No. _____

In The
Supreme Court of the United States

KEVIN LAMPKIN; STEPHEN MILLER, individually and on behalf of all others similarly situated; JOE BROWN; FRANK GITTESS; TERRY NELSON; DIANNE SWIBER; ROBERT FERRELL,

Petitioners,

v.

UBS FINANCIAL SERVICES, INCORPORATED; formerly known as UBS Painewebber, Incorporated; UBS SECURITIES, L.L.C., formerly known as UBS Warburg, L.L.C.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

APPENDIX
VOLUME TWO

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APPENDIX

Page

United States Court of Appeals for the Fifth Circuit, Opinion, May 24, 2019 ..... App. 1

United States Court of Appeals for the Fifth Circuit, Judgment, May 24, 2019 ..... App. 29

United States District Court for the Southern District of Texas, Opinion and Order, February 28, 2017 ..... App. 31

United States District Court for the Southern District of Texas, Final Judgment of Dismissal, February 28, 2017 ..... App. 241

Relevant Statutes ..... App. 243

Docket, United States District Court for the Southern District of Texas, 4:02-cv-00851 ..... App. 261

Plaintiffs' Third Amended Class Action Complaint ..... App. 336

APPEAL,APPEAL_NAT,CLOSED,ENRON-NEWBY,MDL,MEMBER,MOTREF

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:02-cv-00851
Internal Use Only

Lampkin, et al v. UBS Painewebber Inc, et al
Assigned to: Judge Melinda Harmon
Demand: $0
Lead case: 4:01-cv-03624
Member case: (View Member Case)
Related Case: 4:01-cv-03913
Cause: 15:78m(a) Securities Exchange Act

Date Filed: 03/07/2002
Date Terminated: 02/28/2017
Jury Demand: Plaintiff
Nature of Suit: 850 Securities/ Commodities
Jurisdiction: Federal Question

Plaintiff

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Plaintiff

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V.

Defendant

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V.	
Party of Interest **Patrick Mendenhall**	represented by **Charles Rodney Acker** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*
Party of Interest **Patrick Mendenhall**	represented by **Charles Rodney Acker** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*
Movant **Claimants (H02-0851)**	represented by **Dawn Renee Meade** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Joseph John Hroch** 12821 Industrial Rd Houston, TX 77015 713-636-8741 Email: jhroch@wombleco.com

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V.

Defendant

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Date Filed	#	Docket Text
03/07/2002	1	COMPLAINT by Kevin Lamkin, Janice Schuette filed; FILING FEE $ 150.00 RECEIPT # 518584 (bchurchill) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 03/08/2002)
03/07/2002	2	Order setting Initial Pretrial and Scheduling Conference on 2:15 7/19/02 before Judge Ewing Werlein, Jr and Order to Disclose Interested Persons, filed. Parties notified. (bchurchill) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 03/08/2002)
03/07/2002	3	AFFIDAVIT by Kevin Lamkin Re: [1-1] complaint, filed. (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 03/08/2002)
03/20/2002	4	AFFIDAVIT by Janice Schuette, filed. (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 03/21/2002)
03/22/2002	5	CERTIFICATE OF INTERESTED PARTIES by Kevin Lamkin, Janice Schuette, filed. (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 03/22/2002)
04/18/2002	6	AMENDED COMPLAINT by Kevin Lamkin, Janice Schuette,(Answer due 4/28/02 for UBS Painewebber Inc) amending [1-1] complaint

		adding Robert Ferrell, UBS Warburg LLC, filed. (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 04/19/2002)
04/18/2002		(2) SUMMONS issued w/amended complaint. (ljackson) (Entered: 04/19/2002)
04/23/2002	7	AFFIDAVIT by Robert Ferrell, filed (ckrus) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 04/24/2002)
04/23/2002	8	AFFIDAVIT by Janice Schuette Re:, filed (ckrus) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 04/24/2002)
04/23/2002	9	AFFIDAVIT by Kevin Lamkin Re:, filed (ckrus) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 04/24/2002)
05/09/2002	10	RETURN OF SERVICE executed as to UBS Warburg LLC 5/1/02 filed. Answer due on 5/21/02 for UBS Warburg LLC (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 05/10/2002)
05/09/2002	11	RETURN OF SERVICE executed as to UBS Painewebber Inc 5/1/02 filed. Answer due on 5/21/02 for UBS Painewebber Inc (ljackson) Additional attachment(s) added on

		7/25/2006 (mgoolsby,). (Entered: 05/10/2002)
05/21/2002		(Court only) **Added for UBS Painewebber Inc, UBS Warburg LLC attorney Rodney Acker (ljackson) (Entered: 05/21/2002)
05/21/2002	12	MOTION to dismiss by UBS Painewebber Inc, UBS Warburg LLC, Motion Docket Date 6/10/02 [12-1] motion, filed. (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 05/21/2002)
05/21/2002	13	MEMORANDUM by UBS Painewebber Inc, UBS Warburg LLC in support of [12-1] motion to dismiss, filed. (in brown expandable folder) (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 05/21/2002)
05/28/2002	14	MOTION for appointment of lead pltf, and for approval lead counsel, by Kevin Lamkin, Janice Schuette, Robert Ferrell, Motion Docket Date [14-1] motion, 6/17/02 [14-2] motion, filed. (psmith) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 05/29/2002)
05/29/2002	15	MEMORANDUM of law by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller in support of [14-1] motion for appointment of lead pltf, [14-2] motion for approval lead counsel, filed (ljackson)

		Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 05/30/2002)
05/30/2002		(Court only) **Added party Stephen Miller (ljackson) (Entered: 05/30/2002)
06/03/2002		Motion(s) referred: [14-1] motion for appointment of lead pltf referred to Magistrate Judge Frances H. Stacy, [14-2] motion for approval lead counsel referred to Magistrate Judge Frances H. Stacy (ljackson) (Entered: 06/03/2002)
06/05/2002		(Court only) **Added for Stephen Miller attorney Thomas Walter Umphrey (ljackson) (Entered: 06/05/2002)
06/06/2002	16	AGREED MOTION to extend time to respond to motion to dismiss, to extend submission date, and for leave to file reply by Kevin Lamkin, Janice Schuette, UBS Painewebber Inc, UBS Warburg LLC, filed. (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 06/07/2002)
06/10/2002	17	ORDER granting [16-1] agreed motion to extend time to respond to motion to dismiss, granting [16-2] agreed motion to extend submission date, and granting [16-3] agreed motion for leave to file reply submission date for defts' motion to dismiss

		is 7/12/02, Response to motion reset to 6/24/02 for [12-1] motion to dismiss, Reply to Response to Motion set to 7/12/02 for [12-1] motion to dismiss, entered; Parties notified. (signed by Judge Ewing Werlein, Jr) (ljackson) Modified on 06/13/2002 (Entered: 06/11/2002)
06/11/2002		Deadline updated; Motion Docket Date 7/12/02 [12-1] motion to dismiss (ljackson) (Entered: 06/13/2002)
06/12/2002	18	RESPONSE by UBS Painewebber Inc, UBS Warburg LLC to pltfs' [14-1] motion for appointment of lead pltf, filed. (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 06/12/2002)
06/13/2002		(Court only) **Terminated deadlines (ljackson) (Entered: 06/13/2002)
06/24/2002	19	RESPONSE by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller to defts' [12-1] motion to dismiss, filed. (part 1 of 2) (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 06/25/2002)
06/24/2002	19	MOTION for leave to amend complaint by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, Motion Docket Date 7/14/02

		[19-1] motion, filed. (part 2 of 2) (ljackson) (Entered: 06/25/2002)
06/24/2002	20	SECOND AMENDED CLASS ACTION COMPLAINT by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller,(Answer due 7/4/02 for UBS Warburg LLC, for UBS Painewebber Inc) amending [1-1] complaint, filed. (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 06/25/2002)
06/24/2002	21	REPLY by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller to defts' response to pltfs' [14-1] motion for appointment of lead pltf, [14-2] motion for approval lead counsel, filed (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 06/25/2002)
06/24/2002	22	EXHIBITS to [20-1] amended complaint by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, filed. (3 volumes in brown expandable folder) (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 06/25/2002)
06/26/2002		Motion(s) referred: [19-1] motion for leave to amend complaint referred to Magistrate Judge Frances H. Stacy for review and

		determination/recommendation (sjones) (Entered: 06/26/2002)
07/08/2002		Motion(s) no longer referred: [14-1] motion for appointment of lead pltf, [14-2] motion for approval lead counsel (ljackson) (Entered: 07/08/2002)
07/09/2002	23	AGREED MOTION regarding motion for leave to amend complaint and response to amended complaint by Kevin Lamkin, Janice Schuette, UBS Painewebber Inc, Robert Ferrell, UBS Warburg LLC, Stephen Miller,. (kprice) Modified on 07/09/2002 Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 07/09/2002)
07/10/2002	24	CERTIFICATE OF INTERESTED PARTIES by Defts UBS Painewebber Inc and UBS Warburg LLC, filed. (fmremp) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 07/11/2002)
07/10/2002	25	JOINT DISCOVERY/Case Management Plan by Kevin Lamkin, Janice Schuette, UBS Painewebber Inc, Robert Ferrell, UBS Warburg LLC and Stephen Miller, filed. (fmremp) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 07/11/2002)
07/12/2002	26	AGREED ORDER granting [23-1] agreed motion regarding motion for

		leave to amend complaint and response to amended complaint, entered. Pltfs' second amended complaint shall be filed. Defts shall answer the second amended complaint by 8/15/02. The page limit for defts' answer is expanded to not more than 50 pages. Parties notified. (signed by Judge Ewing Werlein, Jr) (ltien) (Entered: 07/12/2002)
07/19/2002	27	Minute Entry Order: Rule 16 Scheduling Conference. Apps: R Acker for UBS PaineWebber, UBJ Warburg, J Kendall for Kevin Lamkin, et al; D Branswan, A Tindel for pltfs, B E Spencer for Lamkin, et al, J J Hose for pltfs; denying without prejudice deft's [12-1] motion to dismiss as moot; Parties will jointly submit a docket control order; terminated deadlines; Ct Reporter: none, entered. Parties ntfd. (Signed by Judge Ewing Werlein, Jr) (kprice) (Entered: 07/22/2002)
07/19/2002	28	AGREED MOTION for extension of time by Kevin Lamkin, Janice Schuette, UBS Painewebber Inc, Robert Ferrell, UBS Warburg LLC, Stephen Miller, filed. (kprice) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 07/22/2002)
07/25/2002	29	ORDER granting [28-1] agreed motion for extension of time pltfs'

		deadline to repond [sic] to defts' motion to dismiss is extended until 9/19/02, entered. The page limit for pltfs' response to motion to dismiss is expanded to not more than 50 pages. Defts' deadline to file their reply is extended until 10/10/02. Parties notified. (signed by Judge Ewing Werlein, Jr) (ljackson) (Entered: 07/26/2002)
07/26/2002		(Court only) **Renoticed document [29-2] order (ljackson) (Entered: 07/26/2002)
07/26/2002	30	ORDER OF RECUSAL of Judge Ewing Werlein, Jr, entered; Parties notified. signed by Judge Ewing Werlein, Jr) (ltien) (Entered: 07/30/2002)
07/30/2002		Motion(s) no longer referred: [19-1] motion for leave to amend complaint. (ljackson) (Entered: 07/30/2002)
07/30/2002	31	NOTICE OF TRANSFER (to Judge Vanessa D. Gilmore) recusal, filed. Parties notified. (ljackson) (Entered: 07/31/2002)
08/15/2002	32	MOTION to dismiss Pltfs second amended class action complaint by UBS Painewebber Inc, UBS Warburg LLC, Motion Docket Date 9/4/02 [32-1] motion, filed. (hlerma) Additional attachment(s) added on

		7/25/2006 (mgoolsby,). (Entered: 08/15/2002)
08/15/2002	33	MEMORANDUM by UBS Painewebber Inc, UBS Warburg LLC in support of [32-1] motion to dismiss Pltf's second amended class action complaint, filed (This document is in brown expandable folder.) (hlerma) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 08/15/2002)
09/09/2002	34	AGREED MOTION to extend time by Kevin Lamkin et al and UBS Painewebber Inc et al, filed. (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 09/09/2002)
09/09/2002	35	AGREED ORDER granting [34-1] agreed motion to extend time Response to (p.427)motion reset to 10/9/02 for [32-1] motion to dismiss Pltf's second amended class action complaint, m [sic] Motion Docket Date 10/9/02 [32-1] motion to dismiss Pltf's second amended class action complaint, Reply to Response to Motion set to 11/8/02 for [32-1] motion to dismiss Pltf's second amended class action complaint, entered; Parties notified. (signed by Judge Vanessa D. Gilmore) (ljackson) (Entered: 09/11/2002)

10/01/2002	36	ORDER REFERRING CASE to Magistrate Judge Mary Milloy, entered; Parties notified (signed by Judge Vanessa D. Gilmore) (ljackson) (Entered: 10/01/2002)
10/07/2002	39	ORDER, entered. Counsel shall provide a courtesy copy of all pleadings to Judge Milloy's chambers. Parties wishing to respond to pleadings regarding discovery disputes must do so within 10 days of receipt. Parties notified. (signed by Magistrate Judge Mary Milloy) (ljackson) (Entered: 10/10/2002)
10/09/2002	37	RESPONSE by Kevin Lamkin, Janice Schuette to defts' [32-1] motion to dismiss Pltf's second amended class action complaint, filed. (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 10/10/2002)
10/09/2002	38	AGREED MOTION for leave to extend page limit for response to dismissal motion and reply by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, filed. (ljackson) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 10/10/2002)
10/11/2002	40	INDEX of authorities by Kevin Lamkin etal to [37-1] response, filed. (in (2) brown expandable folders) (ljackson) Additional attachment(s)

		added on 7/25/2006 (mgoolsby,). (Entered: 10/11/2002)
10/18/2002		Received and forwarded to CRD: proposed scheduling order (kprice) (Entered: 10/19/2002)
10/28/2002	41	SCHEDULING ORDER entered. Pltfs to file a response to defts' [32-1] motion to dismiss by 10/9/02. Defts to file reply to to [sic] pltfs' response to defts' [32-1] motion to dismiss by 11/12/02. If defts' motion to dismiss is denied, Court will allow discovery on class related issues for a period of 6 months under the schedule detailed herein. Pltfs will file their motion for class certification 30 days after the close of all pre-certification discovery. Defts will file their response to pltfs' motion for class certification 30 days after pltfs' motion is filed; pltfs may file a reply 15 days after defts' response is filed. Parties notified. (signed by Judge Vanessa D. Gilmore) (ltien) (Entered: 10/29/2002)
11/11/2002	42	ORDER granting [38-1] agreed motion for leave to extend page limit for response to dismissal motion and reply, entered. The pltfs' response may be 60 pages long and the defts' reply may be 35 pages long. Parties notified. (signed by

		Magistrate Judge Mary Milloy) (ljackson) (Entered: 11/12/2002)
11/12/2002	43	NOTICE of Hearing: telephone conference for 10:30 11/14/02 before Magistrate Judge Mary Milloy, filed. (ljackson) (Entered: 11/12/2002)
11/12/2002	44	REPLY BRIEF by Defts UBS Painewebber Inc and UBS Warburg LLC in support of their [32-1] motion to dismiss Pltf's second amended class action complaint, filed. (placed in brown expandable folder) (fmremp) Modified on 11/13/2002 Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 11/13/2002)
11/13/2002		(Court only) **Terminated document [19-1] motion for leave to amend complaint (ljackson) (Entered: 11/13/2002)
11/14/2002	45	Minute entry: Telephone Conference held. Apps: Spencer, Meade, Tindel and Havard f/pltf; Acker f/deft; Defts to file additional briefing in re to pltf Ferrell's, et al motion for appointment of lead pltf and for approval of lead counsel by 12/2/02, as stated on the record; If parties need a hearing they are to notify the Court as stated on the record; terminated deadlines; Ct Reporter: ERO. (kprice) (Entered: 11/17/2002)
11/14/2002	46	Minute entry: Telephone Conference held. Apps: Spencer, Meade, Tindel

		and Havard f/pltfs; Acker f/deft; Attorney Tindel is to notify the Court by 11/15/02 whether the parties will be submitting a proposed order as to the appointment of lead counsel and for approval of lead counsel and/or to sever the issues as to Spencer and Associates as stated on the record; Ct Reporter: ERO. (kprice) (Entered: 11/17/2002)
11/15/2002		Received a call from Attorney Tindel advising the court that the parties will be submitting a proposed order in reference to appointment of lead pltf and approval of lead counsel and will sever counsel issues as to Spencer and Associates/JH (kprice) (Entered: 11/17/2002)
11/21/2002		Revd proposed order re: motion for appointment lead pltf and lead counsel, fwd'd to crd. (per jh) (ljackson) (Entered: 11/21/2002)
11/21/2002	47	ORDER, entered. Kevin Lamkin, Janice Schuette, Robert Ferrell, and Stephen Miller are appointed as lead pltfs fo [sic] the putative class. Ordered that Provost Umphrey Law Firm is appointed as lead counsel for the putative class. Ordered that pltfs' additional request to approve Spencer & Assoc as local counsel for the putative will be taken under advisement. Parties notified. (signed

		by Magistrate Judge Mary Milloy) (ljackson) (Entered: 11/21/2002)
11/21/2002		(Court only) **Added for Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller attorney Andy Wade Tindel (ljackson) (Entered: 11/21/2002)
11/21/2002		(Court only) **Renoticed document [47-1] order (ljackson) (Entered: 11/21/2002)
11/22/2002		(Court only) **Terminated document [14-1] motion for appointment of lead pltf, [14-2] motion for approval lead counsel (ljackson) (Entered: 11/22/2002)
11/22/2002		CASE reassigned to Judge Melinda Harmon (ckrus) (Entered: 11/26/2002)
11/22/2002	48	ORDER of Consolidation. This case is consolidated into H-01-3624 and H-01-3913, entered; Parties notified. (signed by Judge Melinda Harmon) (ckrus) (Entered: 11/26/2002)
11/22/2002		Consolidated Member Case Lead Case Number: H-01-3624 & H-01-3913 (ckrus) (Entered: 11/26/2002)
12/06/2002	49	AGREED MOTION objecting to and moving for reconsideration of the Court's [48-1] order of consolidation by UBS Painewebber Inc, UBS Warburg LLC, Motion Docket Date 12/26/02 [49-1] motion, filed.

		(ddarneille) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 12/09/2002)
12/06/2002	50	MEMORANDUM by UBS Painewebber Inc, UBS Warburg LLC in support of [49-1] agreed motion for reconsideration of the Court's [48-1] order of consolidation, filed. (ddarneille) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 12/09/2002)
12/06/2002	51	AGREED MOTION for reconsideration of [48-1] order of consolidation, objections to consolidation MOTION for findings of fact and conclusions of law to support consolidation, and REQUEST for clarification by Kevin Lamkin, Robert Ferrell, Janice Schuette, Stephen Miller, Motion Docket Date 12/26/02 [51-1] motion, 12/26/02 [51-2] motion, 12/26/02 [51-3] motion, filed. (ddarneille) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 12/09/2002)
12/06/2002	52	MEMORANDUM by Kevin Lamkin, Robert Ferrell, Janice Schuette, Stephen Miller in support of [51-1] agreed motion for reconsideration of [48-1] order of consolidation, objections to consolidation, [51-2] motion for findings of fact and conclusions of law to support consolidation, and [51-3] request for clarification, filed.

		(ddarneille) Modified on 12/09/2002 Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 12/09/2002)
06/13/2003	53	MOTION to stay related NASD arbitration by UBS Painewebber Inc, UBS Warburg LLC, Motion Docket Date 7/3/03 [53-1] motion, filed. (ddarneille) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 07/09/2003)
06/13/2003	54	MEMORANDUM by UBS Painewebber Inc, UBS Warburg LLC in support of [53-1] motion to stay related NASD arbitration, filed. (ddarneille) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 07/09/2003)
06/13/2003	55	APPENDIX by UBS Painewebber Inc, UBS Warburg LLC for [53-1] motion to stay related NASD arbitration and [54-1] support memorandum, filed. (ddarneille) Additional attachment(s) added on 7/25/2006 (mgoolsby,). Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 07/09/2003)
07/07/2003		(Court only) **Added party Claimants (H02-0851) (ddarneille) (Entered: 07/09/2003)
07/07/2003	56	OBJECTION and RESPONSE by Claimants (H02-0851) to [53-1] motion to stay related NASD

		arbitration, filed. (ddarneille) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 07/09/2003)
07/07/2003	57	MEMORANDUM by Claimants (H02-0851) in support of [56-1] objection and response to motion to stay arbitration proceeding, filed. (ddarneille) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 07/09/2003)
07/10/2003	58	PLTFS' WITHDRAWAL of [51-1] agreed motion for reconsideration of consolidation, objections to consolidation, [51-2] motion for findings of fact and conclusions of law to support consolidation and [51-3] request for clarification by Kevin Lamkin, Robert Ferrell, Janice Schuette, Stephen Miller, filed. (ddarneille) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 07/11/2003)
07/10/2003		(Court only) **Terminated document [51-1] motion for reconsideration of [48-1] order of consolidation, [51-2] motion for findings of fact and conclusions of law to support consolidation, [51-3] motion for clarification (ddarneille) (Entered: 07/11/2003)
07/18/2003	59	REQUEST by UBS Painewebber Inc, UBS Warburg LLC for status

		conference concerning discovery specific to the Lamkin action, filed. (ddarneille) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 07/22/2003)
07/30/2003	60	Minute entry: Telephone Conference held. Apps: J Kendall (by telephone) for pltfs; R Acker (by telephone) for defts. Telephone conference held on deft's Request Concerning Discovery Specific to the Lamkin Action (No 59). Parties agree to share limited discovery, as stated on the record. Ct Reporter: F Warner. (kprice) (Entered: 08/01/2003)
11/12/2003	61	MEMORANDUM AND ORDER; UBS PAine Webber [sic], Inc and UBS Warburg LLC's motion for reconsideration (#49 in H02-851, #1177 in H01-3624 and #524 in H01-3913) is DENIED; motion to dismiss (#32 in H02-851) is DENIED and motion to stay (#53 in H02-851) is MOOT, entered. Parties notified. (signed by Judge Melinda Harmon) (tward) (Entered: 11/13/2003)
12/10/2003	62	EMERGENCY MOTION for clarification by Kevin Lamkin, Janice Schuette, Stephen Miller, Motion Docket Date 12/30/03 [62-1] motion, filed. (tward) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 12/11/2003)

12/10/2003		(Court only) **Added for Kevin Lamkin, Janice Schuette, Stephen Miller attorney Joe Kendall. (tward) (Entered: 12/11/2003)
12/12/2003	63	ORDER granting pltf's [62-1] motion for clarification, Deft's shall file and answer within twenty days of entry of this order. The Court further orders that counsel shall confer and propose and agreed docket control schedule Set docket control schedule for 1/9/04. If they are unable to do so, they should submit arguments in writing to the Court so that it can determine a reasonable schedule for this case, entered; Parties notified. (signed by Judge Melinda Harmon) (tward) (Entered: 12/18/2003)
12/24/2003		(Court only) **Renoticed document [63-1] relief Set docket control schedule for 1/9/04, [63-2] order (mperales) (Entered: 12/24/2003)
01/07/2004	64	AGREED MOTION to extend deadline to respond to to [sic] pltf's second amended class action complaint by UBS Painewebber Inc, filed. (tward) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 01/07/2004)
01/08/2004	65	ORDER granting UBS Paine Webber Inc and UBS Warburg LLC's [64-1] agreed motion to extend

		deadline to respond to to [sic] pltf's second amended class action complaint Reset answer to pltf's second amended class action complaint for 1/21/04 for UBS Painewebber Inc, for UBS Warburg LLC, entered; Parties notified. (signed by Judge Melinda Harmon) (tward) (Entered: 01/09/2004)
01/08/2004	66	AGREED RESPONSE by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, UBS Painewebber Inc, UBS Warburg LLC to [63-2] order, filed. (part 1 of 2) (tward) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 01/09/2004)
01/08/2004	66	AGREED MOTION for extension to Court's request for agreed docket control order by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, UBS Painewebber Inc, UBS Warburg LLC, filed. (part 2 of 2) (tward) (Entered: 01/09/2004)
01/08/2004		(Court only) **Added for Robert Ferrell attorney Joe Kendall. (tward) (Entered: 01/09/2004)
01/20/2004	67	ORDER granting [66-1] agreed motion for extension to Court's request for agreed docket control order. Pltf's and Deft's shall confer and propose an agreed docket control schedule for this action by January

