong energy results, this was a difficult quarter in our broadband business. However, our asset-light approach will allow us to adjust quickly to weak broadband industry conditions. We are significantly reducing our broadband cost structure to match the reduced revenue opportunities currently available.

41. On July 25, 2001, Bloomberg Business News reported that at a meeting with analysts, defendant Skilling stated that Enron will meet or beat its profit projections. The article stated in pertinent part:

"We will hit those numbers, and we will beat those numbers," Skilling told a meeting of analysts and investors in New York. . . .

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."

42. On August 14, 2001, Enron issued 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."

43. 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.

44. The statements referenced above in ¶¶ 32-37 and 39-43 above, were each materially false and misleading when made as they misrepresented and/or omitted the following adverse facts which then existed and disclosure of which was necessary to make the statements made not false and/or misleading, including:

(a) that Broadband Services was experiencing declining demand for bandwidth and the Company's efforts to create a trading market for bandwidth were not meeting with success as many of the market participants were not creditworthy;

(b) that the Company's operating results were materially overstated as result of the Company failing to timely write-down the value of its investments with LJM Cayman LP and LJM2 Co-Investment LP;

(c) that Enron was failing to write-down impaired assets on a timely basis in accordance with GAAP; and

(d) as a result of the foregoing, defendants' earnings projections and statements about the Company's prospects and outlook were lacking in a reasonable basis at all times.

### **The Truth Begins To Be Revealed**

45. On October 16, 2001, Enron surprised the market by announcing that the Company was taking non-recurring charges of \$1.01 billion after-tax, or (\$1.11) loss per diluted share, in the third quarter of 2001, the period ending September 30, 2001. Defendant Lay commented on the substantial charge, stating:

After a thorough review of our businesses, we have decided to take these charges to clear away issues that have clouded our performance and earnings potential of our core energy businesses.

The press release further detailed the charge as follows: \$287 million related to asset impairments recorded by Azurix Corp.; \$180 million associated with the restructuring of the Company's Broadband Services division; \$544 million related to losses associated with certain investments and early termination during the third quarter of certain structured finance arrangements with a previously disclosed entity.

46. An article in The Wall Street Journal, on October 17, 2001, further explained the nature of the "structured finance arrangements with a previously disclosed entity," which was mentioned

in the Company's earnings release. According to the article, the structured finance arrangements involved limited partnerships that were managed by Enron's Chief Financial Officer, defendant Fastow.

The article stated in pertinent part 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.

47. The next day, on October 18, 2001, The Wall Street Journal further reported on the nature of defendant Fastow's financial arrangements with the Company. The article reported that "Enron had shrank its shareholder equity by \$1.2 billion as the Company had 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 to defendant Fastow. The article stated in pertinent part as follows:

According to Rick Causey, Enron's chief accounting officer, these shares were contributed to a "structured finance vehicle" set up about two years ago in which Enron and LJM2 were the only investors. In exchange for the stock, the entity provided Enron with a note. The aim of the transaction was to provide hedges against fluctuating values in some of Enron's broadband telecommunications and other technology investments.

48. In response to the news that Enron would be reducing its shareholder equity by more than \$1 billion and that it might impact the Company's credit rating, on October 18, 2001, the price of Enron common stock declined sharply, falling from \$32.20 per share to \$29.00 per share on extremely heavy trading volume. As the market continued to digest the information, the price of Enron stock continued to decline, trading as low as \$25.87 per share on October 19, 2001.

49. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Enron, their control over, and/or receipt and/or modification of Enron's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Enron, participated in the fraudulent scheme alleged herein.

50. Defendants' scienter is further evidenced by the insider selling of certain of the Individual Defendants and other Enron Insiders. This trading was unusual and suspicious given its timing and amount as follows:

defendant Lay: sold 84,714 shares from Jan. 2 to Jan. 31 for \$68.28 to \$82 each, or more than \$5.78 million; sold 80,680 shares from Dec. 1 to Dec. 29 for \$67.19 to \$84.06 each, or more than \$5.42 million. The sales total \$11.2 million.

defendant Skilling: sold 50,000 shares from Jan. 3 to Jan. 31 for \$68.94 to \$80.28 each, or more than \$3.45 million; sold 20,000 shares from Dec. 20 to Dec. 27 for \$79.03 to \$83 each, or more than \$1.58 million, and 20,000 shares from Dec. 6 to Dec. 13 for \$68.91 to \$77.06, or \$1.38 million. The sales total \$6.41 million.

Mark Frevert, Enron Wholesale Services chairman and chief executive: sold 180,000 shares from Dec. 18 to Dec. 20 for \$79 to \$79.98 each, or more than \$14.2 million. The sale brought his holdings to 223,771 shares.

Cliff Baxter, Enron vice chairman and chief strategy officer, who sold 174,215 shares from Jan. 2 to Jan. 31 for \$69.44 to \$81.31 each, or more than \$12.10 million. The sale brought his holdings to 7,877 shares.

Ken Rice, chairman and chief executive of Enron Broadband Services Inc.: sold 32,000 shares from Jan. 3 to Jan. 31 for \$68.19 to \$82 each, or more than \$12.10 million; sold 100,000 shares on Dec. 13 for \$76.69 each, or \$7.67 million. The sales total \$9.185 million and brought Rice's holdings to 113,127 shares.