		30, 2004. If they are unable to do so, they should submit arguments in writing to the Court so that it can determine a reasonable schedule for this case, entered. Parties Notified (Signed by Judge Melinda Harmon) (tward) (Entered: 01/21/2004)
01/20/2004		Deadline updated; Reset notice of compliance of agreed docket control schedule due for 1/30/04 (tward) (Entered: 01/21/2004)
01/21/2004		(Court only) **Renoticed document [67-1] order (khightower) (Entered: 01/23/2004)
01/21/2004	68	ANSWER by UBS Painewebber Inc, UBS Warburg LLC to second amended class action complaint, filed. (tward) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 01/26/2004)
01/30/2004	69	MOTION to enter proposed docket control order by UBS Painewebber Inc, UBS Warburg LLC, Motion Docket Date 2/19/04 [69-1] motion, filed. (tward) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 02/02/2004)
01/30/2004	70	MOTION to approve docket control order and request for oral argument by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, Motion Docket Date 2/19/04 [70-1] motion filed. (tward) Additional

		attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 02/02/2004)
02/06/2004	71	Notice of change of address by Kevin Lamkin, Janice Schuette for attorney Bonnie E Spencer, filed. (information fwd'd to attorney admissions) (tward) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 02/10/2004)
04/05/2004	72	ORDER; Pending before the Court are the following motions: (1) Deft UBS Financial Services Inc (f/k/a UBS Paine Webber Inc) and UBS Securities LLC's (Ma. UBS Warburg LLC) motion to enter proposed docket control order or in the alternative to postpone entry of any docket control order in H02-851 pending the entry of an amended docket control order in Newby (H01-3624) (instrument #69 in H02-851); and (2) a motion to approve docket control order filed by pltfs' Kevin Lamkin, Janice Schuette, Robert Ferrell and Stephen Miller, individually and on behalf of the putative class (#70 in H02-851). Because these motions impact upon the deposition protocol established by the parties and approved by the Court, the Court ORDERS that copies of this order not only be sent to the usual parties' counsel, but in particular to G. Paul Howes. The Court

		further ORDERS that Mr Howes shall file responses to the two motions as soon as possible, , entered; Parties notified. (signed by Judge Melinda Harmon) (tward) (Entered: 04/07/2004)
04/07/2004		(Court only) **Added party Univ of California. (tward) (Entered: 04/08/2004)
04/07/2004	73	RESPONSE by Univ of California to [70-1] motion to approve docket control order and request for oral argument, [69-1] motion to enter proposed docket control order, filed. (tward) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 04/08/2004)
04/08/2004	75	ORDER; pltf's request for an exemption to the deposition protocol established by the parties and approved by the Court is DENIED and their [70-1] motion to approve docket control order is DENIED. UBS defts' [69-1] motion to enter proposed docket control order is MOOT because of the deposition protocol, entered; Parties notified. (signed by Judge Melinda Harmon) (tward) (Entered: 04/12/2004)
04/09/2004	74	REPLY by Kevin Lamkin, Janice Schuette, Robert Ferrell to Newby Lead Pltf's response to [70-1] motion to approve docket control order

		and request for oral argument, filed. (tward) Additional attachment(s) added on 7/25/2006 (mgoolsby,). (Entered: 04/09/2004)
03/30/2005	76	NOTICE of Change of Address by Andy Tindel, Provost*Umphrey Law Firm L.L.P., counsel for Kevin Lamkin, filed. (Tindel, Andy) (Entered: 03/30/2005)
06/07/2005	77	MOTION to Compel Production of Documents from Non-Party, Patrick Mendenhall by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, filed. Motion Docket Date 6/27/2005. (Attachments: # 1 (p.31) Proposed Order)(rroberts,) (Entered: 06/08/2005)
06/07/2005	78	NOTICE of Affiliation of Counsel by Thomas L Hunt on behalf of Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, filed. (kmurphy,) (Entered: 06/08/2005)
06/07/2005	79	AMENDED NOTICE OF AFFILIATION OF COUNSEL by Thomas L Hunt on behalf of Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, filed. (kmurphy,) (Entered: 06/08/2005)
06/30/2005	80	MOTION for Extension of Time Submission Date and Deadline for Non-Party Patrick Mendenhall to Respond to Plaintiffs' 77 (p.968) Motion to Compel by Patrick

		Mendenhall, Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, filed. Motion Docket Date 7/20/2005. (Filed in CA H 01-3624 #3661 by Charles Acker)(kmurphy,) Additional attachment(s) added on 7/1/2005 (kmurphy,). (Entered: 07/01/2005)
06/30/2005	81	ORDER granting 80 (p.986) Agreed Motion to Extend Submission Date and Deadline for Non-Party Patrick Mendenhall to Respond to Plaintiffs' Motion to Compel.(Signed by Judge Melinda Harmon) Parties notified.(kmurphy,) (Entered: 07/01/2005)
07/05/2005	82	NOTICE Of Withdrawal of re: 77 (p.968) MOTION to Compel Production of Documents from Non-Party, Patrick Mendenhall by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, filed. (mewilliams,) (Entered: 07/06/2005)
08/05/2005		(Court only) ***Motions terminated: 77 (p.968) MOTION to Compel Production of Documents from Non-Party by 82 (p.995) Notice of Withdrawal, Patrick Mendenhall. (htippen,) (Entered: 08/05/2005)
08/08/2005	83	EMERGENCY MOTION to Compel Responses to Requests for Production upon all Defts, by all plaintiffs, filed. Motion Docket Date 8/29/2005.

		(Attachments: # 1 (p.31) Continuation)(kmurphy,) (Entered: 08/09/2005)
08/09/2005	84	ORDER denying without prejudice 83 (p.998) Motion to Compel. Pltfs and dfts in CA H 03-4359 and CA H 02-851 shall meet and confer in an effort to work out their differences on this discovery. (Signed by Judge Melinda Harmon) Parties notified.(kmurphy,) (Entered: 08/10/2005)
03/31/2006	85	APPLICATION for Issuance of Letter of Request under the Hague Convention Re Luqman Arnold, by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, filed. Motion Docket Date 4/20/2006. (Attachments: # 1 (p.31) Proposed Order)(psmith,) (Entered: 04/03/2006)
03/31/2006	86	Proposed LETTER REQUEST for International Judicial Assistance Pursuant to the Hague Convention of March 18, 1970 on the taking of Evidence in Civil or Commercial Matters re: the 85 (p.1045) MOTION, filed. (Attachments: # 1 (p.31) Exhibit A# 2 (p.44) Exhibit # 3 (p.45) Exhibit # 4 (p.47) Exhibit # 5 (p.49) Exhibit # 6 (p.51) Exhibit # 7 (p.81) Exhibit)(psmith,) Additional attachment(s) added on 4/3/2006 (psmith,). (Entered: 04/03/2006)

04/28/2006	87	ORDER granting expedited consideration of Pltf's Mtn to Compel Production of Documents. Parties wishing to file a response shall file a response by 05/05/06.(Signed by Judge Melinda Harmon) Parties notified.(htippen,) (Entered: 04/28/2006)
05/01/2006	108	JOINT EMERGENCY MOTION to Compel Production and MOTION to Expedite Consideration by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, filed. Motion Docket Date 5/22/2006. (Attachments: # 1 (p.31) Proposed Order # 2 (p.44) Proposed Order Granting Expedited Consideration) This document was originally filed electronically by attorney as inst #49 in Civil Action No. H-03-4359.(ltien,) (Entered: 05/18/2006)
05/02/2006	88	ORDER that lead Plaintiff's Request for Issuance of Letter Request Under the Hague Convention is granted. Doc. 85 (p.1045) (Signed by Judge Melinda Harmon) Parties notified.(ejuarez,) Modified on 5/4/2006 (ejuarez,). (Entered: 05/04/2006)
05/02/2006	89	Letter Rogatory Issued as to: Letter of Request for International Judicial Assistance Pursuant to the Hague Convention of March 18, 1970 on the taking of evidnece [sic] in Civil or Commercial Matters. Related Doc

		# 86 (p.1056)., filed.(ejuarez,) (Entered: 05/05/2006)
05/05/2006	90	Opposed RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (Attachments: # 1 (p.31) Affidavit Declaration of Brendan P. Cullen)(McMahon, Kerry) (Entered: 05/05/2006)
05/07/2006	91	EXHIBITS 1-3 to the RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (McMahon, Kerry) Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/07/2006	92	EXHIBITS 4-8 to the RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (McMahon, Kerry) Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/07/2006	93	EXHIBITS 9-15 to the RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (McMahon, Kerry)

		Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/07/2006	94	EXHIBITS 16-21 to the RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (McMahon, Kerry) Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/07/2006	95	EXHIBITS 22-24 to the RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (McMahon, Kerry) Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/07/2006	96	EXHIBITS 25-26 to the RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (McMahon, Kerry) Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/07/2006	97	EXHIBITS 27-30 to the RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (McMahon, Kerry)

		Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/07/2006	98	EXHIBITS 31-32 to the RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (McMahon, Kerry) Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/07/2006	99	EXHIBITS 33-34 to the RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (McMahon, Kerry) Modified on 5/8/2006 (espencer,). Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/07/2006	100	CONTINUATION OF EXHIBIT 34 to the RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (McMahon, Kerry) Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/07/2006	101	EXHIBIT 35 to the RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS

		Painewebber Inc. (McMahon, Kerry) Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/07/2006	102	EXHIBIT [sic] 36-37 to the RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (McMahon, Kerry) Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/07/2006	103	EXHIBIT 38 to the RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (McMahon, Kerry) Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/07/2006	104	EXHIBIT [sic] 39-49 to the RESPONSE in Opposition to 85 (p.1045) MOTION, filed by UBS Painewebber Inc. (McMahon, Kerry) Modified on 5/8/2006 (espencer,). (Entered: 05/07/2006)
05/09/2006	105	Supplemental RESPONSE in Opposition to 83 (p.998) MOTION to Compel Responses to Requests for Production upon all Defts MOTION for Emergency, filed by UBS Painewebber Inc. (McMahon, Kerry) (Entered: 05/09/2006)

05/15/2006	106	PLEADING STRICKEN PER ORDER 110 (p.2175) RESPONSE to Westboro and Stonehurst Plaintiff's Submission in Support of the Giancarlo and Lamkin Plaintiffs' 108 (p.2125) Emergency MOTION to Compel Production of Documents, filed by UBS Painewebber Inc. (McMahon, Kerry) Modified on 5/25/2006 - linked to #108 (ltien,). Modified on 6/8/2006 (espencer,). (Entered: 05/15/2006)
05/15/2006	107	Agreed RESPONSE *to Bank Defendants' and Enron's Motion to Extend Expert Deadlines in the Consolidated and Coordinated Cases*, filed by Kevin Lamkin. (Meade, Dawn) (Entered: 05/15/2006)
05/15/2006	109	ORDER on 108 (p.2125) Joint Emergency Motion to Compel Production and Request for Expedited Consideration.(Signed by Judge Melinda Harmon) Parties notified.(ltien,) (Entered: 05/18/2006)
06/07/2006	110	ORDER striking 106 (p.2053) Response,. Pleading does not comply with order (No. 4018) in CA 01-3624 issued 10/11/05.(Signed by Judge Melinda Harmon) Parties notified.(espencer,) (Entered: 06/08/2006)
06/09/2006	111	ORDER striking 107 (p.2120) Response. Pleading does not comply

		with Order (No. 4018) in CA 01-3624 issued 10/11/05.(Signed by Judge Melinda Harmon) Parties notified.(espencer,) (Entered: 06/09/2006)
07/17/2006	112	STATEMENT to proceed independently of certified class by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, filed.(kejones,) (Entered: 07/18/2006)
07/18/2006	113	NOTICE *of Production of Expert Reports* by UBS Painewebber Inc, filed. (McMahon, Kerry) (Entered: 07/18/2006)
07/25/2006	114	ORDER - Plaintiffs' Counsel for cases CA H 01-4063, H 01-4125, H 01-4128, H 01-4150, H 01-4208, H 01-4209, H 01-4326, H 02-0851, H 02-2160, H 02-3754 and H 02-3942 shall file appropriate motion to dismiss if the case encompassed within the Tittle [sic] action or a statement indicating that they wish to proceed independently. CA H 02-0851 and H 03-2257 cases are not consolidated with Tittle [sic] but are coordinated.(Signed by Judge Melinda Harmon) Parties notified.(kmurphy,) (Entered: 07/26/2006)
07/26/2006	115	AMENDED ORDER amending CA H 01-3913 1221 Order. Plaintiffs' counsel for CA H 01-4040, H 01-4063, H 01-4089, H 01-4125,

		H 01-4128, H 01-4150, H 01-4208, H 01-4209, H 01-4209 [sic], H 01-4299, H 01-4326, H 02-267, H 02-1058, H 02-2160, H 02-3754, H 02-3942 shall file an appropriate motion to dismiss if the case is encompassed within the Tittle [sic] action or a statement to proceed independently. CA H 02-851 and CA H 03-2257 are coordinated with Tittle [sic] CA H 01-3913.(Signed by Judge Melinda Harmon) Parties notified. (kmurphy,) (Entered: 07/26/2006)
08/11/2006	116	MOTION for a Distinct Scheduling Order by all plaintiffs, filed. Motion Docket Date 8/31/2006. (Attachments: # 1 (p.31) Proposed Order)(kejones,) (Entered: 08/11/2006)
08/11/2006	117	Unopposed MOTION for Leave to Amend 20 (p.270) Amended Complaint, by all plaintiffs, filed. Motion Docket Date 8/31/2006. (Attachments: # 1 (p.31) Continuation, # 2 (p.44) Continuation, # 3 (p.45) Continuation,# 4 (p.47) Continuation, # 5 (p.49) Continuation, # 6 (p.51) Continuation, # 7 (p.81) Continuation, # 8 (p.84) Proposed Order)(jbradford,) (Entered: 08/14/2006)
08/14/2006	118	DEMAND for Trial by Jury by all plaintiffs, filed.(ltien,) (Entered: 08/16/2006)

08/16/2006	119	DESIGNATION OF REBUTTAL EXPERTS by Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller, Dianne Swiber, Terry Nelson, Joe Brown, and Frank Gittess, filed.(jbradford,) (Entered: 08/16/2006)
08/16/2006	120	ORDER granting Plaintiffs' 117 (p.2198) Motion to Amend Complaint.(Signed by Judge Melinda Harmon) Parties notified.(kmurphy,) (Entered: 08/17/2006)
08/16/2006	121	ORDER granting Agreed 116 (p.2189) Motion for District Scheduling Order.(Signed by Judge Melinda Harmon) Parties notified.(kmurphy,) (Entered: 08/18/2006)
08/24/2006	122	Third AMENDED Class Action Complaint against UBS Financial Services Inc, UBS Securities LLC filed by Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Kevin Lamkin, Janice Schuette, Robert Ferrell, Stephen Miller. Related document: 20 (p.270) Amended Complaint/Counterclaim/Crossclaim etc., filed by Stephen Miller,Kevin Lamkin, Janice Schuette, Robert Ferrell. (Attachments: # 1 (p.31) Continuation # 2 (p.44) Continuation # 3 (p.45) Continuation # 4 (p.47) Continuation # 5 (p.49) Continuation # 6 (p.51) Continuation # 7 (p.81) Continuation # 8 (p.84)

		Continuation # 9 (p.86) Affidavit)(cpeebles) (Entered: 08/25/2006)
09/14/2006	124	ORDER of USCA for the Fifth Circuit (certified copy) dated 8/30/2006 (USCA No. 05/20582). Motion to substitute appellant Kenneth Lay with the executrix of his estate, Linda Lay is granted., filed.(mmar,) (Entered: 09/18/2006)
09/15/2006	123	ORDER of USCA for the Fifth Circuit (certified copy) dated 8/23/2006 (USCA No. 05-20380). Motion for an order substituting Linda Lay as executrix of Kenneth Lay's estate is granted., filed.(mmar,) (Entered: 09/18/2006)
09/29/2006	125	NOTICE *of Motion to Dismiss Plaintiff's Third Amended Class Action Complaint (#122)* by UBS Painewebber, Inc., filed. (McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	126	MEMORANDUM in Support *Motion to Dismiss* by UBS Painewebber, Inc., filed. (Attachments: # 1 (p.31) Proposed Order Proposed Lampkin Order* 2 (p.441)(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	127	APPENDIX re: 122 (p.2356) Amended Complaint/Counterclaim/ Crossclaim etc.,, by UBS Painewebber, Inc., filed. (Attachments: # 1 (p.31) Exhibit Lomuscio Declaration Exhibit 4# 2 (p.44) Exhibit

		Lomuscio Declaration Exhibit 5)(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	128	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	129	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	130	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	131	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	132	APPENDIX by UBS Painewebber, Inc., filed. (Attachments: # 1 (p.31) Exhibit Lomuscio Declaration Exhibit 9# 2 (p.44) Exhibit Lomuscio Declaration Exhibit 10)(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	133	APPENDIX by UBS Painewebber, Inc., filed. (Attachments: # 1 (p.31) Exhibit Lomuscio Declaration Exhibit 12# 2 (p.44) Exhibit Lomuscio Declaration Exhibit 13# 3 (p.45) Exhibit Lomuscio Declaration Exhibit 14)(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	134	APPENDIX by UBS Painewebber, Inc., filed. (Attachments: # 1 (p.31) Exhibit Lomuscio Declaration

		Exhibit 16# 2 (p.44) Exhibit Lomuscio Declaration Exhibit 17)(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	135	APPENDIX by UBS Painewebber, Inc., filed. (Attachments: # 1 (p.31) Exhibit Lomuscio Declaration Exhibit 19)(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	136	APPENDIX by UBS Painewebber, Inc., filed. (Attachments: # 1 (p.31) Exhibit Lomuscio Declaration Exhibit 21# 2 (p.44) Exhibit Lomuscio Declaration Exhibit 22)(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	137	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	138	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	139	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	140	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	141	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 09/29/2006)

09/29/2006	142	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	143	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	144	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 09/29/2006)
09/29/2006	125	Notice of MOTION to Dismiss 122 (p.2356) Third Amended Class Action Complaint, by UBS Financial Services Inc, UBS Securities LLC, filed. Motion Docket Date 10/19/2006. (Entered: 12/11/2006)
10/31/2006	145	Agreed MOTION for Extension of Time to Respond to Defendants Motion to Dismiss Plaintiffs Third Amended Class Action Complaint by all plaintiffs, filed. Motion Docket Date 11/20/2006. (Tindel, Andy) (Entered: 10/31/2006)
10/31/2006	146	Agreed PROPOSED ORDER re: 145 (p.4759) Agreed MOTION for Extension of Time to Respond to Defendants Motion to Dismiss Plaintiffs Third Amended Class Action Complaint, filed.(Tindel, Andy) (Entered: 10/31/2006)
11/06/2006	147	ORDER extending Plaintiff's Response Deadline to Defendants' Motion to Dismiss Plaintiffs Third Amended Action Complaint 145

		(p.4759) Motion for Extension of Time.(Signed by Judge Melinda Harmon) Parties notified.(sbyrum,) (Entered: 11/07/2006)
11/06/2006		(Court only) ***Set/Reset Deadlines: Responses due by 11/27/2006 Replies due by 1/8/2007 (sbyrum,) (Entered: 11/07/2006)
11/27/2006	148	RESPONSE to 166 (p.5316) MOTION to Dismiss 122 (p.2356) Third Amended Class Action Complaint, filed by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller. (Attachments: # 1 (p.31) Continuation MemorandumInSupportOfPsResponseToMotionToDismiss)(Augustus, David) Modified on 12/11/2006 - linked to #166 (ltien,). (Entered: 11/27/2006)
11/27/2006	149	*Declaration of David L. Augustus and Attachments 1 - 2 (To Memorandum Of Law In Support of Ps Response To Motion To Dismiss* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)
11/27/2006	150	*Attachment 3 to Memorandum of Law In Support of Plaintiffs Response to Motion To Dismiss* by

Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)

11/27/2006 151 *Attachments 4 - 8 to Memorandum of Law in Support of Plaintiffs Response to Motion to Dismiss* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)

11/27/2006 152 *Attachment 9 to Memorandum of Law in Support of Plaintiffs Response to Motion to Dismiss* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)

11/27/2006 153 *Attachments 10 - 11 to Memorandum of Law in Support of Plaintiffs Response to Motion to Dismiss* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)

11/27/2006 154 *Attachments 12 - 13 to Memorandum of Law in Support of Plaintiffs Response to Motion to Dismiss* by Kevin Lampkin, Janice Schuette,

Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)

11/27/2006 155 *Attachments 14 - 15 to Memorandum of Law in Support of Plaintiffs Response to Motion to Dismiss* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)

11/27/2006 156 *Attachments 16-1 to 16-9 to Memorandum of Law in Support of Plaintiffs Response to Motion to Dismiss* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)

11/27/2006 157 *Attachments 17 - 20 to Memorandum of Law in Support of Plaintiffs Response to Motion to Dismiss* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)

11/27/2006 158 *Attachments 21 to 24-2 to Memorandum of Law in Support of Plaintiffs Response to Motion to Dismiss* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry

Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)

11/27/2006 159 *Attachments 25 - 31 to Memorandum of Law in Support of Plaintiffs Response to Motion to Dismiss* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)

11/27/2006 160 *Attachments 32 - 35 to Memorandum of Law in Support of Plaintiffs Response to Motion to Dismiss* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)

11/27/2006 161 *Attachment 36 to Memorandum of Law in Support of Plaintiffs Response to Motion to Dismiss* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)

11/27/2006 162 *Attachments 37- 39 to Memorandum of Law in Support of Plaintiffs Response to Motion to Dismiss* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert

		Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)
11/27/2006	163	*Attachments 40 - 44 to Memorandum of Law in Support of Plaintiffs Response to Motion to Dismiss* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Augustus, David) (Entered: 11/27/2006)
11/27/2006	164	RESPONSE to 166 (p.5316) MOTION to Dismiss 122 (p.2356) Third Amended Class Action Complaint, filed by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller. (Augustus, David) Modified on 12/11/2006 - linked to #166 (ltien,). (Entered: 11/27/2006)
11/27/2006	165	PROPOSED ORDER re: 164 (p.5306) Response to Motion, filed.(Augustus, David) (Entered: 11/27/2006)
11/27/2006	164	[sic] Alternatively, MOTION for Leave to Amend Complaint by all plaintiffs, filed. Motion Docket Date 12/18/2006. (Entered: 12/11/2006)
01/02/2007	166	MOTION to Certify Class by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed. Motion Docket

		Date 1/22/2007. (Attachments: # 1 (p.31) # 2 (p.44) Exhibit # 3 (p.45) Exhibit # 4 (p.47) Exhibit # 5 (p.49) Exhibit # 6 (p.51) Exhibit # 7 (p.81) Exhibit # 8 (p.84) Exhibit # 9 (p.86) Exhibit # 10 (p.88) Exhibit # 11 (p.89) Exhibit)(Hunt, Thomas) (Entered: 01/02/2007)
01/08/2007	167	REPLY in Support of 125 (p.2518) MOTION to Dismiss 122 (p.2356) Amended Complaint/Counterclaim/ Crossclaim etc.,,, filed by UBS Painewebber, Inc.. (Attachments: # 1 (p.31) Supplement Supplemental Declaration)(McMahon, Kerry) (Entered: 01/08/2007)
01/08/2007	168	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 01/08/2007)
01/08/2007	169	APPENDIX by UBS Painewebber, Inc., filed. (Attachments: # 1 (p.31 Appendix Exhibits 1-3 (cont)) (McMahon, Kerry) (Entered: 01/08/2007)
01/08/2007	170	APPENDIX by UBS Painewebber, Inc., filed. (Attachments: # 1 (p.31) Appendix Exhibits 1-3 (cont))(McMahon, Kerry) (Entered: 01/08/2007)
01/08/2007	171	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 01/08/2007)

01/08/2007	172	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 01/08/2007)
01/08/2007	173	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 01/08/2007)
01/08/2007	174	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 01/08/2007)
01/08/2007	175	APPENDIX by UBS Painewebber, Inc., filed.(McMahon, Kerry) (Entered: 01/08/2007)
01/08/2007	176	APPENDIX by UBS Painewebber, Inc., filed. (Attachments: # 1 (p.31) Exhibit Exhibits 4-5 (cont)) (McMahon, Kerry) (Entered: 01/08/2007)
01/08/2007	177	APPENDIX by UBS Painewebber, Inc., filed. (Attachments: # 1 (p.31) Errata Exhibits 4-5 (cont)) (McMahon, Kerry) (Entered: 01/08/2007)
01/29/2007	178	RESPONSE to 167 (p.5522) Reply in Support of 125 (p.2518) Motion to Dismiss, filed by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller. (Attachments: # 1 (p.31) Supplemental Declaration of David L. Augustus# 2 (p.44) Attachment 1# 3 (p.45), Attachment 2# 4 (p.47) Attachment 3# 5 (p.49) Attachment 4

		# 6 (p.51) Attachment 5)(Hunt, Thomas) Modified on 2/6/2007 - linked to #125 (Hien,). (Entered: 01/29/2007)
01/30/2007	179	NOTICE of Change of Address by Rodney Acker and Ellen Sessions, counsel for UBS Financial Services Inc, UBS Painewebber, Inc., UBS Securities LLC, filed. (Acker, Charles) (Entered: 01/30/2007)
01/30/2007	180	Agreed MOTION for Extension of Time Class Certification Briefing by UBS Financial Services Inc, UBS Painewebber, Inc., UBS Securities LLC, filed. Motion Docket Date 2/20/2007. (Acker, Charles) (Entered: 01/30/2007)
01/30/2007	181	Agreed PROPOSED ORDER re: 180 (p.5806) Agreed MOTION for Extension of Time Class Certification Briefing, filed.(Acker, Charles) (Entered: 01/30/2007)
02/01/2007	182	ORDER granting 180 (p.5806) Agreed Motion to Amend Briefing Schedule for Class Certification. (Signed by Judge Melinda Harmon) Parties notified.(ltien,) (Entered: 02/02/2007)
02/05/2007	183	RESPONSE to 178 (p.5712) Surreply in Opposition to 125 (p.2518), Motion to Dismiss, filed by UBS Financial Services Inc, UBS Securities LLC. (Acker, Charles) Modified on

		2/6/2007 - linked to #125 (ltien,). (Entered: 02/05/2007)
02/06/2007	184	*(Re-Filing Due to Missing Page) Exhibit E to Lead Plaintiffs' Motion for Class Certification* by Kevin Lampkin, Janice Schuette, Joe Brown, Frank Gittess, Terry Nelson, Dianne Swiber, Robert Ferrell, Stephen Miller, filed.(Hunt, Thomas) (Entered: 02/06/2007)
04/02/2007	185	Joint MOTION for Clarification by all plaintiffs, filed.Motion Docket Date 4/23/2007. (Hunt, Thomas) (Entered: 04/02/2007)
04/02/2007	186	(CORRECTED DOCKET ENTRY: Plaintiffs Joint NOTICE Of Dispute And Motion For Determination Regarding The Court's Stay Order, Newby #5638) Joint MOTION for Clarification by all plaintiffs, filed.Motion Docket Date 4/23/2007. (Hunt, Thomas) Text Modified on 6/27/2007 (htippen,). (Entered: 04/02/2007)
04/03/2007	187	NOTICE *in Opposition* re: 186 (p.5876) Joint MOTION for Clarification, 185 (p.5835) Joint MOTION for Clarification by UBS Financial Services Inc, UBS Painewebber, Inc., UBS Securities LLC, filed. (Acker, Charles) (Entered: 04/03/2007)
04/20/2007	188	NOTICE *Regarding Stay* re: 186 (p.5876) Joint MOTION for

		Clarification, 185 Joint MOTION for Clarification by UBS Financial Services Inc, UBS Painewebber, Inc., UBS Securities LLC, filed. (Acker, Charles) (Entered: 04/20/2007)
06/14/2007	189	ORDER granting 185 (p.5835) Motion for Determination regarding the Court's Stay Order (#185 in H-02-851 and #139 in H-03-4359). The Court ORDERS that the motion for determination is GRANTED. The Court concludes that not only the appeal of the reversal of this Court's class certification in Newby, but also the Supreme Court's granting a writ of certiorari in the Charter Communications action warrant continuing the stay in these two suits until the Supreme Court issues an opinion on the scope of § 10(b).(Signed by Judge Melinda Harmon) Parties notified.(htippen,) (Entered: 06/14/2007)
06/14/2007		(Court only) Set/Cleared Flags. Stayed flag set. (htippen,) (Entered: 06/14/2007)
06/14/2007		(Court only) ***Motion(s) terminated by 189 (p.5926) Order granting 185 (p.5835) motion: 186 (p.5876) Joint MOTION for Clarification. (htippen,) (Entered: 06/27/2007)

07/28/2010	190	Joint MOTION to Lift Stay by Joe Brown, Robert Ferrell, Frank Gittess, Kevin Lampkin, Stephen Miller, Terry Nelson, Janice Schuette, Dianne Swiber, filed. Motion Docket Date 8/18/2010. (Meade, Dawn) (Entered: 07/28/2010)
08/05/2010	191	RESPONSE to 190 (p.5928) Joint MOTION to Lift Stay filed by UBS Financial Services Inc, UBS Painewebber, Inc., UBS Securities LLC. (Acker, Charles) (Entered: 08/05/2010)
08/05/2010	192	DECLARATION of Stephen M. Dollar re: 191 (p.5932) Response to Motion, filed.(Acker, Charles) (Entered: 08/05/2010)
08/06/2010	193	Joint REPLY to Response to 190 (p.5928) Joint MOTION to Lift Stay, filed by Joe Brown, Robert Ferrell, Frank Gittess, Kevin Lampkin, Stephen Miller, Terry Nelson, Janice Schuette, Dianne Swiber. (Meade, Dawn) (Entered: 08/06/2010)
08/06/2010	194	PROPOSED ORDER re: 190 (p.5928) Joint MOTION to Lift Stay, filed.(Meade, Dawn) (Entered: 08/06/2010)
08/09/2010	195	EXHIBITS re: 193 (p.5945) Reply to Response to Motion by Joe Brown, Robert Ferrell, Frank Gittess, Kevin Lampkin, Stephen Miller, Terry Nelson, Janice Schuette, Dianne Swiber,

		filed.(Meade, Dawn) (Entered: 08/09/2010)
11/16/2010	196	NOTICE *of Pending Motion* re: 190 (p.5928) Joint MOTION to Lift Stay by Kevin Lampkin, filed. (Tindel, Andy) (Entered: 11/16/2010)
08/11/2011	197	ORDER granting in part and denying in part 1901 Joint MOTION to Lift Stay; the motion to lift the stay is granted, but denied as to the scheduling conference. The Court will dismiss the pending motions to dismiss shortly. STAYED flag cleared..(Signed by Judge Melinda Harmon) Parties notified.(htippen,) (Entered: 08/11/2011)
08/18/2011	198	MOTION for Leave to File Fourth Amended Complaint by Joe Brown, Robert Ferrell, Frank Gittess, Kevin Lampkin, Stephen Miller, Terry Nelson, Dianne Swiber, filed. Motion Docket Date 9/8/2011. (Attachments: # 1 (p.31) Exhibit A, # 2 (p.44) Exhibit A Supp 1, # 3 (p.45) Exhibit A Supp 2, # 4 (p.47) Exhibit A Supp 3, # 5 (p.49) Exhibit A Supp 4, # 6 (p.51) Exhibit A Supp 5, # 7 (p.81) Exhibit A Supp 6, # 8 (p.84) Exhibit A Supp 7, # 9 (p.86) Exhibit A Supp 8, # 10 (p.88) Exhibit A Supp 9, # 11 (p.89) Exhibit B, # 12 (p.90) Proposed Order)(Meade, Dawn) Filers

		modified on 8/30/2011 (ltien,). (Entered: 08/18/2011)
09/07/2011	199	Agreed MOTION for Extension of Time to Extend Briefing Deadlines for Plaintiffs' Motions for Leave to Amend in Lampkin v. UBS Financial Services, Inc., et al. and Giancarlo v. UBS Financial Services, Inc., et al. by UBS Financial Services Inc, UBS Securities LLC, filed. Motion Docket Date 9/28/2011. (Attachments: # 1 (p.31) Order Granting Agreed Motion to Extend Briefing Deadlines for Plaintiffs' Motions for Leave to Amend in Lampkin v. UBS Financial Services, Inc., et al. and Giancarlo v. UBS Financial Services, Inc., et al.)(Acker, Charles) (Entered: 09/07/2011)
09/15/2011	200	RESPONSE in Opposition to 198 (p.5976) MOTION for Leave to File Fourth Amended Complaint, filed by UBS Financial Services Inc, UBS Painewebber, Inc., UBS Securities LLC. (Attachments: # 1 (p.31) Proposed Order)(Acker, Charles) (Entered: 09/15/2011)
09/15/2011	201	DECLARATION of Stephen M. Dollar re: 200 (p.6236) Response in Opposition to Motion, filed. (Attachments: # 1 (p.31) Exhibit 1, # 2 (p.44) Exhibit 2, # 3 (45) Exhibit 3, # 4 (p.47) Exhibit 4, # 5 (p.49) Exhibit 5, # 6 (p.51) Exhibit 6, # 7

		(p.81) Exhibit 7, # 8 (p.84) Exhibit 8, # 9 (p.86) Exhibit 9, # 10 (p.88) Exhibit 10, # 11 (p.89) Exhibit 11)(Acker, Charles) (Entered: 09/15/2011)
09/19/2011	202	Agreed MOTION to Vacate 182 (p.5816) Order on Motion for Extension of Time by Joe Brown, Robert Ferrell, Frank Gittess, Kevin Lampkin, Stephen Miller, Terry Nelson, Dianne Swiber, UBS Financial Services Inc, UBS Securities LLC, filed. Motion Docket Date 10/11/2011. (Attachments: # 1 (p.31) Proposed Order)(Tindel, Andy) (Entered: 09/19/2011)
02/22/2012		Archive Data: FRC Shipment id: 2011, Accession number: 021-10-0230, Location number: shelved, Box number: 20-21, Type of documents sent to FRC: c, Date documents shipped to FRC: 12/14/2009, Disposal authority: IIA7b(2), Disposal date: 01/01/2034, Restriction code: N, Notes: Closed Civil Case Files. Notes 2: 4:02cv0043 through 4:02cv2698, filed. (dkellyadi,) (Entered: 02/22/2012)
03/12/2012	203	ORDER denying 198 (p.5976) Motion for Leave to File.(Signed by Judge Melinda Harmon) Parties notified.(htippen,) (Entered: 03/12/2012)

03/12/2012	204	Clerks Notice regarding CMECF notice returned undeliverable from paulh@rgrdlaw.com on the account of George Paul Howes. The referenced email address has been deleted from your CM/ECF account, filed. (tferguson,) (Entered: 03/12/2012)
06/27/2012		(Court only) ***Motion(s) terminated as MOOT by 209 (p.6566) Order denying DI Motion: 199 (p.6227) Agreed MOTION for Extension of Time to Extend Briefing Deadlines for Plaintiffs' Motions for Leave to Amend in Lampkin v. UBS Financial Services, Inc., et al. and Giancarlo v. UBS Financial Services, Inc., et al.. (htippen,) (Entered: 06/27/2012)
07/03/2012	205	ORDER granting 202 (p.6532) Motion to Vacate Amended Briefing Schedule for Class Certification and to Reset Briefing Schedule Deadlines.(Signed by Judge Melinda Harmon) Parties notified.(bthomas,) (Entered: 07/03/2012)
07/09/2013	206	ORDER. Status Report due within thirty days. (Signed by Judge Melinda Harmon) Parties notified.(rvazquez) (Entered: 07/09/2013)
07/19/2013	207	MOTION to Perpetuate Expert Testimony by Claimants (H02-0851),

filed. Motion Docket Date 8/9/2013. (Meade, Dawn) (Entered: 07/19/2013)

08/08/2013 208 STATUS REPORT by UBS Financial Services Inc, UBS Securities LLC, filed.(Acker, Charles) (Entered: 08/08/2013)

08/08/2013 209 RESPONSE in Opposition to 207 (p.6549) MOTION to Perpetuate Expert Testimony, filed by UBS Financial Services Inc, UBS Securities LLC. (Attachments: # 1 (p.31) Proposed Order)(Acker, Charles) (Entered: 08/08/2013)

08/29/2013 210 NOTICE of Referral of Motion to Magistrate Judge Frances H. Stacy re 2.0/ MOTION to Perpetuate Expert Testimony, filed. (rvazquez) (Entered: 08/29/2013)

09/03/2013 211 MOTION for Oral Hearing on Motion to Perpetuate Testimony Hearing re: 21:17, MOTION to Perpetuate Expert Testimony by Joe Brown, Robert Ferrell, Frank Gittess, Kevin Lampkin, Stephen Miller, Terry Nelson, Janice Schuette, Dianne Swiber, filed. Motion Docket Date 9/24/2013. (Spencer, Bonnie) (Entered: 09/03/2013)

09/04/2013 212 NOTICE of Referral of Motion to Magistrate Judge Frances H. Stacy re 211 MOTION for Oral Hearing on Motion to Perpetuate Testimony

		Hearing re: 207 (p.6549) MOTION to Perpetuate Expert Testimony, filed. (rvazquez) (Entered: 09/04/2013)
09/04/2013	213	ORDER granting 207 (p.6549) Motion to Perpetuate the Testimony of Expert Witnesses.(Signed by Magistrate Judge Frances H Stacy) Parties notified.(wbostic) (Entered: 09/04/2013)
09/05/2013	214	RESPONSE in Opposition to 211 (p.6581) MOTION for Oral Hearing on Motion to Perpetuate Testimony Hearing re: 207 (p.6549), MOTION to Perpetuate Expert Testimony, filed by UBS Financial Services Inc, UBS Securities LLC. (Acker, Charles) (Entered: 09/05/2013)
09/05/2013	215	NOTICE *of Filing of Deposition Transcripts* by Joe Brown, Robert Ferrell, Frank Gittess, Kevin Lampkin, Stephen Miller, Terry Nelson, Janice Schuette, Dianne Swiber, filed. (Attachments: # 1 (p.31) Exhibit Exhibit 1, # 2 (p.44) Exhibit Exhibit 2, # 3 (p.45) Exhibit Exhibit 3)(Meade, Dawn) (Entered: 09/05/2013)
09/06/2013	216	REPLY to Response to 211 (p.6581) MOTION for Oral Hearing on Motion to Perpetuate Testimony Hearing re: 207 (p.6549) MOTION to Perpetuate Expert Testimony, filed

		by Joe Brown, Robert Ferrell, Frank Gittess, Kevin Lampkin, Stephen Miller, Terry Nelson, Janice Schuette, Dianne Swiber. (Spencer, Bonnie) (Entered: 09/06/2013)
09/11/2013	217	ORDER denying as moot 211 (p.6581) Motion for Hearing; granting 207 (p.6549) Motion to perpetuate the expert witnesses.(Signed by Magistrate Judge Frances H Stacy) Parties notified.(bwhite, 4) (Entered: 09/11/2013)
10/21/2013	218	Unopposed MOTION for Extension of Time to Perpetuate Expert Testimony by Joe Brown, Robert Ferrell, Frank Gittess, Kevin Lampkin, Stephen Miller, Terry Nelson, Janice Schuette, Dianne Swiber, filed. Motion Docket Date 11/12/2013. (Attachments: # 1 (p.31) Exhibit Exhibit A)(Spencer, Bonnie) (Entered: 10/21/2013)
10/23/2013	219	ORDER granting 218 (p.8359) Motion for Extension of Time.(Signed by Judge Melinda Harmon) Parties notified.(rvazquez) (Entered: 10/28/2013)
11/12/2013	220	MOTION for Michael Hamilton to Appear Pro Hac Vice by Kevin Lampkin, et. al., filed. Motion Docket Date 12/3/2013. (gsalinas, 5) (Entered: 11/15/2013)

11/26/2013	221	ORDER granting 220 (p.8367) Motion to Appear Pro Hac Vice.(Signed by Judge Melinda Harmon) Parties notified.(rvazquez) (Entered: 11/26/2013)
12/10/2013	222	NOTICE *of Supplement of Documents for Expert Reports* by Joe Brown, Robert Ferrell, Frank Gittess, Kevin Lampkin, Stephen Miller, Terry Nelson, Janice Schuette, Dianne Swiber, filed. (Attachments: # 1 (p.31) Exhibit Exhibit 1)(Meade, Dawn) (Entered: 12/10/2013)
06/16/2014	223	Opposed MOTION Motion [sic] to Rule by Joe Brown, Robert Ferrell, Frank Gittess, Kevin Lampkin, Stephen Miller, Terry Nelson, Janice Schuette, Dianne Swiber, filed. Motion Docket Date 7/7/2014. (Attachments: # 1 (p.31) Exhibit Exhibit A, # 2 (p.44) Exhibit Exhibit B)(Spencer, Bonnie) (Entered: 06/16/2014)
07/07/2014	224	RESPONSE to 223 (p.8436) Opposed MOTION Motion [sic] to Rule filed by UBS Financial Services Inc, UBS Painewebber, Inc., UBS Securities LLC. (Ettinger, Lauren) (Entered: 07/07/2014)
02/28/2017	225	OPINION AND ORDER (Signed by Judge Melinda Harmon) Parties notified.(rhawkins) (Entered: 02/28/2017)

02/28/2017	226	FINAL JUDGMENT. Case terminated on 2/28/2017(Signed by Judge Melinda Harmon) Parties notified.(rhawkins) (Entered: 02/28/2017)
03/28/2017	227	MOTION for Reconsideration of 226 (p.8696) Final Judgment, 225 (p.8468) Order by Joe Brown, Robert Ferrell, Frank Gittess, Kevin Lampkin, Stephen Miller, Terry Nelson, Dianne Swiber, filed. Motion Docket Date 4/18/2017. (Meade, Dawn) (Entered: 03/28/2017)
03/28/2017	228	PROPOSED ORDER re: 227 (p.8697) MOTION for Reconsideration of 226 (p.8696) Final Judgment, 225 (p.8468) Order, filed.(Meade, Dawn) (Entered: 03/28/2017)
04/18/2017	229	RESPONSE in Opposition to 227 (p.8697) MOTION for Reconsideration of 226, Final Judgment, 225 (p.8468) Order, filed by UBS Financial Services Inc, UBS Securities LLC. (Acker, Charles) (Entered: 04/18/2017)
08/25/2017	230	OPINION AND ORDER denying 227 (p.8697) MOTION for Reconsideration of Final Judgment, 225 (p.8468) Order (Signed by Judge Melinda Harmon) Parties notified.(rhawkins) (Entered: 08/25/2017)

09/21/2017	231	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: 226 (p.8696) Final Judgment, 203 (p.6543) Order on Motion for Leave to File, 225 (p.8468) Order, 230 (p.8728) Order by Joe Brown, Robert Ferrell, Frank Gittess, Kevin Lampkin, Stephen Miller, Terry Nelson, Dianne Swiber (Filing fee $ 505, receipt number 0541-18954437), filed.(Tindel, Andy) (Entered: 09/21/2017)
09/22/2017	232	Clerks Notice of Filing of an Appeal. The following Notice of Appeal and related motions are pending in the District Court: 231 (p.8732) Notice of Appeal,. Fee status: Paid. Reporter(s): F. Warner; ERO, filed. (Attachments: # 1 (p.31) Notice of Appeal, # 2 (p.44) ORDER denying 198 Motion for Leave to File, # 3 (p.45) Opinion and Order, # 4 (p.47) Final Judgment of Dismissal, # 5 (p.49) Opinion and Order Denying Motion to Reconsider, # 6 (p.51) Public Docket Sheet) (jtabares, 1) (Entered: 09/22/2017)
09/22/2017		Appeal Review Notes re: 231 (p.8732) Notice of Appeal,. Fee status: Paid. The appeal filing fee has been paid.Hearings were held in the case. DKT13 transcript order form(s) due within 14 days of the filing of the notice of appeal. Number

		of DKT-13 Forms expected: 3, filed.(jtabares, 1) (Entered: 09/22/2017)
10/02/2017		Notice of Assignment of USCA No. 17-20608 re: 231 (p.8732) Notice of Appeal, filed.(mperez, 1) (Entered: 10/02/2017)
10/06/2017	233	DKT13 TRANSCRIPT ORDER REQUEST by Plaintiffs/Andy Tindel. No hearings This order form relates to the following: 231 (p.8732) Notice of Appeal filed.(Tindel, Andy) (Entered: 10/06/2017)

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

KEVIN LAMPKIN, JANICE SCHUETTE, ROBERT FERRELL, and STEPHEN MILLER, Individually and on Behalf of All Others Similarly Situated,	§	Judge Melinda Harmon
Plaintiffs,	§	CIVIL ACTION NO. H:02-CV-0851
VS.	§	
UBS FINANCIAL SERVICES, INC., and UBS SECURITIES LLC,	§	
Defendants.	§	

PLAINTIFFS' THIRD AMENDED CLASS ACTION COMPLAINT

1. The Plaintiffs, Kevin Lampkin, Janice Schuette, Bobby Ferrell, Stephen Miller, Dianne Swiber, Terry Nelson, Joe Brown, and Frank Gittess (collectively "Plaintiffs") file this their Third Amended Class Action Compliant [sic] and would respectively show the Court as follows:

I. JURISDICTION AND VENUE

2. Original jurisdiction is proper in this Court pursuant to 28 U.S.C. §1331 because the claims arise under the laws of the United States, specifically, §11,

§12(a)(2)and §15 of the Securities Act of 1933, 15 U.S.C. §77(k), §77(l) and §77(o) *et seq*.; §10(b), 10(b)(5) and §20 of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b) and §78(t) *et seq*.; and the Private Securities Litigation Reform Act, 15 U.S.C. §78(u)(4) and 15 U.S.C. §78(a) *et seq*.

3. Venue is proper in the Houston Division of the Southern District of Texas under 28 U.S.C. § 1391(b), as the Defendants have significant contacts in this district and division, and this is the district and division in which a substantial part of the events or omissions giving rise to the claim occurred.

4. 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 market.

II. PARTIES

5. Plaintiff Kevin Lampkin ("Lampkin") is a resident of Hamilton, Mississippi. Kevin Lampkin files this action for himself, and as representative of a class of similarly situated people pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4. Lampkin purchased Enron Corp. ("Enron") equity securities during the relevant time period in a UBS PaineWebber, Inc. account in reliance on the information provided to him, and absence of information withheld from him, by

UBS PaineWebber, Inc. and without any knowledge of the facts underlying the federal securities fraud claims asserted herein. Additionally, Lampkin purchased or acquired in a UBS PaineWebber, Inc. account options to purchase Enron equity securities without any knowledge of the false statements contained in the referenced registration statements and/or prospectuses.

6. Plaintiff Janice Schuette ("Schuette") is a resident of Robstown, Texas. Schuette files this action for herself, and as representative of a class of similarly situated people pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4. She transferred Enron equity securities into a UBS PaineWebber, Inc. account during the relevant time period and held those securities in reliance on the information provided to her, and absence of information withheld from her, by UBS PaineWebber, Inc. and without any knowledge of the facts underlying the federal securities fraud claims asserted herein.

7. Plaintiff Bobby Ferrell ("Ferrell") is a resident of Houston, Texas. Ferrell files this action for himself, and as representative of a class of similarly situated people pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4. Ferrell is a former Enron employee and maintained an individual retirement account at UBS PaineWebber, Inc. during the relevant time period. He held Enron equity securities in this account in reliance on the information provided to him, and absence of information withheld from him, by UBS

PaineWebber, Inc. and without any knowledge of the facts underlying the federal securities fraud claims asserted herein. Additionally, Ferrell purchased or acquired in a UBS PaineWebber, Inc, account options to purchase Enron equity securities without any knowledge of the false statements contained in the referenced registration statements and/or prospectuses.