Steve Kean, Enron executive vice president and chief of staff: sold 77,822 shares on Jan. 31 for \$79.84 to \$80 each, or more than \$6.21 million. The sale brought his holdings to 26,363 shares.

Stanley Horton, chairman and chief executive of Enron Gas Pipeline Group and EOTT Energy Partners-LP: sold 25,000 shares Jan. 29 for \$80.51 each, or \$2.01 million, and 25,000 shares Dec. 27 for \$80.96 each, or \$2.02 million. The sales total \$4.04 million and brought his holdings to 144,217 shares.

Richard Buy, Enron executive vice president and chief risk officer: sold 47,724 shares from Jan. 2 to Jan. 26 for \$81.90 to \$82 each, or \$3.91 million. The sale brought his holdings to 9,257 shares.

In total, the insider selling by defendants Skilling and Lay and the other Enron insiders totals more than \$73 million.

51. The market for Enron's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Enron's common stock traded at artificially inflated prices during the Class Period. Plaintiffs and other members of the Class purchased or otherwise acquired Enron securities relying upon the integrity of the market price of Enron's securities and market information relating to Enron, and have been damaged thereby.

52. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Enron's common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not

false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

53. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiffs and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Enron's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Enron and its business, prospects and operations, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein.

**Applicability Of Presumption Of Reliance:  
Fraud-On-The-Market Doctrine**

54. At all relevant times, the market for Enron's securities was an efficient market for the following reasons, among others:

(a) Enron's stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

(b) As a regulated issuer, Enron filed periodic public reports with the SEC and the NYSE;

(c) Enron regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Enron was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

55. As a result of the foregoing, the market for Enron's securities promptly digested current information regarding Enron from all publicly available sources and reflected such information in Enron's stock price. Under these circumstances, all purchasers of Enron's securities during the Class Period suffered similar injury through their purchase of Enron's securities at artificially inflated prices and a presumption of reliance applies.

## **NO SAFE HARBOR**

56. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Enron who knew that those statements were false when made.

## **FIRST CLAIM**

### **Violation Of Section 10(b) Of The Exchange Act And Rule 10b-5 Promulgated Thereunder Against All Defendants**

57. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

58. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including plaintiff and other Class members, as alleged herein; (ii) enable Enron to sell \$1.25 billion of convertible securities and Enron insiders to sell \$73 million of their personally-held common stock; and (iii) cause

plaintiffs and other members of the Class to purchase Enron's securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

59. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Enron's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

60. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of Enron as specified herein.

61. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Enron's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Enron and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and

engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Enron securities during the Class Period.

62. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of and had access to other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

63. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Enron's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' overstatements and misstatements of the Company's business, operations and earnings throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and

omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

64. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Enron's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of Enron's publicly-traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiffs and the other members of the Class acquired Enron securities during the Class Period at artificially high prices and were damaged thereby.

65. At the time of said misrepresentations and omissions, plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiffs and the other members of the Class and the marketplace known the truth regarding the problems that Enron was experiencing, which were not disclosed by defendants, plaintiffs and other members of the Class would not have purchased or otherwise acquired their Enron securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

66. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

67. As a direct and proximate result of defendants' wrongful conduct, plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

## **SECOND CLAIM**

### **Violation Of Section 20(a) Of The Exchange Act Against Individual Defendants**

68. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

69. The Individual Defendants acted as controlling persons of Enron within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which plaintiffs contend are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiffs to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

70. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or

influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

71. As set forth above, Enron and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**WHEREFORE**, plaintiffs pray for relief and judgment, as follows:

(a) Determining that this action is a proper class action, designating plaintiffs as Lead Plaintiff and certifying plaintiffs as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiffs' counsel as Lead Counsel;

(b) Awarding compensatory damages in favor of plaintiffs and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury.

Dated: October 22, 2001

**HOEFFNER BILEK & EIDMAN**

By: \_\_\_\_\_

Thomas E. Bilek  
Lyric Office Centre  
440 Louisiana Street  
Suite 720  
Houston, TX 77002  
(713) 227-7720

**MILBERG WEISS BERSHAD  
HYNES & LERACH LLP**

Steven G. Schulman  
Samuel H. Rudman  
One Pennsylvania Plaza - 49th Floor  
New York, NY 10119  
(212) 594-5300

**MILBERG WEISS BERSHAD  
HYNES & LERACH LLP**

William S. Lerach  
Darren J. Robbins  
G. Paul Howes  
600 West Broadway  
1800 One America Plaza  
San Diego, CA 92101-3356  
(619) 231-1058

**CAULEY GELLER BOWMAN &  
COATES**

Paul J. Geller  
2255 Glades Road, Suite 421A  
Boca Raton, FL 33431  
(561) 750-3000

**RICHARDSON, STOOPS,  
RICHARDSON & WARD**

Fred. E. Stoops, Sr.  
The Richardson Building  
6555 South Lewis Avenue, Suite 200  
Tulsa, OK 74136-1010  
(918) 492-7674

**LAW OFFICES OF BERNARD M.  
GROSS, P.C.**

Deborah Gross  
1515 Locust Street  
Philadelphia, PA 19102  
(215) 561-3600

**Attorneys for Plaintiff**