8. Plaintiff Stephen Miller ("Miller") is a resident of Houston, Texas. Miller files this action for himself, and as representative of a class of similarly situated people pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4. Miller purchased Enron equity securities in a UBS PaineWebber, Inc. account during the relevant time period in reliance on the information provided to him, and absence of information withheld from him, by UBS PaineWebber, Inc. and without any knowledge of the facts underlying the federal securities fraud claims asserted herein.

9. Plaintiff Dianne Swiber ("Swiber") is a resident of Katy, Texas. Swiber files this action for herself, and as representative of a class of similarly situated people pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4. Swiber purchased or acquired in a UBS PaineWebber, Inc. account options to purchase Enron equity securities without any knowledge of the false statements contained in the referenced registration statements and/or prospectuses.

10. Plaintiff Terry Nelson ("Nelson") is a resident of Gardner, Illinois. Nelson files this action for himself, and as representative of a class of similarly situated people pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4. Nelson held both Enron equity securities and options to purchase Enron equity securities in a UBS PaineWebber, Inc. account during the relevant time period in reliance on the information provided to him, and absence of information withheld from him, by UBS PaineWebber, Inc. and without any knowledge of the facts underlying the federal securities fraud claims asserted herein.

11. Plaintiff Joe Brown ("Brown") is a resident of Baytown, Texas. Brown files this action for himself, and as representative of a class of similarly situated people pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4, Brown purchased Enron equity securities in a UBS PaineWebber, Inc. account during the relevant time period in reliance on the information provided to him, and absence of information withheld from him, by UBS PaineWebber, Inc. and without any knowledge of the facts underlying the federal securities fraud claims asserted herein.

12. Plaintiff Frank Gittess ("Gittess") is a resident of Houston, Texas. Gittess files this action for himself, and as a representative of a class of similarly situated people pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4. Gittess

purchased Enron preferred securities in a UBS PaineWebber, Inc. account during the relevant time period in reliance on the information provided to him, and absence of information withheld from him, by UBS PaineWebber, Inc. and without any knowledge of the facts underlying the federal securities fraud claims asserted herein.

13. Defendant UBS Financial Services, Inc., previously known as UBS PaineWebber, Inc. (hereinafter "PW"), is a Delaware corporation authorized to do business in Texas and has appeared by counsel in this lawsuit. PW is a subsidiary of Swiss banking conglomerate UBS AG.

14. Defendant UBS Securities LLC, previously known as UBS Warburg, LLC (hereinafter "Warburg"), is a Delaware limited liability company authorized to do business in Texas and has appeared by counsel in this lawsuit. UBS is also a subsidiary of Swiss banking conglomerate UBS AG.

15. PW and Warburg may be collectively referred to herein as "Defendants." PW, Warburg, and UBS AG may be collectively referred to herein as "UBS."

III. CLASS ACTION ALLEGATIONS

16. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following classes of people:

(i) Lampkin, Miller, Brown, and Gittess bring claims on their own behalf and on behalf of all

persons similarly situated who purchased or acquired Enron's publicly traded equity and/or preferred securities in a UBS PW account from November 5, 2000 through and including December 2, 2001 (the "1934 Act Class Period") (the "Purchase Class");

(ii) Schuette, Ferrell, and Nelson bring claims on their own behalf and on behalf of all persons similarly situated who held Enron's publicly traded equity securities in a UBS PW account during the 1934 Act Class Period (the "Hold Class");

(iii) Lampkin, Ferrell, and Swiber bring claims on their own behalf and on behalf of all persons similarly situated who purchased or acquired options to purchase Enron equity securities, and/or purchased or acquired Enron equity securities through the exercise of an option to purchase Enron equity securities, pursuant to the prospectuses identified in Paragraphs 230-234 below through UBS PW from October 19, 1998 through and including November 19, 2001 (the "1933 Act Class Period") (the "Section 12 Class");

(iv) Lampkin, Ferrell, and Swiber bring claims on their own behalf and on behalf of all persons similarly situated who purchased or acquired options to purchase Enron equity securities, and/or purchased or acquired Enron equity securities through the exercise of an option to purchase Enron equity securities, pursuant to the registration statements identified in Paragraph 230 below through UBS PW during the 1933 Act Class Period (the "Section 11 Class").

17. Excluded from the class are Defendants and subsidiaries or affiliates of Defendants, any past or present officers, directors or employees of Defendants (and members of their immediate families or subsidiaries or affiliates of Defendants or any national, state or local governmental entities/agencies or departments. Also excluded from the class are entities or individuals convicted of engaging or participating in a fraud in connection with Enron Corp. or any of its subsidiaries or affiliates.

18. The members of the Classes are so numerous joinder of all members is impracticable. While the exact number of Class members is unknown at the present time, discovery shows the putative classes well exceed 45,000 members.

19. Plaintiffs' claims are typical of the claims of the Classes because Plaintiffs and all the Class members sustained damages which arose out of Defendants' unlawful conduct complained of herein.

20. Plaintiffs are representative parties who will fairly and adequately protect the interests of the Class members. Plaintiffs have retained counsel who are experienced and competent. Plaintiffs have no interest which is in conflict with those of the Classes they seek to represent.

21. A class action would be superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action precluding its maintenance as a class action.

22. The prosecution of separate actions by individual Class members would create. a risk of inconsistent and varying adjudications, which could establish incompatible standards of conduct for Defendants. Questions of law and fact common to the Classes predominate over any questions which may affect only individual members. Among the common questions of law and fact as to the securities fraud allegations under the 1934 Act are:

(a) whether the Defendants engaged in a course of conduct or adhered to certain business practices that violated the anti-fraud provisions of the 1934 Act;

(b) whether the Defendants failed to disclose to Class members material facts;

(c) whether the Defendants had a duty to disclose to Class members the alleged materials facts;

(d) whether the Defendants had a duty to take action to protect the Class members;

(e) whether a causal connection exists between the content of the non-disclosed facts and any harm actually suffered by the Class members; and

(f) the extent and the appropriate measure of damages sustained by Class members.

23. Among the common questions of law and fact as to the strict liability allegations under the 1933 Act are:

(a) whether PW is an underwriter under the 1933 Act in connection with certain Enron registration statements;

(b) whether PW is a seller under the 1933 Act in connection with certain Enron prospectuses;

(c) whether any harm suffered by the Class members resulted from false or misleading representations in one or more Enron registration statements and/or prospectuses for which PW was a [sic] underwriter and/or seller, respectively; and

(d) the extent and the appropriate measure of damages sustained by Class members.

IV. RESPONDEAT SUPERIOR LIABILITY

24. Defendants' employees violated federal securities laws at a time when Defendants had the power and/or ability to control their employees' actions. Defendants' advocation of the violations complained of herein or, alternatively, their failure to prevent these violations, may not be excused by any theory that they had a reasonable, and enforced, supervisory system in place. Defendants are responsible for their employees' conduct under the doctrine of respondeat superior under § 15 of the Securities Act of 1933 and §20 of the Securities Exchange Act of 1934. 15 U.S.C. § 77(o), as amended, and 15 U.S.C. § 78(t), as amended.

V. SUMMARY OF CLAIMS

A. Claims under the Securities Exchange Act of 1934

25. Generally, defendants may violate the anti-fraud provisions of the Securities Exchange Act of 1934 (the "1934 Act") in two separate ways: (1) through materially false statements or statements which are materially misleading due to the omission of additional information; and (2) through non-representational acts, i.e., by employing a device, scheme, or artifice to defraud or engaging in any act, practice, or course of business which operates as a fraud. Plaintiffs bring their fraud claims against Defendants based upon the second category of violations, specifically for engaging in a scheme or course of conduct violating Section 10(b) of the 1934 Act as implemented through Subsections (a) and (c) of Rule 10b-5. Defendants' acts, practices, and course of business combined to operate a fraud upon the Plaintiffs and deceived them into believing the price at which they purchased or held their Enron securities was deter wined by the natural interplay of supply and demand. Defendants' obligations to Plaintiffs, both under Rule 10b-5 and pursuant to a brokerage relationship, required disclosure of all which was necessary to fulfill the fundamental purpose of the securities laws. UBS positioned itself between two classes of clients – its retail brokerage clients and its corporate client – such that UBS could not fulfill its legal obligations both to Plaintiffs and Enron concurrently. UBS failed to disclose information and knowledge it possessed during the 1934 Class Period regarding the

manipulation of Enron's public financial appearance, some of which was accomplished through UBS, nor did UBS disclose the conflicts under which it operated its brokerage business. This information was material in the sense that a reasonable investor would have considered the information important in making decisions to trade in Enron securities through a UBS retail brokerage account. Ignorant of this undisclosed information, Plaintiffs acquired and/or held Enron equity securities in their UBS retail brokerage accounts during the 1934 Act Class Period. UBS's failure to disclose to Plaintiffs the material knowledge possessed by UBS concerning Enron, and by participating in financing devices and schemes to inflate the appearance of Enron's financial status, that is, engaging in acts, practices, and a course of business that would operate as a fraud or deceit on others, had the effect of concealing the circumstances that bore on Plaintiffs' ultimate economic loss, e.g., it concealed, among other things, the risks that Enron would be unable to service its debt and consequently suffer financial collapse. Thus, UBS's failure to disclose material information to Plaintiffs and course of business operated as a fraud and deceit upon others and was a significant contributing cause of the reasonably foreseeable economic losses that ultimately materialized from the risk concealed by UBS.

B. Claims under the Securities Act of 1933

26. Plaintiffs bring claims against PW under the Securities Act of 1933 (the "1933 Act") based on PW's role as the exclusive broker and stock option plan

administrator for Enron during the 1933 Act Class Period. PW acted as a "seller" and "underwriter" of Enron securities under the 1933 Act and is liable for the materially false financial statements contained in the Enron prospectuses and registration statements identified herein.

VI. UBS AND ENRON HISTORIES

27. UBS is one of the largest banks in the world. It is an integrated bank, offering traditional commercial loans, investment banking opportunities and retail brokerage services. UBS's integrated status, combined with its endless hunger for investment banking dollars, combined to create a lethal force against Plaintiffs herein, who constituted UBS's retail customers. The monster that came to be the "integrated bank" created a situation that allowed UBS to capitalize on its superior knowledge, make money, then use Plaintiffs as a buffer to absorb the risk inherent in Enron investments. To fully understand how dangerous UBS was to the plaintiffs, one must briefly examine the historical changes that allowed its rise, the importance of the retail broker, PW, to its business model, and the issues that made servicing Enron by participating in transactions they knew had no principal business purpose other than to misrepresent income flows, an irresistible scheme that operated as a fraud and deceit on others.

A. Banking Legislative History

28. In the wake of the stock market crash of 1929, Congress passed the Glass-Steagall Bank Act of 1933 to erect a wall between commercial banking and investment banking activities. The Act effectively prevented banks from doing business on Wall Street through §§20 and 32. Section 20 forbade member banks from affiliating with a company "engaged principally" in the "issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation of stocks, bonds, debentures, notes, or other securities." Section 32 prohibited member banks from having interlocking directorships or close officer or employee relationships with a firm "principally engaged" in investment banking activities.

29. The Glass-Steagall Act was enacted to prevent three pervasive occurrences associated with the combination of investment and commercial banking activities:

i. Risk to commercial and savings deposits when banks invest their assets in securities;

ii. Issuance of loans made to shore up the price of securities or the financial position of companies in which a bank had invested assets; and

iii. Conflicts of interest as between a bank's financial interests, an issuing client's interests, and a brokerage client's interests.

30. Post Glass-Steagall, and through the remainder of the Twentieth Century, Congress continued its

goal of limiting the growth and resulting power of banks. As a result, during the 1930's and 1940's, banks focused on the fundamental practices of taking deposits and making loans.

31. The 1950's ushered in a new age of "aggressive" activities to once again consolidate some banking activities. Again, Congress took action to protect the public. First, in 1956 Congress enacted the Bank Holding Company Act to prevent financial-services conglomerates from amassing too much power. Then, in response to aggressive acquisitions and expansion by the insurance company TransAmerica Corp., which owned Bank of America and an array of other businesses, Congress created a barrier between banking and insurance. In passing the protectionist legislation, Congress took the prudent action to prevent the risk of loss to a bank associated with investment activities and insurance underwriting.

32. However, in the late 1990's, decades after these legislative actions, Congress changed its attitude about the banking industry and wholesale protection for consumers. On April 6, 1998, Citicorp and the Travelers Group announced their merger. Pre-merger, Citicorp operated as a bank holding company and Travelers operated as an insurance underwriter. Travelers also owned Salomon Smith Barney, a retail brokerage securities firm. To facilitate the merger, in November of 1999. Congress passed the Gramm-Leach-Bliley Act ("GLBA"). The GLBA repealed the provisions of the Glass-Steagall Act that prohibited the combining of commercial and investment bank activities. Thus, the

GLBA eliminated the restrictions on commercial and investment banks by granting financial holding companies, like Travelers and Citicorp, the ability to own commercial banks, investment banks, insurance companies, and securities firms. For the first time since the era of the Great Depression, the GLBA ushered in a new era wherein one entity like UBS could integrate operations for the benefit of a corporate client like Enron, providing an influential combination of lending, investment banking, and securities activities. UBS moved immediately to establish itself as such an entity.

B. UBS History

33. By 1990, the banking industry as a whole was in decline and the role of banks was in question. The traditional strengths of banks as providers of capital was being undermined by the ability of borrowers to access the capital markets directly. The emergence of non-bank, stand-alone competitors increased the risk and reduced the profitability of many commercial banks. The equity values of banks suffered as a consequence. At the same time, technology was advancing very quickly. Costs for sophisticated financial computing decreased by close to one hundred percent (100%) and deregulation and globalization were contentious issues.

34. In the midst of these issues, Swiss Bank Corporation began the journey down the road that would lead to its merger with Union Bank of Switzerland and

the creation of the global giant UBS. On May 10,1995, Swiss Bank Corporation acquired S.G. Warburg, Plc., a European investment bank. The new company was called SBC Warburg. SBC Warburg expanded into the United States in September of 1997, by acquiring the New York investment bank Dillon Read & Co. The investment banking division then became known as SBC Warburg Dillon Read. One year later, in June, 1998, SBC merged with Union Bank of Switzerland ("Union Bank"), creating UBS AG.

35. Early analysis did not favor the merger between these two powerhouse Swiss banks. In. February 2000, UBS restructured and branded its investment banking operations UBS Warburg. The initial focus of UBS Warburg's expansion plans turned out to be the well established United States brokerage firm PaineWebber, Inc. In July, 2000, UBS announced it was acquiring the 121-year-old institution for $10.8 billion in cash and stock. UBS described the merger in a July 12, 2000 Media Release as follows:

> PaineWebber will become an integral part of UBS Warburg. Combining UBS Warburg's premium content and global reach with PaineWebber's private client franchise, and uniting the two highly complementary institutional franchises creates a preeminent global investment services firm. UBS Warburg will be one of the few financial institutions possessing top-class private, institutional and corporate client franchises, across the world, served by a full range of content, products and services.

36. Acquiring PW added more than 8,000 brokers and 2.7 million clients to the UBS portfolio. UBS's stated rationale for the merger was to add "a leading position with US affluent and high net worth clients to what is already the world's largest private bank." According to UBS:

> UBS Warburg has a particularly strong position in distributing non-US products to US clients, and PaineWebber brings significant equity and fixed income distribution strength and a top ten ranked US equity research team. Strong US retail distribution will also enhance the ability to win primary mandates globally. UBS Warburg provides a wealth of content with a wide range of attractive products and expertise that can be leveraged for PaineWebber's private clients, from top-ranked global equity research to direct access to new issues across the world's securities markets, and a superior private equity capability.

37. UBS attracted an influx of new talent as well. In November of 2000, Warburg announced the arrival of Ken Moelis, the former co-head of investment banking in the Americas for Credit Suisse First Boston. Moelis agreed to join Warburg as co-head of its American investment banking unit. John Costas, Warburg's then COO, said upon the announcement, "It is our intent to build aggressively upon our current investment banking platform and continue to accelerate our growth. Simply stated, our goal is to be among the top investment banks in the United States." Thus, by the end of 2000, UBS quieted its critics by securing its

place in the American markets and reporting global profits of $4.8 billion, an increase of $600 million over the previous year.

38. At the beginning of 2001, UBS announced it would manage PW's private clients through the business unit called UBS PaineWebber. PW's institutional clients remained managed by Warburg. While the move reflected UBS's desire to increase its reach into the growing wealth management industry, John Costas stressed to *The Wall Street Journal* that the division would not impact any of the benefits already produced by the combination of the investment bank and PW.

39. While most of Wall Street pulled out the axe in 2001, laying off hundreds of bankers, UBS did just the opposite. From March 2001 to June 2002, the firm increased its U.S. investment banking staff by 10%, according to *The Wall Street Journal*. UBS's hiring frenzy began just after Moelis helped recruit senior bankers in sectors such as real estate, technology and industrials. Moelis even poached the financial services team of Credit Suisse First Boston, the firm he left, to join UBS.

40. UBS's radical changes throughout 2000 and 2001 transformed it into a new Wall Street, and global, player. In 2001 the firm became Europe's top investment bank based on revenues generated from investment banking activities. According to the *Wall Street Journal*, the firm reported a 7.5% European market share in investment banking revenues in 2001, up

from 4.5% in 2000. In the U.S., the firm broke into the Top 10 in overall investment banking revenues. It nearly doubled its U.S. market share in 2001 to 3.2%, good enough for ninth place in total investment banking revenues. UBS Warburg also broke into the U.S. top 10 list of equity underwriters. The firm reported that U.S. investment banking operations represent about 40% of total revenues, compared with less than 15% previously. UBS's ambition to be the world's most powerful bank manifested itself most visibly in its business relationship with Enron.

C. The Role of PaineWebber

41. Plaintiffs' claims in this case are different than every other Enron-related legal action. Plaintiffs seek to represent every investor who purchased, acquired and/or held Enron equity and preferred securities in a PW account, during the class periods. The 1934 Act Class Period begins with UBS's merger with PW, and the responsibilities and duties attendant thereto.

42. UBS's acquisition of PW's retail brokerage business, through which it generated profits from its retail clients' trades in Enron securities, clearly establishes UBS as a primary violator of Rule 10b-5 as to the Plaintiffs and those they seek to represent. Through the acquisition of PW's retail brokerage business, UBS assumed concrete duties of disclosure to a specific class of investors – its retail clients. By remaining silent while these retail clients, to whom UBS owed

duties of disclosure, purchased, acquired, and/or held Enron equity and preferred securities during the 1934 Act Class Period, UBS committed a primary violation of the anti-fraud provisions of the Securities Exchange Act. *See, e.g.*, *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972).

43. The 1934 Act established a self-regulating scheme by means of self-regulatory organizations ("SROs"), including the National Association of Securities Dealers, Inc. ("NASD") and the New York Stock Exchange ("NYSE"). The Securities and Exchange Commission ("SEC"), in turn, supervises these SROs. The SROs developed rules of professional conduct to act as industry standards, some of which focus on customer protection and investor rights. Although the 1934 Act provides no specific private right of action for a violation of a [sic] SRO rule or regulation, nevertheless a breach of such a rule or regulation implicates a violation of Section 10(b)/Rule 10b-5. During the 1934 Act Class Period, as well as today, SRO rules and regulations governed UBS's communications and relationship with its retail clients. By way of example, NASD Rule 2210(d) is one of a number of NASD and NYSE rules generally requiring its members, such as UBS, to deal fairly with their customers. It mandates that:

> All member communications with the public shall be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or securities or type of security, industry discussed, or service offered. No

> material fact or qualification may be omitted if the omission, in the light of the context of the material presented, would cause the communications to be misleading.

44. Federal common law during the 1934 Class Period, and continuing today, placed a legal duty on UBS not to treat its retail clients unfairly. Under the "shingle" doctrine of broker conduct, when a broker-dealer hangs out its shingle it implicitly represents that it will deal fairly with the public and in accordance with the standards of the profession. Thus, the 1934 Act, SEC rules, SRO rules and regulations, as well as federal common law all required UBS either to notify its retail clients about the material information known by UBS relating to Enron securities purchased or acquired in UBS accounts, or if UBS could not disclose this information for any reason, then to restrict trading and suspend research coverage of those securities.

45. Another fact distinguishing Plaintiffs' claims from every other Enron-related claim is the exclusive relationship between UBS and Enron at the retail brokerage level. When UBS acquired PW, UBS also acquired all the rights and obligations associated with PW's role as the exclusive administrator of Enron's stock option plans. By letter agreement dated October 19, 1998, PW contracted to assume exclusively the administrative function for Enron's stock option plans in exchange for the exclusive right to be the brokerage firm for all stock option exercises by Enron employees. Through this administrative role, UBS acquired an

instant retail brokerage relationship with nearly every employee of Enron and its affiliate companies. The severe degree of recklessness with which UBS operated its business is especially highlighted in the story of this subclass of Plaintiffs, who in addition to having significant concentrations of their investments tied to Enron, also had their salaries and retirements tied to Enron. Plaintiffs' 1933 Act claims stem from this unique relationship.

D. UBS Commitment to an Enron Relationship

46. UBS did not always enjoy close ties to Enron. Prior to the merger between SBC and Union Bank, each entity engaged Enron only in a limited scope of business. Union Bank's negative experience, in the early 1980s, with Enron's predecessor company, Houston Natural Gas, resulted in a reluctance to commit large credit amounts to Enron. SBC's credit officer considered Enron's financial profile weaker than Moody's and S&P's ratings and recognized Enron's aggressive rate of growth as an additional risk to conducting business with Enron.

47. The universe of knowledge regarding Enron's financial situation that SBC and Union Bank carried into their merger is well documented. As early as 1995, Union Bank's credit officer characterized Enron's off-balance sheet liabilities as "significant" and its use of leverage as "aggressive." Union Bank considered Enron's disclosures "weak" and its credit officer recognized Enron Capital & Trade Resources ("ECT"), the

business later labeled as Enron's Wholesale Division, as a business resulting in "significant off-balance sheet exposures," "bringing nontraditional risks," and "add[ing] to pressure on leverage." By 1997, Union Bank had labeled ECT a "black box."

48. In 1997, Union Bank credit executives recognized that Enron utilized "structured preferred issues that have equity treatment, but effectively debt characteristics," "off-balance sheet financings," and "50% or less owned joint ventures" to reduce the *appearance* of balance sheet leverage. Union Bank concluded that Enron's "earnings management," through its "very sophisticated manner" of measuring project returns, use of off-balance sheet financings, etc., "will continue to make it difficult to compare Enron's financials from year to year." At that time, Union Bank executives already knew that Enron's off-balance sheet obligations, now labeled as "beyond reasonable business levels" and "excessive . . . to capital," totaled $5.6 billion, raising its balance sheet leverage to 70%. Union Bank was also aware that Enron had a short fall in funds flow from operations to cover its capital expenditures and equity investments which, along with dividends, had to be financed with increasing debt and equity issues. Notwithstanding, these executives simply trusted Enron to manage its situation and "not 'bet the company.'"

49. Preceding and immediately subsequent to the SBC Union Bank merger, the most significant business conducted between Enron and UBS was that of equity risk management. The equity risk management

consisted mostly of equity swap and equity forward contracts (discussed in detail below). In late 1998, however, UBS sought to capitalize on the synergies of its merger by establishing a more comprehensive relationship with Enron. On December 11, 1998, UBS executives met with Fastow to discuss the UBS/Enron relationship going forward. Ken Crews ("Crews"), the North American head of UBS's corporate finance department, and Jim Hunt ("Hunt"), a Managing Director in the corporate finance department in UBS's Dallas, Texas office, represented UBS at the meeting. The meeting resulted in UBS's commitment to a relationship with Enron and the coordination of that relationship through the appointment of Hunt as UBS's "relationship banker" for Enron.

50. It was well known within the banking industry that Enron rewarded banks, who provided credit capacity, by paying exorbitant amounts of money on investment banking fees. From 1998 forward, the Crews/Hunt team of executives at UBS's investment bank worked tirelessly to expand UBS's credit capacity for Enron so that UBS could participate in capturing a portion of the more than $100 million in non-credit related investment banking dollars Enron paid annually. The only limit to UBS's relationship with Enron turned out to be the sustained reluctance of UBS's credit executives to extend greater amounts of credit to Enron.

51. However, this lack of credit capacity for Enron did not prevent UBS from becoming a knowing participant in a number of transactions designed to

create a false public appearance of Enron's financial position for the purpose and effect of progressing UBS' scheme to optimize investment banking fees from Enron in conflict with and at the expense of its obligations to UBS's retail customers who brought[sic], sold and/or held Enron securities through UBS PW. Specifically, UBS participated in five (5) separate transactions over the course of an approximate two year period that did not have a principal legitimate business purpose but the purpose and results of which, individually and cumulatively, were to create a false public appearance of Enron' s financial position.

52. These transactions consist of (1) two amendments to equity forward contracts between UBS and Enron; (2) an underwriting of notes issued as part of Enron's Osprey/Whitewing structure; (3) a commitment to extend credit to Enron's E-Next Generation facility; and (4) an underwriting of credit linked notes in Enron's Yosemite IV structure. In addition to UBS's participation in these transactions, a score of UBS officers obtained significant amounts of information regarding Enron's questionable business practices over the course of other activities as well. This information then spread up through the UBS global structure, but not out to UBS's retail clients. UBS undertook trading activities to eliminate its credit exposure to Enron for its own benefit, while in possession of this material, non-public information, while simultaneously allowing its retail clients to purchase and hold Enron equity securities without the same benefit of UBS's institutional knowledge.

E. ENRON HISTORY[1]

53. Until the late fall of the same year, the 2001 Fortune 500 Rankings ranked Enron as the seventh largest corporation in the world, based upon revenues. It grew from a traditional energy production and transmission company in the mid-1980s to a global enterprise. As such, it was an industry leader in the purchase, transportation, marketing, and sale of natural gas and electricity, and other energy sources and related financial instruments. Further, it spearheaded the development, construction, and operation of pipelines and various types of power facilities.

54. By the mid-1990s, Enron's business and business model had changed dramatically. Starting out as a company that had a concentration in natural gas pipelines, it became over time a company that depended less on pipelines and transportation and more on energy trading and investing in new technologies and businesses. In its 2000 Annual Report, Enron described its four business segments as Wholesale Services, Energy Services, Broadband Services, and Transportation Services. Enron Wholesale Services was highlighted as its largest and fastest growing business. Wholesale Services created trading markets in gas, oil, electricity, and other energy produced and provided price risk

[1] In this section, Plaintiffs highlight the elements of Enron's background key to understanding UBS's violations of Subsections (a) and (c) of Rule 10b-5 by utilizing the various reports filed by the Court-Appointed Examiners in the Enron Corp. bankruptcy proceedings. Unless otherwise indicated, the material is taken directly from one or more of these reports.

management and other related services. Enron Energy Services, Enron's retail arm, served users of energy in the commercial and industrial markets. Enron Broadband Services, newly minted in 2000, was in the "hot" telecommunications sector. Enron Transportation Services, the newly renamed segment, housed Enron's pipelines and Portland General.

55. Enron's rapid expansion into new businesses made it a voracious consumer of cash. Enron's management communicated to the investment community its awareness of the issues posed by its expansion and gave assurances that Enron could manage its way through these risks without upsetting investor expectations. Enron considered its credit ratings critical to this success. As recognized in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" ("MD&A") section of Enron's 1999 Annual Report, Enron's continued investment grade status was critical to the success of its wholesale business as well as its ability to maintain adequate liquidity.

56. By 1999, Enron's Wholesale Services was by far the most significant of Enron's business segments, accounting for 66% of its 1999 income before interest, minority interests and income taxes ("IBIT"). In order to continue the growth of this business, Enron needed to trade with other market participants without being required to post collateral. Thus, the continued success of Enron's entire business depended upon the continued success of its Wholesale Services business

segment, which was in turn dependent upon Enron's credit ratings for its senior unsecured long-terms debt.

57. The credit rating depended on achieving certain financial ratios. The five key credit ratios consisted of: funds flow interest coverage; pre-tax interest coverage; funds flow from operations to total obligations; total obligations to total obligations plus shareholders' equity and certain other items; and debt to total capital. Enron identified the components in its 2000 Annual Report as follows:

- *Funds flow from operations*, defined as net cash provided by operating activities (from the cash flow statement) less cash provided from decreases in working capital (or plus cash used for increases in working capital);
- *Balance Sheet Debt*, defined as short-term and long-term debt appearing on the face of the balance sheet;
- *Total Obligations*, defined as Balance Sheet Debt, plus guarantees of debt of third parties and guarantees of lease residual values, plus any excess of price risk management liabilities over price risk management assets. Guaranteed debt was reduced by the value Enron attributed to the assets supporting the underlying debt. Debt of unconsolidated equity affiliates was not included because (unless guaranteed) it was non-recourse to Enron;
- *Shareholders' Equity and certain other items*, defined as shareholders' equity, plus the mezzanine items, minority interests and

company-obligated preferred securities of subsidiaries;

- *Adjusted Earnings for credit analysis*, defined as IBIT, less gain on sale of non-merchant assets and the excess of earnings from equity method of investees over distributions from those investees, plus impairment losses; and
- *Interest Expense*, defined as interest incurred, less interest capitalized, plus estimated lease interest expense.

58. On June 11, 1991, Enron wrote to the SEC Office of Chief Accountant to inform the SEC that Enron intended to use mark to market (MTM) accounting for its gas trading business, Enron Gas Services. Under MTM accounting, assets are carried at their "fair value," based upon publicly quoted prices, or if there are none available, based upon management's estimate using the best information available to determine the fair value of the assets. Changes in values from quarter-to-quarter are recorded as gains or losses in the income statement.

59. By letter dated January 30, 1992, the SEC Chief Accountant, Walter P. Schuetze, informed Enron that, based upon Enron's representations, the SEC accounting staff would not object to Enron's use of MTM accounting for its natural gas trading activities beginning in 1992. Ultimately, MTM accounting spread throughout Enron. The seeds for financial engineering were sown in 1997, when Enron determined that it should use MTM accounting for its "merchant investments." Enron analogized what it called its "merchant

bank activities" to those of venture capital investment companies, which are permitted to use MTM accounting under GAAP. Through MTM accounting, Enron often recognized earnings long before its activities generated any cash. Analysts took notice of Enron's acceleration of earnings through MTM accounting, which led to a "quality of earnings" issue for Enron. By the end of 1999, Enron's quality of earnings problem – the gap between income and actual funds flow from operations – was a serious problem affecting Enron's liquidity.

60. As of December 31, 2000, approximately $22.8 billion of Enron's assets were accounted for using MTM accounting. The MTM accounting assets represented 35% of its $65.5 billion of total assets. A mere 5% fluctuation in value of these assets would have resulted in gain or loss of $1.1 billion, an amount greater than Enron's 2000 net income of $979 million. Without regard to valuation abuses, Enron's problem was not the use of MTM accounting. Rather, Enron's problem was its resort to financial engineering to address the effects of MTM accounting. MTM accounting is a double-edged sword: It can result in income or it can result in losses. To hide the losses, Enron began to seriously manipulate financials. For example, as discussed further below, UBS and Enron completed two transactions that had no legitimate business purposes other than to avoid the negative effects MTM could have on Enron's public financial statements and to progress UBS's scheme to optimize its Enron revenues in conflict with its obligations to its retail customers.

Ultimately, these types of financial manipulations led to one of the greatest falls in American corporate history for Enron, the loss of billions of dollars by UBS's retail customers, but no significant business disruption for UBS.

61. In the autumn of 2001, Enron made a series of financial disclosures and restatements of its financial statements pertaining in large part to certain related party transactions. These disclosures, in turn, triggered a chain of events culminating in Enron's unprecedented bankruptcy filing. In an earnings release on October 16, 2001, Kenneth Lay ("Lay") announced, among other things, that Enron was taking "after-tax non-recurring charges" of $1.01 billion in the third quarter and reduction in shareholder equity of $1.2 billion. These "non-recurring charges" resulted in a net loss for the third quarter of $618 million, compared to reported new income of $404 million for the preceding quarter and $292 million for the third quarter of 2000. Although the earnings charge consisted of several components, one component, and the entire charge to equity, related to Enron's early termination during the third quarter of certain structured finance arrangements with a "previously disclosed entity." The "previously disclosed entity" was LJM2 Co-Investment, L.P. ("LJM2"), a private investment limited partnership funded in December 1999. Andrew S. Fastow ("Fastow"), Enron's CFO, and Michael J. Kopper ("Kopper"), another Enron executive, ran LJM2.

62. Several significant events followed these disclosures. On October 24, 2001, Enron announced its

placement of Fastow on a leave of absence. On October 31, 2001, Enron announced that its Board of Directors formed a Special Investigative Committee to examine and recommend actions with respect to transactions between Enron and entities connected with related parties. Then, on November 8, 2001, Enron announced its intention to restate its financial statements for 1997 through 2000 and the first and second quarters of 2001 to reduce previously reported net income by an aggregate $586 million. Enron attributed the restatement to transactions involving three entities, one of which was LJMI, an investment partnership whose general partner was a limited partnership wholly owned by Fastow.

63. Enron filed its third quarter 10-Q, including interim financial statements, on November 19, 2001, giving effect to the previously announced "non-recurring charges" and restatement of prior financial statements. In addition, Enron reported in its third quarter 2001 balance sheet total debt under generally accepted accounting principles ("GAAP") of $12.978 billion. Also on November 19, 2001, senior Enron executives met with certain of Enron's banks, including UBS, at the Waldorf Astoria hotel in New York City. At the presentation, Jeff McMahon ("McMahon"), Enron's new CFO, identified a series of bad investments as the first cause of Enron's problems. The investments he listed were Azurix, Broadband, Elektro, Dabhol, and certain merchant investments. Enron's merchant investments were composed of the capital that it provided, generally, to energy and technology businesses seeking debt

or equity. Enron's poor investment decisions resulted in the need for cash to fund the investments and the need to avoid losses if the investments did not work. Enron was reluctant to issue equity to address its need for cash for fear of an adverse effect on its credit ratings. Enron's use of mark-to-market ("MTM") accounting accentuated the tension between cash demands and credit ratings by creating a large gap between net income and funds flow from operations. This "quality of earnings" problem made it particularly challenging for Enron to raise cash without issuing equity while maintaining its credit rating.

VII. UBS/PW AND ENRON RELATIONSHIP

64. UBS and Enron's relationship was a mutually self-serving relationship that took precedence over and conflicted with the interests of UBS's retail customers. As discussed above, PW's client base was a key component to UBS's success as a global bank. It was also a key component to UBS's Enron relationship because PW provided millions of retail investors to whom UBS could funnel Enron and Enron-related securities, effectively transferring Enron risk to the marketplace. In return, Enron provided PW with a "goldmine" in the form of a captive agreement that gave UBS the first bite at capturing Enron employee wealth to generate retail fees and income.

A. THE GOLDMINE

65. In early 1993, Rocky Val Emery began his career as a financial adviser with PW. Ultimately he was assigned to work at the PW "Heritage Branch," located at 1111 Bagby St., Houston, Texas, the energy capital of the world. As a rookie broker, he landed a client named Bill Roamy, who was an executive with Enron-owned EOG Resources. While working out at the gym, Roamy discussed with Emery the fact that Enron was putting together an "all employee" stock option program and that a number of investment firms were bidding for a contract to be administrator of the Stock Option program. Emery immediately saw the opportunity to make a great deal of money. So, he developed an original platform for providing the administrative services at PW.

66. Emery took the initiative to pitch his plan to Enron. Enron was impressed with his idea and in 1994 chose PW as the Administrator of its Enron Employee Stock Option Plans. Emery had the primary responsibility to oversee the services rendered to Enron and the Enron employees who opened accounts with PW. To render the services, Emery formed a working group within PW that became known as "The Emery Group." The Emery Group started out with approximately five brokers working on the account. That number grew to around 100 by 2001. The Emery Group provided services to PW for four years. Then, in 1998, PW and Enron entered into a written, three year contract.

67. Under the PW/Enron contract. PW was the exclusive administrator of Enron's Employee Stock Option Plans. That meant that, when an Enron employee chose to exercise stock options, the employee was required to do so through PW. Once the stock exercise was complete, the employee could either keep their money with PW or move his/her business to another firm. The Enron Contract was extremely valuable to PW. During the bidding process for the Enron Contract, the closest bidder to PW required a $200,000.00 per year fee for the administration services. PW charged Enron ***no fee*** to administer the Stock Option Plans. Instead, PW charged the employees a nominal six cents per share to exercise their options, and used the administrative services as a "loss leader" to get retail business. Its goal was to retain wealth created by the Enron employees as they exercised their stock options.

68. To retain the wealth, PW put a business model into place. Each time an Enron employee received a grant of stock options, PW sent that employee a packet. The packet included information about the grant, including the grant number, the number of shares, the exercise price, the vesting dates, how to exercise, the processes, tax treatments, and any other information the employee needed to know to exercise the options. PW included information about its free services to Enron employees who chose to open PW accounts. Those services included a free Resource Management Account (RMA) ($85.00 per year value), free stock option analysis and free financial plans (hundreds of dollars in value). Also included in the packet

was a new account form for the Enron employees to fill out and return.

69. By 1999, there were approximately 45,000 to 50,000 Enron employee participants in the Employee Stock Option Plans. Twenty-five percent of them would fill out the information and return the account forms immediately, while another 25% would trickle in over a few months. Another 25% would open accounts when they exercised their options.

70. Once PW received the new account application form, it would open an account for the Enron employee, regardless of whether that employee actually invested any money with the firm. Once an Enron employee actually exercised any options, PW would open its flagship account, the RMA account, for that employee. In fact, every Enron employee who exercised stock options received a free RMA account, unless they specifically declined to open it. Through its business model, PW initially retained 25% of the Enron employee business, that number steadily grew so that, eventually, PW was capturing and retaining about 60% of the Enron employee wealth created when they exercised their stock options.

71. If an Enron employee wanted to exercise options, he could contact PW by telephone. If the Enron employee who called was (1) an insider or (2) had options worth $500,000.00 or more, that person was transferred specifically to Rocky Emery. Otherwise, the call would be forwarded, on a rotating basis, to the brokers who worked within the Emery group. Once the

PW broker answered the phone, he would immediately offer the Enron employee a free "financial plan." This was extremely important because, in order for a PW broker to get an Enron employee account assigned to him, he had to complete a financial plan for the potential client. Thus, virtually every Enron employee who opened an account with UBS received a financial plan and, therefore, became an advisory client of UBS under the Investment Advisors Act.

72. The money flow from Enron employees was so lucrative that one Emery Group broker described it as "like shooting fish in a barrel." Another trainee, who was still doing his initial training in Weehawkin, NJ, left his training session with a $350,000.00 account simply from responding to an inquiry from an Enron employee. By the year 2000, the Heritage branch was ranked number two in the entire country with $50 million in earnings. Of that $50 million, $14 million was created by Rocky Emery alone, not including his 100 brokers who also serviced the Enron Stock Option Plan account. PW received 65% to 70% of the money generated by Emery and the other brokers working the Enron account. Thus, the Enron Stock Option Plan was very profitable to PW, and thus very valuable to keep.

B. THE PRICE

73. Nothing comes free. Enron's good graces were no exception. PW understood that keeping its sweetheart deal meant keeping Enron happy.

1. Secret Agreements

74. To do so, PW instituted internal policies regarding communications about Enron. For example, PW had a secret "gentleman's agreement" with Enron regarding the communications that would occur between PW financial advisors and their Enron employee/ex-employee clients. The "gentlemen's agreement" prohibited PW financial advisors from (1) advising their clients to sell Enron stock; (2) advising their clients to exercise Enron options; and (3) saying anything about Enron that might be considered to be negative. PW advisors were allowed to generally advise their Enron employee clients to diversify. Thus, in flagrant disregard of the NASD rules regarding communication with clients, PW required its financial advisors to speak with clients in code language where they intended "diversify" to mean "sell," hoping that the clients could decipher the message. Further, PW hid the "gentleman's agreement" from their clients, never revealing that the communications between them were limited or that full disclosure would not be had.

2. Muddy Communications

75. Further, PW financial advisors were required to send mixed signals to their clients as a matter of policy. Anytime a PW client asked his financial advisor about Enron, the financial advisor was required to provide the client with UBS research analyst Ron Barone's ("Barone") "Strong Buy" rating on the stock. The financial advisors could then advise the client to

"diversify" if the client was heavily concentrated in Enron holdings. Thus, the client was faced with a "diversification" recommendation simultaneous with what UBS financial advisors understood (including Mark Sutton, the President of PW private Client Group) to be a "buy" recommendation. This practice was another flagrant violation of the NASD rules regarding misleading communications.

76. The UBS equity research analyst, Barone, on the other hand, intended to give Enron a "Strong Buy" rating, not a recommendation. Barone expected that, when the PW brokers received his "Strong Buy" rating, that they would read the Note, understand the Note and, if the stock was appropriate for their clients, discuss same with the client. He never intended that his Note be interpreted as a "buy" recommendation that was even appropriate for PW retail account holders. This information was never revealed to the PW clients.

3. See No Evil – Ignore The Obvious

77. While Enron stock value reached its all time high in January, 2001, trouble loomed on the horizon. It was a trouble of which PW as well aware. Many, many of the high level executives at Enron maintained accounts at PW and were personal clients of Rocky Emery. In the mid-summer of 2000, a sudden firestorm of selling Enron stocks began within the ranks of the upper level executives at Enron:

JULY, 2000

Employee	Date	No. Shares	Closing Price	Est. Value
John Baxter	17	2,064	72.4375	149,511.00
Total		**2,064**		**$149,511.00**

AUGUST, 2000

Employee	Date	No. Shares	Closing Price	Est. Value
Ken Harrison	31	350,000	84.8750	29,706,250.00
Stanley Horton	31	95,000	84.8750	8,063,125.00
Mark Koenig	31	38,385	84.8750	3,257,926.88
Total		**483,385**		**$41,027,301.88**
Running Total		**485,449**		**$41,027,301.88**

SEPTEMBER, 2000

Employee	Date	No. Shares	Closing Price	Est. Value
Kenneth Lay	1	75,000	85.3125	6,398,437.50
Cindy Olson	1	16,380	85.3125	1,397,418.75
Jeffrey Skilling	5	86,441	86.0000	7,433,926.00
Kenneth Rice	5	124,102	86.0000	10,672,772.00
Mark Frevert	18	300,000	89.4375	26,831,250.00
Stanley Horton	18	20,000	89.4375	1,788,750.00
Ken Harrison	21	250,000	80.6250	20,156,250.00
Joseph Sutton	22	50,000	82.8750	4,143,750.00
Joseph Sutton	25	150,000	84.4375	12,665,625.00
Joseph Sutton	26	15,000	86.6875	1,285,312.50
Total		**1,086,923**		**$92,773,491.75**
Running Total		**1,572,372**		**$133,950,304.63**

OCTOBER, 2000

Employee	Date	No. Shares	Closing Price	Est. Value
Richard Causey	2	80,753	86.4375	6,980,087.44
Stanley Horton	2	20,002	86.4375	1,728,922.88
Joseph Sutton	2	15,000	86.4375	1,296,562.50
Joseph Sutton	2	15,000	86.4375	1,296,562.50
Total		**130,755**		**$11,302,135.32**
Running Total		**1,703,127**		**$145,252,439.95**

NOVEMBER, 2000

Employee	Date	No. Shares	Closing Price	Est. Value
Andrew Fastow	3	24,196	77.3750	1,872,165.50
John Baxter	6	31,250	81.5625	2,548,828.13
Norman Blake, Jr.	6	21,200	81.5625	1,729,125.00
Kenneth Lay	6	250,108	81.5625	20,399,433.75
Jeffrey Skilling	6	126,068	81.5625	10,282,421.325
Jeffrey Skilling	6	12,602	81.5625	1,027,850.63 (Schwab)
Andrew Fastow	13	27,884	79.4375	2,215,035.25
Mark Metts	13	17,711	79.4375	1,406,917.56
Jeffrey Skilling	17	130,000	81.5000	1,406,917.56
Total		**641,019**		**$52,076,777.07**
Running Total		**2,344,146**		**$197,329,217.02**

DECEMBER, 2000

Employee	Date	No. Shares	Closing Price	Est. Value
Cindy Olson	15	7,698	77.5625	597,076.13
Kenneth Rice	22	100,000	81.1875	8,118,750.00
Cindy Olson	27	24,441	82.8125	2,024,020.31
Total		**132,139**		**$10,739,846.44**
Running Total		**2,476,285**		**$208,069,063.46**

JANUARY, 2001

Employee	Date	No. Shares	Closing Price	Est. Value
James Derrick, Jr.	2	30,770	79.8750	2,457,753.75
Stanley Horton	2	25,000	79.8750	1,996,875.00
John Baxter	5	179,095	71.3750	12,782,905.63
Richard Buy	5	40,123	71.3750	2,863,779.13
Kenneth Rice	8	790,090	71.2500	56,293,912.50
Kenneth Rice	26	790,090	82.0000	64,787,380.00
Richard Buy	29	7,511	80.7700	606,663.47
Total		**1,862,679**		**$141,789,269.48**
Running Total		**4,338,964**		**$349,858,332.94**

FEBRUARY, 2001

Employee	**Date**	**No. Shares**	**Closing Price**	**Est. Value**
Cindy Olson	1	13,409	78.7900	1,056,495.11
John Baxter	5	12,500	81.8100	1,022,625.00
Stanley Horton	5	25,000	81.8100	2,045,250.00
Steven Kean	5	77,822	81.8100	6,366,617.82
Kenneth Lay	5	183,000	81.8100	14,971,230.00
Greg Vignos	12	1,043	79.8000	83,231.40 (Merrill)
Kenneth Rice	20	400,000	75.0900	30,036,000.00
Jeffrey Skilling	20	130,000	75.0900	9,761,700.00
Total		**842,774**		**$65,343,149.33**
Running Total		**5,181,738**		**$415,201,482.27**

MARCH, 2001

Employee	**Date**	**No. Shares**	**Closing Price**	**Est. Value**
Richard Buy	7	14,254	70.0000	997,780.00
Stanley Horton	12	13,334	61.2700	816,974.18
Cindy Olson	15	6,915	66.5300	460,054.95
Total		**34,503**		**$2,274,809.13**
Running Total		**5,216,241**		**$417,476,291.40**

MAY, 2001

Employee	Date	No. Shares	Closing Price	Est. Value
Kenneth Lay	3	224,000	58.3500	13,070,400.00
Robert Jaedicke	7	8,000	58.0400	464,320.00
Mark Koenig	7	21,590	58.0400	1,253,083.60
Charles Lemaistre	14	8,000	58.7500	470,000.00
Richard Causey	18	482	54.9000	26,461.80
Stanley Horton	18	2,028	54.9000	1,099,537.20
Jeffrey Skilling	21	140,000	54.9900	7,698,600.00
Lou Pai	24	300,000	54.1600	16,248,000.00
Lou Pai	29	90,000	53.0500	4,774,500.00
Lou Pai	29	160,000	53.0500	8,488,000.00
Total		**972,100**		**$53,592,902.60**
Running Total		**6,188,341**		**$471,069,194.00**

JUNE, 2001

Employee	Date	No. Shares	Closing Price	Est. Value
Lou Pai	1	300,000	53.0400	15,912,000.00
Stanley Horton	4	50,000	54.5400	2,727,000.00
James Derrick, Jr.	8	160,000	51.1300	8,180,800.00
Lou Pai	8	32,811	51.1300	1,677,626.43 (Chase)
Lou Pai	8	22,818	51.1300	1,166,684.34
Lou Pai	11	6,086	51.0000	310,386.00 (Chase)
Total		**571,715**		**$29,974,496.77**
Running Total		**6,760,056**		**$501,043,690.77**

JULY, 2001

Employee	Date	No. Shares	Closing Price	Est. Value
Kenneth Rice	19	385,966	49.0800	18,943,211.28
Total		**385,966**		**$18,943,211.28**
Running Total		**7,146,022**		**$519,986,902.05**

AUGUST, 2001

Employee	Date	No. Shares	Closing Price	Est. Value
Kenneth Rice	6	19,133	44.5000	851,4184.50
Total		**19,133**		**$851,4184.50**
TOTAL		**7,165,155**		**$520,838,320.55**

Thus, within 13 months time, 21 insiders alone sold off more than one half of a billion dollars in Enron stock, generating $520,838,320.55 in wealth and hundreds of thousands of dollars in sales fees alone (at $.06 per share) for PW.

4. Speak No Evil – Keep Your Mouth Shut

78. Insider sales of this magnitude waves a big red flag for anyone watching. Nevertheless, PW closed its eyes to the goings on, and focused on keeping the rank and file invested in Enron securities. PW was so resolute that, even when dissent arose from within its ranks, PW moved immediately to squelch it. Enron would not tolerate adverse statements about the company's stock. In the summer of 2000, David Loftus, in management with PW, was traveling and discussing the market with another passenger on the plane. They

discussed Enron. Loftis commented on some issues regarding Enron's business decisions. Within one week, he was called on the carpet at PW, and instructed that he was not to say anything negative about Enron.

79. Another PW broker, Chung Wu ("Wu") (discussed further below), in the fall of 1999, heard on the Dow Jones news wire that Enron was contemplating the sale of all overseas assets. In a telephone conversation with a client, who was also an Enron employee, he mentioned that the possible sale of such assets may not be a good sign. A few days later, Wu was approached by Ken Logsdon, another broker and member of the Emery Group. The Emery Group had an elite section of about ten "lieutenants" who were Rocky Emery's "right hand men." Ken Logsdon was one of them. Logsdon told Wu not to relay information regarding Enron to Enron employees. Logsdon went on to tell Wu that Enron had a list of brokers who had given their employees adverse information, and that Wu's name was on it. Logsdon even admitted that he was on the "sanctioned broker" list. He further told Wu that providing unfavorable information regarding Enron, to Enron employees, would "displease Enron management."

80. Pat Mendenhall, the Heritage Branch Manager, Rocky Emery and Willie Finnigan, the Heritage Branch Sales Manager, told brokers in the branch, on numerous occasions, that if they disseminated any adverse information about Enron to the Enron employees, they would be reprimanded, sanctioned, yanked from the Enron account, or even terminated. Every

time someone "screwed up," the brokers were told about the specific incident and the person involved was identified. They were told flatly: If you "piss off" Enron, "you're done." The overriding idea in the branch, regarding Enron, was simply: "Don't bite the hand that feeds you."

81. In July, 2001, Craig Ellis joined PW, in the Heritage branch, as a consultant to help the sales force with various investments. During a sales meeting, in response to a question regarding Enron, Ellis characterized the company as "cook the books" Enron. Again, Ken Logsdon took action and immediately complained to Patrick Mendenhall, who silenced Ellis. This secret policy was taken to its extreme in an incident involving PW broker Chung Wu. The incident, though one cog in the wheel, is a perfect example of the control that Enron exerted over PW and the lengths to which PW would go to serve its master.

5. Silence The Rogue

82. For twenty years, Chung Wu operated four Chinese restaurants in the Houston area. While operating the restaurants, he attended the University of Houston and obtained his MBA in finance. Wu chose to leave the restaurant business and embark upon a second career as an investment broker. He worked for a short period of time at Morgan Stanley. Ultimately, he joined PW, at the Heritage branch, where he worked from April 21, 1999 until he was terminated on August 21, 2001.

83. Wu was assigned to work with the Emory Group at PW. As such, his client base was comprised predominantly of Enron employees and former employees who had chosen to open an account with PW for the purpose of exercising their Enron stock options. He further realized that most of his clients were heavily concentrated in Enron stock and unexercised stock options.

84. UBS's position on Enron made it very difficult for Financial Advisors to do their job. They seemed to constantly walk the tight rope of balancing their clients' interests with PW's directives. One slip of the tongue could ruin a career. Even so, Wu realized that his clients, as a result of their employment with Enron, had a significant over-concentration in Enron stock through their retirement accounts and stock option holdings. He further realized that such over-concentration was a potentially dangerous situation. Thus, Wu started to watch Enron closely in December, 2000.

85. In addition to the over-concentration issues facing his clients, Wu watched Enron closely because he believed the expectations for the stock were overly optimistic (UBS maintained a "Strong Buy" recommendation on Enron stock constantly through the end of November, 2001). As a Financial Advisor, Wu could not take a contrary position on Enron unless he did his own due diligence and maintained copies of the information upon which he based his opinions and recommendations. Thus, he did his homework meticulously.

86. Wu created real, personal relationships with his clients. He communicated with them often and had a continually growing list of customers who wished to be updated, particularly via e-mail, with Wu's information regarding Enron Stock. From December, 2000 through August, 2001, Chung Wu spent a significant amount of time, after hours, considering the value of Enron stock by reviewing public filings, and comparing Enron's P/E reports to those of similarly situated, or peer, companies.

87. Wu performed his review of Enron, through publically [sic] available documents, for eight months, and began sending e-mails to his clients regarding Enron stock, and attaching P/E ratio charts. By March 2001, Wu corresponded with his clients to discuss Enron's "worsening condition." During the same time period, and despite the PW/UBS "Strong Buy" on Enron stock, from December, 2000 through March, 2001, PW sold over $65,000,000 worth of Enron common stock for four top Enron executives alone: Ken Lay ($20,604,300), Jeff Skilling ($12,382,100), Ken Rice ($20,604,300) and Cliff Baxter ($13,694,751).

88. On May 14, 2001, Wu sent another e-mail to his clients, including the husband of Representative Plaintiff, Janice Schuette, regarding his opinion on the Enron stock. Wu provided an in depth review of Enron's P/E ratio, the problems with its India plant and Enron's silence toward its worsening financial condition. In fact, Wu stated "Enron offers no information on financial impacts [sic] on pulling out of India's projects . . . EBS still has a loss in Q.1, 2001 and its market

value has gone down significantly. . . .". For a period of almost 5 1/2 months, Wu corresponded with his clients, keeping them abreast of his growing concerns about Enron's worsening financial condition.

89. Meanwhile, PW was continuing to conduct a massive stock sell-off for highly placed Enron executives. In April and May 2001, UBS unloaded another $56,000,000 of Enron stock for Lay ($4,144,380), Skilling ($5,216,400), Ken Rice ($1,096,465) and Lou Pai ($45,833,700). Throughout this massive sell off, Wu continued to review Enron's public disclosure documents on behalf of his clients. Despite PW's constant refrain of UBS's "Strong Buy" on Enron stock.

90. On June 15, 2001, Wu e-mailed his clients a new P/E ratio chart comparing Enron to other energy companies. On July 17, 2001, he sent his clients an e-mail attaching UBS analyst Ron Barone's newest analysis of Enron stock. On August 15, 2001, Wu sent his clients an e-mail discussing Enron's institutional selling. Each correspondence sent was transmitted to the same 73 or so clients.

91. In June and July of 2001, UBS continued to facilitate the executives' massive liquidation of Enron stock. Ken Lay ($6,808,155), Jeff Skilling ($1,034,200), Ken Rice ($18,993,991) and Lou Pai ($3,215,605) sold a combined $30,000,000 in stock. Thus, in just eight months, while maintaining a "Strong Buy" position and touting Enron stock to Enron rank and file employees and the Class Members, PW liquidated over

$150,000,000 worth of Enron stock for five top Enron executives.

92. As the months continued and Wu kept analyzing Enron's published records, Wu became very suspect of PW's "Strong Buy" rating on Enron stock. In August, 2001, Wu reviewed Enron's newly issued 10K and 10Q. He had been following press releases regarding Enron and its divestment of assets, loss of management personnel, etc. The information he gathered led him to believe that Enron's financial situation was deteriorating. On August 20, 2001, Chung Wu worked late. He reviewed UBS's most recent "Strong Buy" Research Note, Enron's most recent SEC filings, Enron's 12-31-00 10K, its April, 2001 10Q, and Enron's newly issued second quarter 10Q. His concerns about Enron's worsening condition culminated in his last correspondence to his clients, sent on August 21, 2001, at 12:20 a.m.:

> Financial situation is deteriorating in Enron and price drops another $7.00 from last P/E report while most of the others stay the same or improve . . . I would advise you to take some money off the table even at this point. For those who still has *[sic]* problems separating themselves from the stocks or vested options, please think about selling 'Call' against the long positions or selling 'Uncovered Call' against the vested options with the consideration of having sufficient assets to satisfy the maintenance requirement . . . Time is value and waiting to make a decision would cost you a fortune.

His warning was to no avail. In fact, it was his undoing, causing a ripple effect and resulting in his immediate termination from PW.

93. Jeff Donahue ("Donahue"), Enron's Senior Vice President of Corporate Development, was a PW retail client whose account was assigned to Wu in the course of his work during this same time period, Donahue frequently met and communicated with UBS's relationship banker, Jim Hunt, regarding Enron's need to sell and/or leverage all of its international assets. Donahue, who had requested to be on Wu's e-mail list, received Wu's e-mail directly on August 21, 2001. Upon receipt of the e-mail, Donahue sprang into action.

94. At 6:12 a.m. on August 21, 2001, Donahue forwarded Wu's e-mail to Enron employees Kelly Boots and Tim DeSpain, expressing his desire to have Wu terminated. Donahue then forwarded Wu's e-mail to Hunt. Hunt, in turn, forwarded Donahue's e-mail to Barone. Hunt explained how the e-mail was brought to his attention by "an SVP of Enron" who stated "that this PW guy should be fired[.]" Hunt asked Barone to whom he should direct the e-mail. Barone told Hunt to contact Lee Feinberg, the head of UBS's stock option plan business. Hunt then thanked Donahue for bringing the situation to his attention and assured him that his request had been delivered to "the appropriate person."

95. However, Donahue/Hunt/Barone were not the only Enron/UBS people on Wu's trail. Joan Amero was one of Wu's clients who worked for Enron-owned

PGE in Portland, Oregon. Amero forwarded the e-mail to her boss, Joyce Bell ("Bell"), who worked in PGE's Human Resources department. Joyce Bell sent a copy to her boss, Arleen Barnett ("Barnett"), asking what Barnett thought of the advice. Ultimately Bell sent a copy of the e-mail to her counterparts in Enron's Human Resources division, Aaron Brown ("Brown") and Pam Butler, both mid-level managers in the Employee Compensation department at Enron.

96. After reading the e-mail, Brown immediately contacted his superior, Mary Joyce ("Joyce"). Joyce was the Senior Vice President of Executive Compensation at Enron. She was a signatory to subsequent PW/Enron agreements regarding the Stock Option Administration Contract. She was a private client of Rocky Emery who, by August 21, 2001, had liquidated all of her Enron holdings. She was the person with whom PW would negotiate to renew the Stock Option Administration Contract, which expired in a scant two months (October, 2001). Finally, PW knew that its major competition for the stock option contract was none other than Rocky Emery himself who had, by mid-July, 2001, left PW and moved his operations to First Union/Wachovia.

97. Joyce was not one to mince words. She immediately called Mendenhall. According to UBS's response to a Congressional inquiry into the matter:

> Mary Joyce and Aaron Brown, the Enron personnel responsible for administering Enron's stock option plan, contacted PaineWebber on August 21, 2001, to bring Mr. Wu's e-mail to the Firm's attention. Ms. Joyce expressed her

extreme displeasure that the e-mail had been sent to dozens of Enron employees, requested that the Firm address the situation promptly, and in words or tone expressed her view that strong disciplinary action be taken.

98. After his conversation with Joyce, Mendenhall called Wu on his extension, around 1:08 p.m. CST, to have the following conversation:

CW: Yes, Pat?

PM: Are you sending out an e-mail to Enron employees telling them that the financials are deteriorating and you recommend taking some stock off the table?

CW: I did, yeah, this morning.

PM: Why would you do that? You can't do that!

CW: Okay, I'm sorry.

PM: Chung, you can't, how many did you send it to?

CW: Um, 30, 30 or 40 of them.

PM: Oh Jesus Christ Chung!! What are you thinking!? You can't do that!! Enron has just crawled four feet up my ass! You cannot recommend to buy or sell that stock! You know that!

CW: Okay, I'm sorry, I didn't realize that . . .

PM: Get me a list of everyone you sent it to . . .

CW: Okay . . .

PM: Chung, this is. . . .

CW: I . . .

PM: Who approved the e-mail?

CW: Nobody, I was working real late last night and I sent it out around 12:30 at nighttime . . . and . . . uh . . .

PM: From here?

CW: Yes, from here, yes . . . I was studying 10Q . . .

PM: Chung, you are not an analyst . . . you cannot make a Goddamned recommendation on Enron stock! You know that! I told you 50 times! I told everybody! You don't make a recommendation on Enron!

CW: Um . . .

PM: This has gotten to the head guy at Enron now, they are calling me . . .

CW: I'm so sorry, I'm just . . .

PM: I need a list of who you sent it to, right now.

CW: Okay . . . alright . . . I'll bring it up to you . . .

99. Wu went to Mendenhall's office and gave him a copy of his e-mail. According to Wu, Mendenhall reviewed the document and said, "Chung, you are right, you are right, but why did you put it in writing? You

just don't put it in writing. Mary Joyce is so pissed she's throwing things in her office." Mendenhall then obtained a copy of Wu's distribution list, told Wu that he might be taken off the "Enron project," and instructed Wu to go back to his office and wait.

100. Brown followed up the call to Mendenhall with e-mails. The first, was sent to Kurt Grunsfeld and copied to Mendenhall. Grunsfeld was employed with UBS in the retail brokerage home office in Weehawken, New Jersey. He assisted the Heritage Branch regarding the administration of the Enron stock option plan contract. Brown's e-mail said, "*please handle this situation. I've also forwarded to Pat Mendenhall. This is extremely disturbing to me*." The second e-mail, again sent to Grunsfeld and copied to Mendenhall, was sent less than five minutes later and further stated, "*Several people at PGE received this. I want to see the full distribution list*." Within minutes, in violation of NASD and PW confidentiality rules, PW assistant branch manager Pattie Trieglaff faxed a copy of the distribution list to Brown.

101. Grunsfeld then e-mailed Bobby Fisher ("Fisher"), the PW vice president within the Heritage Branch who assumed responsibility for administering the Enron Stock Option Plan Contract after Rocky Emery left PW, attaching Wu's e-mail and stating, "*Please read. I am calling you now to discuss*." Sometime thereafter, Mendenhall and UBS in-house counsel Peter Bado called UBS's human resources department concerning the situation. The conversation was memorialized in UBS's human resources records:

> Pat Mendenhall called. Sent E-mail to around 70 clients about ENRON saying that the stock is not doing well. He also sent out a chart that was not approved. **This company is saying they will drop UBS PaineWebber now.** Pat spoke to Peter Bado who told Pat *******REDACTED******** Pat would like to terminate trainee today. **********
>
> 3:30 w/Bado and BoM. **BoM had already terminated due to client Enron request.**

102. Along with agreeing to terminate Wu, PW agreed to prepare and disseminate a retraction correspondence to the recipients of Wu's e-mail. At 1:27 p.m. CST, Barnett at PGE received a telephone call or a message from Brown regarding Wu. She sent the following e-mail to Bell, regarding the content of the information she received from Brown:

> Aaron Brown anticipates that Wu Chang [sic] will be terminated shortly. Since his e-mail does not mirror Pain-Webber's official statement in regard to Enron stock, it was very likely unauthorized and Enron is quite upset. Enron will be requesting the list of e-mail recipients and a follow-up is being considered.

Within less than thirty minutes of his initial conversation with Mendenhall, Brown was already reporting to PGE employees that Wu would be terminated from his job.

103. About 2:15 p.m., Willie Finnegin ("Finnegin"), the Sales Manager for the Heritage Branch, called Wu into his office. Finnegin told Wu that Barone

had been on vacation that day but that he had to return from vacation and go into his office to "take care of your shit." Finnegin said that there was just "too much heat" over the e-mail and that PW had to terminate Wu.

104. Around 3:30 CST, Mendenhall sent the following e-mail to Joyce:

> I apologize for how I handled the conversation. I was and still am so upset and frustrated at the e-mail, that I still haven't calmed down. I should have known that if I was this frustrated, that you, as our client, were more so. It is not my intent to hide behind anyone. I take full responsibility and will remedy the situation. We will get your approval prior to any retraction being sent. The Financial Advisor has been terminated. Once again I'm sorry. Thanks. Pat

105. Meanwhile, Fisher had been busy obtaining and delivering the "retraction" letter that would be sent to Wu's clients. After delivering the letter to Enron to review prior to PW's sending it to Wu's clients, Fisher discussed the issues with his business partner Alan Klenke who, despite being out of town, knew about the day's events:

AK: What's going on?

BF: Uh . . . just got back from . . . uh . . . the uh . . . whach-a-ma-call-it . . . Enron . . . delivering the uh . . .

AK: Oh yeah, how'd that go?

BF: Uh, fair. Fair.

AK: Who'd you meet with over there?

BF: Uh, Aaron. I bumped right into, guess who?

AK: Mary Joyce?

BF: Yeh . . . so . . . that's a thrill a minute.

AK: What did she say?

BF: Um . . . I don't think she put together who I was until she was halfway down the hall. She was like, "Hi," and I'm like, "Hi. I just want to tell you I'm so sorry." And she was like on a beeline, and she said, "Oh, that's alright." So, like I say, I'm not sure she knew what was up, so . . .

AK: What were you delivering, an apology letter?

BF: Yeah, a retraction letter that we were supposed to have an hour prior. We told them four and I ran it over there AT five and uh you know . . .

AK: Retracting Chung's statements?

BF: Yes. Exactly. So, and then I had to figure out how to get a .pdf copy of the research report, which I did, which everyone said I couldn't do, heh heh. So, now I'm getting ready to e-mail all 80 people, the "So Sorry" list . . .

AK: The .pdf of . . .

BF: Exactly. So, anyhow, how's your day been?

(Conversation unrelated to Wu issue)

BF: Alright, I'm in the middle of trying to get this dang e-mail out to them timely.

What else, what else happened? I'm in Chung's office right now.

AK: Uh, are you really?

BF: And I ran into him on the way back from there but I was on the phone and he was with his wife or something and he just kind of waved, with a dumb look on his face. So . . .

AK: What did he say? Any reports on his . . .

BF: Nah. He's sorry. It was late and he wanted to get it out. He knew he should have got it Compliance approved, but . . . **He said, "It's factual," which it probably is but, uhm, you know, you just don't say it . . .**

AK: **Yeah, you don't do that . . .**

Fisher testified that he believed in giving "white glove" treatment to Enron. He explained that, aside from the "gentlemen's agreement," "white glove" treatment meant the following: "If he [Aaron Brown] was angry because it was raining, I would carry over an umbrella."

106. The retraction that Fisher and Kienke discussed, and that Fisher delivered to Enron on August

21, 2001, is a letter from Mendenhall, drafted by UBS's in-house counsel, with no specified addressee:

> I have just learned that former UBS PaineWebber Financial Advisor, Chung Wu, sent an e-mail dated August 21, 2001, to certain Enron employees and former Enron employees concerning Enron. Foremost, I wish to apologize for Mr. Wu's statements. To the fullest extent possible, on behalf of UBS PaineWebber, I hereby retract Mr. Wu's statements.
>
> Please be assured that the e-mail was not approved by UBS PaineWebber management and was sent in violation of UBS PaineWebber policies. Mr. Wu's statements are contrary to UBS PaineWebber's current recommendation concerning Enron stock. Specifically, UBS PaineWebber analyst Ron Barone has a strong buy recommendation on the stock. Attached for your reference is a recent copy of our latest Research Note from August 17, 2001.
>
> With Enron's approval, UBS PaineWebber will send copies of this letter to each of the Enron employees and former employees to whom Mr. Wu's e-mail was sent.
>
> Again, I sincerely apologize for Mr. Wu's actions and any inconvenience it has caused.
>
> Very truly yours,
>
> Patrick M. Mendenhall
> Senior Vice President
> Branch Manager.

107. Bernadette Etienne ("Etienne") was Brown's secretary at Enron. In discovery, Enron produced a copy of the original letter Fisher delivered to Brown. That letter had an editorial delete sign next to the small paragraph that said "With Enron's approval, UBS PaineWebber will send copies of this letter to each of the Enron employees and former employees to whom Mr. Wu's e-mail was sent." The letter had a further note on the bottom, in Etienne's handwriting, that said, "Spoke w/Bobby Fisher on 8/21 at 5:18 p.m." Etienne testified that (1) the editorial delete symbol on the letter was typical of those used by Joyce at Enron; (2) the note on the bottom of the letter is typically the way she notes any action she is instructed to take by Joyce/Brown and (3) the note regarding Fisher likely means that she spoke with him about the deletion of the paragraph because, had she been unable to reach him, she would have recorded same with her note.

108. At 6:22 p.m. CST, without ever reviewing the holdings, investment objectives, or any other information concerning those who received Wu's recommendation to sell Enron stock, Mendenhall retracted Wu's sell advice by e-mailing the text of the foregoing apology letter to Wu's clients, but with the following sentence excluded per Joyce's instruction: "With Enron's approval, UBS PaineWebber will send copies of this letter to each of the Enron employees and former employees to whom Mr. Wu's e-mail was sent." In the area where that sentence exists on the version hand delivered to Enron, Mendenhall attached the .pdf file of UBS's current research report for Enron, including

UBS's "Strong Buy" rating on the stock. The retraction worked. Mendenhall testified that not one recipient of his retraction e-mail took Wu's advice to sell their Enron securities.

109. Mendenhall also sent a copy of the retraction e-mail to Joyce. The next morning Joyce responded to Mendenhall's e-mails with an e-mail stating: "This is great. Thanks." About ten minutes later, she sent another e-mail to Mendenhall, and copied it to Brown: "Keep this e-mail and if we get any inquiries, please send this. Don't think we need to send to the HR Vps as yet. Let me know if any call."

110. Despite the fact that Joyce accomplished what she set out to do, UBS banker Jim Hunt was not through. Hunt e-mailed Donahue to inform him that the "rogue broker" had been fired and that UBS retracted Wu's e-mail, apologized, and sent out Barone's "Strong Buy recommendation piece." Further, Hunt's daily calendar from August 24, 2001 indicates a telephone conference between he and Mendenhall. After the conversation, Mendenhall sent Hunt an e-mail forwarding the retraction that UBS had already sent to Wu's clients. In turn, Hunt forwarded Mendenhall's e-mail to Donahue along with an explanation.

6. "Seal" The Deal

111. After navigating its way through another potential damaging situation with Enron, PW immediately instituted a firm, written policy to force compliance with the "gentlemen's agreement" and prevent a

similar situation from occurring in the future. Specifically, PW corporate management decreed that, with respect to stock option issuers such as Enron, PW financial advisors were prohibited from giving their retail clients any advice regarding the subject company, but rather only refer the retail clients to UBS's current research report and rating on the stock. In other words, after August 21, 2001, UBS prohibited its financial advisors from providing UBS retail clients with any information on Enron other than the official UBS position on the stock, which remained a "Strong Buy" until days before Enron's bankruptcy.

112. In fact, UBS's public "Strong Buy" rating on Enron stock never wavered, preventing UBS's financial advisors from giving any information during that period other than a "Strong Buy" recommendation. Highlighting UBS's outrageous conduct is the fact that the Chief Executive Officer of UBS's retail brokerage business, the man responsible for the corporate gag policy on UBS brokers, did not even know at the time what a "Strong Buy" rating meant. He, like the clients who received the rating, assumed "Strong Buy" meant that an investor should actually buy Enron stock. This assumption seems logical in light of the deceptive way in which PW used the term and the research notes.

7. Hindsight

113. UBS cared more about its "relationship" with Enron than it cared about anything else, including its retail customers (the putative class members

herein). A *Houston Chronicle* article stated baldly that UBS had a strong motive to please Enron.

> Once the dust settles on this announcement, we would be buyers of (Enron) at any price below $39 per share," Barone wrote on August 18, 2001. He said a "strong buy" rating was valid because the stock-price "could be approaching a bottom" as it declined into the $30s. Earlier in the year it had been above $80. Ten of the 15 major analysts who followed Enron still rated the company as a "buy" or "strong buy" as late as Nov. 8 [2001], even after word the Securities and Exchange Commission was investigating the company's practices.
>
> UBS PaineWebber may have been particularly sensitive about upsetting Enron in August for other reasons than just going against what was then seen as conventional wisdom. Just a month earlier, First Union Securities had successfully lured away Emery Financial Group, one of PaineWebber's largest teams. Emery had cornered much of Enron's stock option plan and deferred compensation work. From a casual meeting with an Enron employee at a gym seven years ago, Emery Financial and its lead partner, Rocky Emery, created what one former Enron executive described as its own fiefdom within PaineWebber. The number of prominent Enron employees Emery landed as customers and the work Emery did offering stock option services to dozens of others in the company made the operation a big breadwinner in the Houston office. Even today, Emery is the financial adviser to many top Enron

> executives, including former Chairman and CEO Ken Lay.
>
> Those guys at Emery seemed to know everything that was going on at Enron," said the former Enron executive. "Nearly all the executives did business with them, so when you'd call over there they knew who was dumping stock when.
>
> First Union is said to have paid more than $10 million for Emery and his Enron business, which is likely worth a lot less since the company's bankruptcy.[2]

114. According to an article in Registered Rep. Magazine, by Rick Weinberg and David A. Gaffen, dated May 1, 2002,

> Wu seems to have been in a classic Catch-22: PaineWebber policy, according to a document prepared for Congressman Henry Waxman by private client group head Mark Sutton, says representatives have to disclose the analyst's recommendation if their own recommendation runs counter to it . . . [T]he ramifications for all reps are extol mous as they try to feed management – and still act as financial advisors providing objective advice. "This is bad for all firms, not just for UBS," says a Merrill Lynch rep on the West Coast. "When one company does something so bad, so immoral and so unprofessional, it reflects poorly on the

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[2] Copyright 2002 Houston Chronicle, March 5, 2002 Tom Fowler article, *PaineWebber Analyst says Enron Advice Led to Firing*.

entire industry. We'll all suffer the consequences." . . . So, what's a broker to do? One PaineWebber producer has decided to stop using his firm's research, and instead spends over $10,000 a year on independent analysis. A colleague is talking about leaving the firm and taking his clients with him. PaineWebber says reps desiring to go against an analyst rating need approval, and would have to discuss the matter with superiors. But the ability to make a strong suggestion for clients is limited – one is unable to provide additional information supporting one's beliefs, and in the case of Enron, forced to disclose the "strong buy" recommendation analyst Ron Barone had on the stock, though this recommendation may not be suitable for all clients.

The way this firm is now, if you get a strong buy on a stock and the firm wants you to load up on it, you have brokers laughing their heads off," says a PaineWebber rep. "I've had clients ask me the last few days, "Why do you want me to buy this? Does it have a strong buy?" The clients know it's a joke, too. The research department has no credibility whatsoever among brokers. [emphasis added]

The article continues: [E]specially when considering the depth of the relationship between Enron and PaineWebber, which administered stock options for Enron and had an underwriting relationship with the Houston-based bankruptcy.

> "We will get your approval prior to any retraction being sent," says an e-mail from Houston branch manager Pat Mendenhall to Enron representatives . . . What this means, then, is that a broker has a hard time contradicting an analyst report unless he does it in a clandestine manner . . . Of course, Wu called it like he saw it, and was fired. The PaineWebber rep who's considering leaving, figuring it's one way to avoid Wu's fate, says, "You tell the client, "I've tried to look after your best interests. Obviously, the firms aren't letting me do that. You've been a client for "X" years. You might as well go with me."[3]

8. Meanwhile, Back At The Bank

115. Wu's termination serves to highlight several important aspects of Plaintiffs' claims. For example, Wu's termination clearly shows UBS's coordination of its entire structure to accomplish a common goal. Additionally, Wu's termination clearly shows the control Enron was able to exert over UBS, even during a period of time when UBS had its hands full moving heaven and earth to rid itself of liability and exposure to Enron. Most importantly, Wu's termination clearly shows UBS's subordination of its retail clients' interests to its own and those of Enron. On November 29, 2001, the day after UBS finally downgraded its rating on Enron from "Strong Buy" to "Hold," UBS's global

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[3] Registered Rep Magazine. May 1, 2002, *Fighting Your Firm's Research Machine*, by Rick Weinberg and David A. Gaffen.

senior credit officer commented that the press regarding the downgrade was embarrassing. It should be especially embarrassing to UBS in light of the fact that by the first week of September, UBS had already begun its review to downgrade Enron's internal rating and by October, 2001 had concluded such a downgrade would in fact occur. However, when one of UBS's Financial Advisors shared a similar opinion regarding Enron with UBS's retail clients, UBS fired him.

VIII. BANKING AS SOURCE OF UBS KNOWLEDGE

116. Despite its claims of innocence regarding Enron's financial chicanery, UBS has a long standing banking history with Enron. In the course of time, UBS obtained a great deal of information about Enron's financial situation and the liquidity/bankruptcy risks posed by the manner in which Enron funded its operations. Unlike the position UBS took when dealing with its retail customers, UBS used its superior knowledge about Enron's financial situation to limit its exposure to Enron. The depth of UBS's knowledge about Enron and its financials is proven in part through various Enron deals in which UBS played key roles. These deals include (a) 1999 and 2000 Amendments of existing Equity Forward Contracts; (b) UBS participation in the Osprey and Yosemite IV financial structures; and (c) UBS's participation in the Enron E-Next Generation loan.

117. It is critical to remember the role of these transactions in the context of Plaintiffs' claim under Section 10(b). As explained above, Plaintiffs' securities fraud claim relies upon UBS's knowledge of Enron's financial manipulations and the associated risks (acquired from UBS's active participation in the manipulations in order to progress UBS's purpose of maximizing its Enron-derived income at the expense and in conflict with its retail customers), UBS's duty to disclose this knowledge to its retail clients, and UBS's failure to disclose this knowledge to its retail clients. The transactions identified below serve to establish, in part, the knowledge of UBS in relation to Enron's financial situation during the 1934 Act Class Period, as well as UBS's overall deceptive purpose and effect on its retail clients.

118. In the context of Section 10(b), the Supreme Court specifically categorizes the nondisclosure of material information in violation of a duty to disclose as a "deceptive" act prohibited by Section 10(b). *In re Enron Corp. Sec. Litig.*, 235 F. Supp.2d 549, 569 n. 9 (citing *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 470 (1977)). A failure to disclose under these circumstances deceives those to whom a duty of disclosure is owed because the silence communicates a fiction, i.e., that all known material information has been disclosed. In other words, if UBS possessed material information regarding Enron's financial situation that it failed to disclose to its retail clients, then UBS committed a primary violation of Rule 10b-5. A fundamental issue, then, is whether UBS possessed material information

regarding Enron's financial situation during the 1934 Act Class Period. The transactions discussed below specifically relate to this issue, not whether UBS's involvement in a particular transaction by itself constitutes a primary violation of Rule 10b-5; although it is clear that UBS's involvement in these transactions also constitutes a primary violation of Rule 10b-5, in and of itself, because its participation created a false appearance of fact in furtherance of hiding Enron's financial position and UBS actively participated in order to further its scheme of maximizing its Enron-derived income at the expense of and in conflict with its retail clients' interests who purchased, acquired, and/or held Enron securities through UBS.

A. EQUITY FORWARD AMENDMENTS

119. Prior to the merger between SBC and Union Bank, both banks entered into forward contracts with Enron on Enron's own stocks (herein called "SBC Forward Contracts" and "Union Bank Forward Contracts," respectively, or "Equity Forward Contracts," collectively). The Equity Forward Contracts were financial instruments whereby, on a specific future date (the "Settlement Date"), Enron was contractually obligated to purchase from UBS, and UBS was contractually obligated to deliver to Enron, a specific number of Enron shares at a specific price (the "Forward Price"). The Equity Forward Contracts were derivative financial instruments in that the value of the contracts, but not their terms, fluctuated with the market price of Enron stock. If at any given time the market price of Enron

stock was greater than the Forward Price of the Equity Forward Contracts, the contracts were "in the money" for Enron (i.e., UBS owed Enron value in excess of the value Enron owed UBS). If at any given time the market price of Enron stock was less than the Forward Price of the Equity Forward Contracts, the contracts were "out of the money" for Enron (i.e., Enron owed UBS value in excess of the value UBS owed Enron).

120. The Equity Forward Contracts could be settled in one of two ways. The first settlement option was to "physically settle" the contracts, meaning that UBS would deliver shares to Enron and Enron would deliver cash to UBS. Another option was to "net share settle" the contracts. If a contract was "net share settled" at a time when the contract was "in the money" for Enron, UBS would deliver to Enron the amount of shares necessary at the current market price as equaled the net value of the contract to Enron.[4] If the contract was "out of the money" for Enron at the time it was "net share settled," Enron would deliver to UBS the amount of shares necessary at the current market price as equaled the net liability of Enron under the contract.

121. In 1999 and again in 2000, UBS used these Equity Forward Contracts to complete what in substance were two undocumented and undisclosed loans to Enron. All the traditional components of a loan were present. The basic elements of the transaction were the

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[4] If the Equity Forward Contracts were "net share settled," the equation would also take into account an underwriter discount. This discount is ignored for ease of explanation.

transfer from UBS of value in the form of Enron common stock. In consideration for the stock, Enron promised to pay UBS (or forego payments from UBS) in the future a certain value and reflected that promise in the amendments to the Equity Forward Contracts. Finally, the new value Enron promised to pay (or forego) for the stock was subject to an interest component, again reflected in the amendments to the Equity Forward Contracts. Thus, UBS and Enron effected two true loans, but documented the transactions in a manner designed to avoid their characterization as loans.

122. The purpose of these undocumented and undisclosed loans, in turn, was to support manufactured hedge transactions between Enron and two related party entities, which Enron used improperly to manage its income. UBS entered into these loan transactions knowing each amendment of the Equity Forward Contracts would have a double impact on Enron's financial statements. First, the undocumented loans from UBS were not reported as debt. Second, the manufactured hedge positions were used to preserve MTM income by negating the possibility of losses in connection with those assets. These two UBS transactions alone kept in excess of $260,000,000 in debt from appearing on Enron's balance sheet and provided the means by which net losses associated with merchant investments remained off of Enron's income statement.

123. In order to achieve their goals, UBS and Enron had to manipulate the transactions so that they appeared to be something other than what they truly were: Loans. So, UBS and Enron created deals that

employed form-over-substance structures for the purpose of manufacturing a basis for the manner in which the deals were accounted for on Enron's books. However, the form-over-substance structure fails in the final analysis because both the substance of the transaction and the assumptions underlying the manufactured form defeat it. Additionally, in order to ensure that neither recognized the transactions as a taxable event, UBS and Enron developed a totally, factually inconsistent "alibi" position regarding what the transactions were in terms of "economic substance."

1. 1999 Amendment

124. After the merger of SBC and Union Bank, the Equity Forward Contracts covered 7,803,073 shares of Enron stock with Forward Prices of approximately $44.00 per share. In May of 1999, Enron stock was trading around $74.00, thus the Equity Forward Contracts were "in the money" to Enron in excess of $200 million. To fulfill its obligations under the contract, UBS had purchased shares of Enron stock as a "hedge" to transfer to Enron in the event of settlement. On May 17, 1999, Fastow approached Jim Hunt with a proposition that would allow Enron to extract value from the contracts by using UBS's hedge shares. Essentially, Enron wanted to extract the value from the hedge shares in the amount of the difference between the Forward Price and the increased market value of the shares, which was approximately $30.00 per share.

125. Fastow asked UBS to reset the Forward Price of a portion of the Equity Forward Contract shares, to the "present" market value. Then, Fastow asked UBS to assign, to a third party (which was ultimately LJM), its obligations as to the remaining number of shares subject to the Equity Forward Contracts, as well as that same number of Enron shares held by UBS to hedge its obligations under the contracts. The reset price would be calculated to achieve a constant notional amount of the contracts. Fastow described the amendment, which Enron needed to complete by the end of the quarter, as a "favor" he could use internally at Enron to get UBS investment banking business. After his initial conversations, Fastow left the actual structuring and execution of the deal to his subordinates and to UBS.

126. UBS takes the position that, by participating in the 1999 amendment of the Equity Forward Contracts, it simply satisfied its contractual obligation under the contracts. UBS's position is that (1) Enron had the contractual right to terminate the Union Bank Forward Contract at any time;[5] (2) UBS acquiesced to

[5] Enron had the contractual right to terminate the Union Bank Forward Contract at any time. If Enron terminated the Union Bank Forward Contract in June 1999, the result to Enron would be the receipt of Enron shares from UBS, a larger number of shares at an out-of-pocket cost if the contract was physically settled, or a lesser number of shares at no out-of-pocket cost if the contract was net share settled. There were two problems for Enron with physical settlement. First, Enron did not want to pay for the shares used to populate the SPV because that would "hurt [Enron's] funds flow ratio (for credit rating purposes)." Second, Enron's receipt of shares in settlement of the Union Bank

the amendment; and (3) its acquiescence was a purely administrative task for the purpose of preserving the economics of the Equity Forward Contracts on its books. But, as is evident from the following, UBS was an active and knowing participant in a transaction designed to manipulate Enron's financial appearance and UBS's participation was driven by its own deceptive purpose to optimize its Enron-derived income at the expense of and in conflict with its retail clients' interests.

127. Foundational to UBS's "passive role" argument is the premise that UBS did not know, and had no way of knowing, that Enron sought to achieve an improper purpose through the amendment. However, the way UBS agreed to characterize the transaction obliterates this false premise. The substance of the transaction, its goals, the agreed upon characterization of the transaction, and the obvious violation of tax and accounting principles evidence UBS's primary role in a sham transaction which was, in fact, an undocumented and undisclosed loan to Enron. The value derived from the transaction was used to fund LJM, which in turn provided Enron an accounting hedge to an otherwise "unhedgable" asset in order to prevent potential MTM losses associated with that asset. UBS

Forward Contract would have a negative impact in that those shares would become regarded as treasury shares which could not be used by Enron for operational profit purposes due to GAAP prohibitions. With regard to UBS, termination of the contract meant UBS would lose $1 million in annual revenues associated with the settlement of half of the Union Bank Forward Contract.

knew the result of its actions would be the presentation of a false appearance on Enron's financial reports and would operate as a deceit on its own retail customers purchasing, acquiring, or holding Enron securities through a UBS accont [sic].

128. The driving force behind the amendment of the Equity Forward Contracts was to provide "seed" capital to a special purpose vehicle ("SPV") Enron could use to hedge stocks which it could not sell (the "Illiquid Positions").[6] Enron accounted for the Illiquid Positions using MTM accounting, which created earnings volatility, and Enron wanted to obtain an asset to hedge against this volatility. UBS knew achieving this hedge was the ultimate goal of the transaction.

129. Had Enron merely purchased the stock from UBS and provided it to LJM, Enron could not use

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[6] In March 1998, Enron invested $10 million in the stock of Rhythms NetConnections, Inc. ("Rhythms"), a privately-held Internet service provider, by purchasing 5.4 million shares of stock at $1.85 per share. On April 7, 1999, Rhythms went public at $21.00 per share. In May 1999, Enron's investment in Rhythms was worth approximately $300 million, but a lock-up agreement prohibited Enron from selling its shares before the end of 1999. Because Enron accounted for the investment as part of its merchant portfolio, it marked the Rhythms position to market, meaning increases and decreases in the value of Rhythms stock were reflected on Enron's income statement. The evidence shows conclusively that Enron informed UBS of the illiquid Positions, its goal of funding the SPV with Enron stock, its goal of using the gain in the Equity Forward Contracts for the benefit of the SPV, and its goal of using that SPV to create an accounting hedge to the Illiquid Positions. This was the end sought. The question UBS and Enron had to answer was how to achieve it.

the derivative instrument received from LJM as a hedge against the Illiquid Positions. UBS knew about and discussed this issue with Enron. When a company reacquires its own stock, GAAP requires that the company account for that stock as treasury stock. Under both GAAP and the Internal Revenue Code,[7] a company is prohibited from recognizing, as a gain or loss, that which is received in exchange for the issuance of its own stock. In order for the derivative instrument received by Enron to act as an accounting hedge to the Illiquid Positions, Enron had to recognize any gain or loss associated with the position.

130. Enron and UBS discussed this hurdle in connection with the restructuring of the Equity Forward Contracts. On June 25, 1999, the parties engaged in a conference call. Present on the call for UBS were Hunt, Michael Collins ("Collins") (officer in UBS's Equity Risk Management group), Paul Freilich ("Freilich") (UBS's tax officer), and David Kelly ("Kelly") (UBS in-house counsel). Present on the call for Enron were Kopper and Ben Glisan ("Glisan"), Enron's Vice President of the Structured Finance Group. Also present on the call was Petrina Chandler, a lawyer from Vinson & Elkins, L.L.P. Glisan characterized the purpose of the conference call as an opportunity for Enron to provide UBS with "full(er) disclosure" of Enron's goals for the transaction. Glisan explained to UBS in more detail

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[7] Section 1032(a): Nonrecognition of Gain or Loss – No gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation.

Enron's goal of resolving the unwanted earnings volatility created by the Illiquid Positions. The parties then discussed the prohibitions that would prevent Enron from recognizing a gain or loss on the derivative instrument if Enron receives it in exchange for Enron's issuance of stock.

131. UBS and Enron devised a transaction that allowed LJM to "purchase" Enron stock directly from UBS and thus, from UBS's and Enron's formalistic point of view, avoided the GAAP and Section 1032 issues. They treated this transaction as though it substantively changed the character, and thus the accounting treatment, of Enron's gain on the Equity Forward Contracts.

132. The "elegant solution" addressed two separate problems with gains in two separate assets: (1) Enron had a gain in the Illiquid Positions that it could not protect because they were illiquid and accounted for by using MTM accounting; and (2) the Equity Forward Contracts had value in them that Enron could not account for or recognize as income because of the prohibitions of GAAP and Section 1032.[8] Enron and UBS devised a transaction structure so that Enron could recognize the maximum accounting benefit of both gains. In the resulting transaction, UBS transferred Enron common stock with a current market value of $274,221,708.64 to LJM in exchange for Enron's

[8] Section 1032 also applies to gains in forward contracts and states, "No gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option to buy or sell its stock (including treasury stock)."

agreement to embed approximately $150,000,000.00 of value to UBS in the Equity Forward Contracts, as well as a "transaction fee" of $300,000.00. LJM then provided Enron with a promissory note and a derivative instrument hedging the Illiquid Position, these two assets also having a combined value of approximately $150,000,000.00 on the date of the transaction.[9]

133. The amendment was accomplished by dividing the SBC Forward Contract into two separate contracts and dividing the Union Bank Forward Contract into two separate contracts. The contracts were divided as follows, with the "Amendments" constituting the effective contracts after the amendment date, June 30, 1999:

Original SEC Contract[10]

No. of Shares:	1,099,773
Forward Price:	$43.2714
Total Price:	$47,588,714.00

[9] At some point after June 30, 1999, the promissory note was amended to result in a total obligation to Enron by LJM of $64 million. This amendment appears subsequent to UBS's role in the transaction and thus is immaterial to an analysis of UBS's involvement in the transaction. By way of explanation, however, Enron sought a fairness opinion from Price WatterhouseCoopers [sic] that the value of the Enron shares received by LJM was consistent with the value of the promissory note and derivative contract UBS received from LJM. The fairness opinion received by Enron does not analyze the underlying transaction.

[10] The figures cited are taken from internal UBS documents submitted during the transaction review process. The calculations are incorrect in that the forward price as indicated in the contract was $44.0750, making the total notional value of the original SBC contract $48,472,494.98.

SBC Contract – Amendment A

No. of Shares:	610,325
Forward Price:	$79.8177
Total Price:	$48,714,737.75

SBC Contract – Amendment B

No. of Shares	489,448
Forward Price:	$0.08882
Total Price:	$43,472.77

Union Bank Contract[11]

No. of Shares:	6,703,300
Forward Price:	$44.6078
Total Price:	$299,019,465.74

Union Bank Contract – Amendment A

No. of Shares:	3,815,051
Initial Price:	$78.00
Total Price:	$297,573,978.00

Union Bank Contract – Amendment B

No. of Shares	2,888,249
Initial Price:	$0.08882
Total. Price:	$256,534.28

134. UBS transferred to LJM: (i) the shares covered by Amendment B to the SBC Forward Contract and Amendment B to the Union Bank Forward

[11] The Union Bank Forward Contract included a floating forward price that was reset on the 12th day of every month. The calculation of the forward price with a closing date of June 28, 1999 was $44.6078

Contract, a total of 3,377,697 shares of Enron stock; as well as (ii) UBS's contractual rights and obligations under Amendment B to the SBC Forward Contract and Amendment B to the Union Bank Forward Contract. The Enron shares UBS transferred were held in its own portfolio to hedge its obligation to deliver shares to Enron under the original contract. The market price of Enron stock closed on June 29, 1999 at $81.186, making the value of the Enron stock transferred to LJM equal to $274,221,708.64. In exchange for the shares, UBS and Enron added $149,580,721.37 in cumulative value to portions of the amended contracts remaining with UBS.[12]

135. The transaction was memorialized through an Assignment and Assumption Agreement between UBS, Enron, and LJM, as well as the written confirmations effecting the four amendments described above. The Assignment and Assumption Agreement evidences UBS's transfer of shares to LJM and UBS's transfer of its rights and obligations under the Amendment B confirmations to LJM. This agreement also contains a "Tax Characterization" provision whereby UBS, Enron, and LJM all agreed that the "economic substance" of the transaction was "the purchase by Enron of the Assigned Shares by early settlement . . . with the purchase price paid for such shares being paid by means of a readjustment to the forward price that applies to

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[12] The value added is calculated as follows: (! SBC Forward Price x No. Shares covered by SBC Amendment A) + (! Union Bank Forward Price x No. Shares covered by Union Bank Amendment A).

the remaining underlying shares[.]" The "Tax Characterization" provision creates a fiction in a number of ways.

136. First, the amendment did not result in a "settlement" of the original Forward Contracts because the same number of shares subject to those two contracts remained subject to the four contracts produced by the amendment. The documents on their face show that no "early settlement" occurred with respect to the two original contracts. The transaction is an undocumented, undisclosed loan precisely because no "early settlement" occurred. UBS's transfer of Enron common stock in this transaction was the transfer of new value. Enron's promise to pay (or forego) approximately $150 million in the future was a new promise. Because the amendments did not settle any portion of the original contracts, but rather reflected a new promise by Enron in exchange for UBS's concurrent transfer of new value, the transaction can only be properly regarded and characterized as a loan.

137. Second, the statement in the "Tax Characterization" provision that *Enron* purchased the shares assigned to LJM is false. The Assignment and Assumption Agreement unambiguously states that "[UBS] hereby *sells, transfers and assigns to [LJM]* all of its right, title and interest in and to the Assigned Shares." Hunt's notes reflect UBS's knowledge of this issue. However, UBS selling the shares directly to LJM was a necessary component of the argument to achieve a hedge against the Illiquid Positions, a goal clearly not accomplished if *Enron* purchased the "Assigned

Shares" and then transferred those treasury shares to LJM.

138. Not everyone at UBS was comfortable with this transaction. In fact, individuals both within UBS and Enron had concerns with the structure, especially with regard to the risk in the event of full disclosure. Even the final approval received from UBS's control functions was reserved – "legal, acct & tax – have confirmed they're ok (not 100%, but) & will support transac[tion]."

139. In the end the transaction closed and UBS scored "high profile points" with Enron and Fastow. Within days, Hunt's notes reflect that as a result of the "favor" Enron was now "teeing up som real deals" for UBS and specifically set up a meeting with UBS to discuss its capabilities in structured finance. Hunt, when e-mailing other officers of UBS in preparation for the meeting, emphasized the "creative financing" Enron employs under Kopper's direction as follows:

> we (Chris Pohle's group) just completed a creative financing for Kopper, ***which on its face seemed to be a straight forward restructuring*** of a $350 million (notional) portfolio of forward stock purchase contracts. The restructuring enabled Enron to extract $260 million + in value from the forwards to capitalize a new business venture. (***There's more to the story*** which demonstrates the kind of creative thinking that Kopper's group does.) (Emphasis Added).

2. 2000 Amendment

140. The story was repeated in April of 2000. In March of 2000, Enron notified UBS that it again wished to amend the Equity Forward Contracts remaining at UBS. Shortly after the June 1999 amendment, Enron announced a stock split. As a result, the number of shares subject to the amended Equity Forward Contracts remaining at UBS doubled and the Forward Price was cut in half. UBS's credit officer for Enron again wanted to run the amendment through the UBS's internal control functions, like legal, tax, accounting, and market risk. Collins, attempting to avoid this additional review of the transaction, quickly e-mailed the credit officer stating,

> Also in response to your legal, tax, and acct. issues, this is the exact same transaction we executed for [Enron] back in June. At that time we ha[d] everybody (legal, tax, acct, compliance, market risk, trading. . . .) signed off on it. I would think that this means we don't need to go through this again.

141. Collins then emphasized the importance of the transaction to Enron from a reporting perspective by stating "this entire transaction must be done by the end of the month or my contact ends up in the 'lose her job' scenario." Despite Collins' efforts, the transactionj [sic] was reviewed. On March 24, 2000, Collins e-mailed the transaction review form to a larger group, but again emphasized that the transaction needed to be completed within the week and that the "approval process

should be fairly easy as we executed the identical transaction with Enron in June 1999."

142. UBS documents do not show the same depth of review in connection with the April 2000 amendment, presumably because it was repeatedly characterized as identical to the June 1999 amendment. In the transaction approval form, UBS explained

> [t]he only difference between the two transactions is that the 1999 restructuring involved assigning the forwards and stock to a Cayman Islands SPV where this transaction will be an assignment of forwards and stock to a Delaware LLC . . . (the two members [being] wholly owned subs of Enron and the managing member [being] an investment fund which is a Delaware LP).

UBS also understood Enron's purpose for the transaction to be the same as in the June 1999 amendment.

> The LLC will then provide (i) some cash to ENE and (ii) derivative structures to ENE to hedge certain investments ENE has in US publicly traded stocks which otherwise cannot be economically hedged (thereby eliminating unwanted volatility in ENE's current earnings stream).

143. UBS took specific note of Enron's exposure from its "sprawling trading business." Collins specifically discussed with Enron officer Anne Yeager ("Yeager") Enron's need to hedge its equity investments. Yeager agreed and explained that Enron historically hedged its positions internally from one subsidiary to another.

Collins recognized Enron could not produce effective, true hedges in this manner and "impressed upon Yeager the economics that are at stake by not hedging externally."

144. Collins elevated his concerns, but nevertheless continued his push to complete the April 2000 amendment and enable Enron to complete yet another internal hedge. UBS, Enron, and Harrier (another Enron SPV) executed a near identical Assignment & Assumption Agreement dated April 18, 2000, also including a Tax Characterization provision mischaracterizing the transaction as a settlement of the existing transactions. The 2000 amendments contained the following terms:[13]

Amended SBC Contract[14]

No, of Shares:	1,220,650
Forward Price:	$40.7917
Total Price:	$49,792,327.57

SBC Contract – Amendment A

No. of Shares:	706,274
Forward Price:	$71.0499
Total Price:	$50,180,697.07

[13] Again note that Enron stock split subsequent to the 1999 amendment of the Equity Forward Contracts. Both the forward prices and the number shares subject to the contracts in the 2000 amendment reflect the split.

[14] The figures cited are taken from internal UBS documents submitted during the transaction review process. The figures are incorrect and should reflect a $50,101,457.19 total notional value of the original SBC contract at the forward price calculated by UBS.

SBC Contract – Amendment B

No. of Shares:	514,376
Forward Price:	$0.080232
Total Price:	$41,269.42

Amended UBS Contract[15]

No. of Shares:	7,630,102
Forward Price:	$40.7038
Total Price:	$310,573,887.00

UBS Contract – Amendment A

No. of Shares:	4,405,303
Initial Price:	$70.50
Total Price:	$310,573,861.50

UBS Contract – Amendment B

No. of Shares:	3,224,799
Initial Price:	$0.080232
Total Price:	$258,732.07

145. UBS transferred to Harrier 3,739,175 shares of Enron common stock. The forward price of the contracts remaining with UBS were increased to add $112,106,553.82 of value. On April 18, 2000, the effective date of the Assignment & Assumption Agreement, Enron stock closed at $68.00. Thus, the Enron shares received by Harrier were worth $254,263,900.00.

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[15] Per UBS calculation of forward price on April 24, 2000. The figures cited arc taken from internal UBS documents submitted during the transaction review process. The figures are incorrect and should reflect a $310,574,145.79 total notional value of the original UBS contract at the forward price calculated by UBS.

146. UBS's and Enron's twice restructuring of the Equity Forward Contracts provided Enron with what it considered hedges for assets that could not otherwise be hedged, as well as hundreds of millions of dollars in "seed" capital for LJM and Harrier that. Enron thereafter used for many illicit accounting and corporate purposes. After structuring these sham transactions and with institutional knowledge of their fraudulent nature, UBS performed no due diligence in connection with subsequent transactions to determine the accuracy of Enron's financial statements.

B. OSPREY & YOSEMITE IV

147. The obligation to perform due diligence generally derives from securities laws. Congress statutorily imposed very strict liability on issuers of securities and other specific groups, such as underwriters, who assist issuers in the process of selling securities to investors. A defense to this statutory liability may exist if a potentially liable party behaves responsibility [sic] and makes a good faith attempt to uphold the fundamental purpose of the securities laws. The standard applied to this defense has become known as due diligence, a term of art generally combining common sense with a reasonable degree of skepticism. In sum and substance, due diligence charges the potentially liable party with knowing what a reasonable, good faith investigation would have revealed under the circumstances. If this knowledge would have prompted a reasonable person to take action that was not taken because of a failure to investigate, due diligence

standards were not satisfied. As UBS's internal procedures reflect, due diligence is an absolutely necessary process to ensure that one does not "participate in transactions of a dubious or illegal nature or [which carry] hidden or unclear risks."

148. Under relevant industry standards and UBS's own internal policies, due diligence must be undertaken for all transactions. A financial services firm cannot simply rely on another firm to conduct due diligence with respect to a transaction, but instead must conduct its own investigation of the facts and circumstances to satisfy itself that no issues exist regarding the issuer and/or the transaction. In the present case, the extreme degree of recklessness exhibited by UBS in connection with its dealings with Enron include UBS's admitted failure to conduct due diligence with respect to Osprey and Yosemite IV.

1. Osprey Transaction

149. UBS participated as a co-manager in a follow-on offering of notes issued in connection with Enron's Osprey structure in September of 2000. UBS's first analysis of Enron's Osprey structure was early in 2000. A UBS presentation prepared for Enron discusses Enron's initial use of the Osprey structure, recognizing the structure as a means by which Enron could restructure its merchant portfolio. UBS characterized the structure as providing "non-recourse" financing to Enron, but noted that Enron maintained an

ultimate obligation to repay the notes issued through the structure by the delivery of Enron equity shares.

150. In late August of 2000, Enron invited UBS to participate as an underwriter to the follow-on offering of notes issued through the Osprey structure. Glisan explained to Hunt and UBS Debt Capital. Markets Group Managing Director Kimberly Blue ("Blue") that Enron needed to complete this structured bond deal for year end balance sheet purposes and wanted UBS to participate both (1) as an acknowledgment of the work UBS had been doing for Enron and (2) to motivate UBS in the work that lay ahead. UBS admits that it did not conduct its own due diligence in connection with its role in the Osprey follow on offering, but instead relied upon due diligence carried out by Deutsche Bank Alex Brown ("Deutsche") and Donaldson, Lufkin & Jenrette ("DLJ").

151. UBS, however, entered into no agreements with, and received no documentation concerning the due diligence efforts of, the lead banks. This failure violates UBS's own internal policy of creating an engagement letter clearly setting out the responsibilities of the parties in the due diligence for the transaction. Further, Deutsche confirmed that for UBS simply to rely on the due diligence conducted by it or DLJ would violate industry standards. Deutsche also confirmed that no agreement supporting UBS's alleged reliance on Deutsche or DLJ existed. Finally, any reliance by UBS on the due diligence of Deutsche and DLJ would have been unreasonable in light of several complaints

UBS received from DLJ concerning Deutsche's failure to cooperate on the deal.

152. Despite industry standards and known issues between the parties upon whom UBS allegedly relied, UBS employees merely listened in on two conference calls, an initial scheduling call and the final call before the issuance. Essentially, UBS took three actions relating to the transaction: (1) It lent its name to the offering memorandum; (2) it marketed the notes to potential investors and forwarded orders for purchases of the notes; and (3) it collected $411,062.00 in fees. In fact, regarding the fees paid to UBS in connection with the transaction, one UBS employee boasted, "Not too bad for preparing a sales memo and reading some documentation."

153. Apparently, the documentation UBS read did not include the various opinion letters provided by outside professionals for the structure. For example, Vinson & Elkins, L.L.P. prepared an opinion letter regarding the issue of whether the assets and liabilities of Osprey would be substantively consolidated with the assets and liabilities of Enron in the event of an Enron bankruptcy, but this letter was not even prepared or received until after UBS solicited investors to purchase the securities. Thus, UBS cannot attempt to rely on the advice of professionals as a reason for its failure to conduct due diligence because the sales activities occurred without the benefit of any documented professional advice.

154. UBS's admission that it failed to conduct reasonable due diligence seems strangely convenient considering the purpose for which Enron used the Osprey structure. In fact, UBS senior-level employees distance themselves from the responsibility for conducting due diligence on the Osprey structure by pointing the finger internally at other sections of the bank as the responsible group for due diligence activities. Whoever UBS charged with responsibility for due diligence, UBS internal policies demand that the firm only participate in any complex or unusual transactions after first forming a clear understanding of their economic and tax consequences. Consistent with this mandate, testimony from the law firm hired by UBS and the other banks involved in the transaction to assist with due diligence indicates UBS did, in fact, participate in due diligence and a last minute decision to omit from the offering memorandum disclosures of how the structure would be used to purchase certain distressed assets from Enron in non-arm length transactions.

155. By denying that UBS performed any due diligence on the project, UBS denies any knowledge regarding Enron's use of the Osprey structure. Thus, UBS attempts to deny knowing that Enron used the Osprey structure to generate income by parking overvalued, non-performing assets in the structure, which structure Enron ultimately supported through a mandatory issuance of common stock. Even if UBS's confessed violations of its internal, as well as industry, standards are accepted, UBS's conduct does not

exonerate it. In fact, under said circumstances, UBS's lack of knowledge would only be the result of its own extremely reckless conduct in connection with the transaction.

2. Yosemite IV

156. UBS takes the same position with regard to its role in the transaction generally referred to as Yosemite IV. As the name implies, Enron had previously closed three versions of transactions similarly structured. The Yosemite IV transaction closed on May 16, 2001. Enron used these Yosemite transactions to obtain what in economic substance were loans, despite their public characterization as funds flow from operations.

157. Enron approached UBS regarding the transaction on April 10, 2001. Fastow told Hunt that Enron instructed Salomon Smith Barney ("SSB") to include UBS as a co-lead on the transaction for "reasonable economics." An announcement of the deal was expected on April 16th, which prompted UBS officer Karsten Berlage ("Berlage") to express his surprise that UBS, as a co-lead, was only presented with the draft offering memorandum a few days before. Prior to the transaction closing, and in violation of UBS policies regarding due diligence and understanding the economic substance of transactions, UBS again attempts to limit its involvement in the transaction to advising Enron with regard to various timing issues that arose, such as European holidays, and preparing a sales memorandum

for UBS employees to use in soliciting investors. UBS would rather take the position it simply violated its own internal policies and procedures, as well as established industry standards, by not conducting its own due diligence prior to the closing of the transaction than admit to knowing the details of a transactions [sic] resulting in an undocumented $775 million loan to Enron.

158. Interestingly, though, Hunt's file contains notes from a conference call conducted the day before subscriptions in the transaction were sold. These notes indicate UBS was, in fact, informed about the true purpose of the transaction. For example, Hunt notes the ultimate purpose of the transaction was to generate funds for Enron without increasing Enron's use of credit from banks, thereby preserving that capacity for new use. Additionally, Hunt's notes reflect the underlying mechanics of the transaction were discussed, including the commodity forward contracts used to provide Enron with disguised loans from the transaction. UBS documents also evidence Hunt's and Blue's participation in a due diligence call the day after the subscriptions were sold. Hunt notes that UBS avoided directly selling the notes to investors by specifically requesting all sale orders be funneled through SSB. Immediately after the call Blue e-mailed Hunt stating "I kinda feel like I am being lied too [sic]." Finally, Berlage himself admitted in an e-mail to his colleague in late November of 2001 that he advised Enron on the structuring of the transaction.

159. This knowledge is also consistent with documents from April of 2000 when UBS was attempting to put together its own form of a Yosemite transaction for Enron. UBS first met with Enron on February 14, 2000 to discuss the Yosemite structure and to discuss ideas about how UBS could improve upon transactions Enron had already completed using this structure. By April 7, 2000, UBS had developed a proposed structure, which in UBS's own presentation materials shows the circular swap of a commodity that provided Enron with up-front cash without it or any other participant in the transaction taking on commodity price risk. The circular commodity swap eliminates the commodity price risk and makes the transaction, in substance and in form, nothing more than an undisclosed loan to Enron.

160. Attempting to avoid a badge of knowledge regarding the improprieties of the Osprey and Yosemite IV transactions, UBS admits to violating internal and industry standards for due diligence. This is nothing more than a defense strategy developed for this litigation. A witness for SSB, just like Deutesche [sic] and DLJ for Osprey, testified that each participate in Yosemite IV should have completed their own independent due diligence. To accept UBS's position a fact finder must conclude that a wide group of UBS officers, all ambitious in their careers, well experienced, and in senior level positions, simply disregarded their responsibility to understand all the material aspects of the transactions. UBS would rather a fact finder believe its conduct was reckless than intentional. Either way, UBS violated the anti-fraud provisions of the federal

securities laws in connection with the Osprey and Yosemite IV transactions. UBS either knew, as did its joint lead SSB, or was severely reckless in not knowing about the commodity prepay aspect of the transaction, the fact that the prepay transaction was not entered into by any of the parties in order to make trading profits, and that the prepay transaction was nothing more than yet another disguised loan to Enron. In light of UBS's own documents regarding this transaction, UBS clearly knew Yosemite IV was nothing more than "direct [Enron] debt."

C. E-Next Generation

161. E-Next perhaps serves as the best documented example of UBS participating in a materially false public presentation of Enron's financial appearance. On March 20, 2001, Wendy Field ("Field"), an Executive Director in UBS's Investment Grade Loan Origination Group, and two other individuals from UBS's credit department, attended an "Enron one-on-one session to discuss what UBS deemed a "structured 'secure' loan to Enron." The subject project was a $600 million structured off-balance sheet construction facility named E-Next Generation LLC ("E-Next"). By using the E-Next facility, Enron sought to finance, off balance sheet, the construction of its US electric generating build out and then, once the construction was complete, bring the project onto Enron's balance sheet at a time when the project was generating revenues. Enron made UBS aware of this intention in order to secure UBS's participation.

162. The E-Next project was divided into three phases, on its face requiring a total seven (7) year loan commitment by UBS. It was extremely important to structure the project in three phases because that was the only mechanism that could be used to keep the loan off of Enron's books. Phase I consisted of acquiring the turbines and other ancillary equipment and beginning initial development activity. In Phase II, Enron identified locations and constructed multiple gas-fired electric generating plants. Phase III consisted simply of the operation of these plants. Enron maintained an option to purchase the plants at the end of Phase II and represented to UBS that the option would absolutely be exercised. Additionally, UBS had a right to prevent Enron from proceeding into Phase III by forcing them to exercise the purchase option. UBS's Lending Commitments Committee Proposal for E-Next best summarizes UBS's understanding of the transaction and its financial commitment:

> Phase III will never kick-in as this is NOT intended to be a project financing „ To achieve off-balance sheet treatment, Enron needs to have the equipment and plans owned by another legal entity. Enron will have the right to purchase the equipment and facilities at the end of Phase II at the full cost of construction. Proceeds from the purchase will go to fully repay the loans associated with the cost of the project. ***It is Enron's intention to purchase every project at the end of Phase II . . . Thus, the entire Phase III mechanism is simply a structure which will allow***

> ***off-balance sheet treatment for the debt and assets . . . [W]e view the financing as 3-year senior secured Enron Corp. risk.*** (Emphasis Added).

163. UBS's Credit Risk Control Group officers reviewed the transaction and also understood its purpose. As one credit officer wrote,

> ***The financing is structured primarily to satisfy accounting rules . . . By having a structured deal the assets can remain off-balance sheet until project completion thus having no negative impact on [return on invested capital] . . .*** Even though the facility has a tenor of seven years, it is highly unlikely (and not intended) for it [to] extend past three years without amending the terms of the structure. (Emphasis Added).

164. Despite the risk associated with the form-over-substance structuring of the transaction, UBS knew the importance Enron placed on E-Next, as well as in UBS's participation in E-Next. UBS initially requested to be excused from the E-Next transaction; however, Enron responded that E-Next was "critical" and that UBS was expected to commit to the facility and show its support. Hunt emphasized to Field that she "cannot get a 'no' answer from credit" and later reminded her that she "must get approval" for the deal. Hunt had reason to worry. On April 9, 2001, during the sequence of the E-Next approval process, Bill Glass ("Glass"), UBS's Head of North American Credit, attended a senior-level "CFI Risk Meeting" wherein

Enron was individually identified as one of only three companies in the total universe of UBS counterparties as a name "we do not like." Thus, when Glass approved UBS's participation in the E-Next loan facility on April 10, 2001, he specifically conditioned his approval on the requirement that UBS "sell down the position after closing."

165. In addition to having the transaction reviewed and approved by UBS's Lending Commitment Committee and its Head of North American Credit, UBS had its in-house legal counsel review the transaction. On April 19, 2001, UBS attorney Sandra Costin ("Costin") e-mailed Field with regard to a technical issue concerning Enron's guarantee of the E-Next project obligations and to note her conclusion that UBS's ability to prevent Enron from placing the assets into Phase III of the project is not "absolute." Field responded to Costin's legal concerns in an e-mail to UBS executives Chris Glocker and Richard Tavrow stating:

> As far as the latter point [of UBS's ability to block Phase III], again this is sort of a business point. We did not look at this deal as a Project Financing and we have been more than vocal (to Enron and CSFB) about our ability to block a project entering Phase 3. Sandra's point is that in a legal sense we might not have a great leg to stand on if the economics of the project are "market" and they have met the rest of the conditions. ***Enron has stated that they will not put a project into phase 3. I have stated I will use everything in my power to prevent it. So***

> ***were*** [sic] ***are we? I explained this in the approval process but I need your concurrence.*** (Emphasis Added).

166. Ultimately, UBS received all the internal approvals necessary to participate in E-Next. On April 26, 2001, UBS was informed that the Master Assignment and Assumption Agreement for E-Next had been closed and the conditions precedent to funding had been met. UBS committed to fund $20 million of the $600 million facility. In other words, in the second quarter of 2001, UBS individually committed to issue Enron a loan in the amount of $20 million, and more generally knew that Enron was collectively being loaned $600 million, through a structure solely designed to allow Enron to keep the total loan off its balance sheet as a direct Enron obligation. From the outset, UBS knew the deal was "purely a structured 'secured' loan to Enron." The existence of this loan, the necessary public disclosures regarding it, and the fact that Enron structured transactions for the sole purpose of avoiding public disclosure, were material facts to investors, especially when considered in the context of the time and the larger universe of financial obligations to which Enron was then exposed.

D. ADDITIONAL UBS KNOWLEDGE

167. With the host of banks competing for the uniquely large fees associated with Enron's investment banking business, it is no surprise that UBS did not win a mandate on every potential transaction. UBS did, however, perform significant amounts of work on

transactions that never closed or on which UBS did not ultimately participate. Through this work, UBS came into possession of even more non-public information on Enron and its questionable activities that UBS kept from the Class Plaintiffs at a time when they were purchasing or acquiring Enron securities in UBS accounts.

168. One example is "Project Wiamea" or "Project Kahuna" in 2000. This project was considered a "test of UBS's ability" to create a finance structure for Enron that would maximize Enron's earnings per share by reducing funding costs and credit exposure to certain assets. Through this project, Enron informed UBS how assets were "sold" to special purpose entities while Enron maintained control over the asset and how Enron used equity accounting to "disclose" the debt associated with specific assets. Finally, Enron also informed UBS how various activities did not show up on Enron's balance sheet as debt, but rather were considered as part of Enron's footnotes on risk management activities.

169. Another example was UBS's involvement in the potential sale by Enron of all of its international assets during the summer of 2000. Known as "Project Summer" or "Enigma," UBS represented a group of Middle Eastern investors who were looking to buy all of Enron's international assets. The transaction did not close, but many questions were raised by UBS regarding Enron's treatment of its international assets. In one memorandum, UBS posed the following questions to Enron regarding the accounting treatment for various assets:

- "Why is the debt not consolidated if the rest of the project is?"
- "Several projects in which [Enron] has an ownership interest for US GAAP greater than 50% but appear to not be consolidated for US GAAP . . . Why is this the case?"
- "The US GAAP balance sheet and the project level balance sheet are quite different."

170. Not only was Enron's treatment of the debt associated with these assets in question, Enron's valuation of these assets were also in question. One Enron executive working on this project commented that the asset values on Enron's books are "at best of little use, and at worst misleading, to outside investors. Many of the [book values] have little or nothing to do with Enron's actual cash investment, market value, or any other investor-relevant markers." On Hunt's copy of this document, he wrote in the column next to the foregoing statement that he "couldn't agree more."

171. This known overvaluation of Enron's international assets also became an issue early in 2001 when LJM, the Fastow-controlled investing entity disclosed in late 2001, approached UBS for assistance in rasing [sic] capital from outside investors to enable LJM to purchase Enron Wind from Enron. Hunt became frustrated by the project numbers generated by UBS lower-level employees as being "too conservative." UBS found itself wrestling with the fact that the purchase price assumption being used for the project was

too high considering the asset's "recent financial performance." In other words, UBS knew the asset was grossly overvalued by Enron in the potential sale to LJM.

172. Further, in connection with "Enigma II" in early 2001, UBS recognized that its Enron executive contacts were "on a special assignment from the CEO and CFO" and were "out to raise as much [cash] as they can this quarter." The idea was to put together a transaction that would leverage Enron's international assets "to the limit" and pull out from them whatever cash they could, whether reasonable or unreasonable. In this context, UBS employees again noted for the record that "the difference between book [earnings] and cash flow can sometimes be significant. Thus, the consolidated financials for the asset package do not tell the whole story."

173. Despite UBS's knowledge of these issues, it continued to participate in other Enron transactions in this time period, continued to commit to Enron credit facilities in order to win additional business from Enron, continued to conduct proprietary trading in Enron securities, and continued to allow Class Plaintiffs to trade Enron securities through UBS accounts while ignorant of all these facts. Not once did UBS evaluate its responsibilities to the Class Plaintiffs in light of this information. Instead, as discussed in detail above, UBS brokers were forced only to give their retail clients UBS's "Strong Buy" rating on Enron.

IX. THE UNWINDING

174. The dénouement of the UBS/Enron saga clearly had begun by June of 2001. The subsequent five month period included a number of events, the ultimate result of which was UBS eliminating virtually all of its trading and credit exposure to Enron prior to Enron's bankruptcy filing on December 2, 2001. In June and July of 2001, UBS issued and sold JPY 20,000,000,000 (approximately $163 million) worth of notes to a foreign investor. UBS's payment obligations under the notes were specifically linked to an Enron credit event, such as Enron's bankruptcy or default on an obligation to UBS. In other words, in the event Enron filed bankruptcy or otherwise defaulted on an obligation to UBS, UBS could avoid repayment of the notes it issued to this institutional investor. UBS developed and employed the credit linked notes to transfer its Enron credit exposure to a Japanese party that did not have the material inside information UBS possessed.

175. Also in July of 2001, UBS began a process of selling to a broader group of similarly uninformed investors, including its retail clients, certain Enron debt securities held by UBS. In February of 2001, Enron issued and sold in a private placement a significant amount of Zero Coupon Convertible Senior Notes Due 2021. UBS purchased from initial purchasers a cumulative face value at maturity amount of $261,800,000.00 worth of these notes. On July 18 2001, Enron filed a S-3 registration statement with the SEC registering the notes and the common stock issuable upon conversion and identifying various UBS entities as selling

security holders of the notes. Enron also filed a supplement on August 15, 2001 registering additional stock for issuance upon conversion. These registration statements enabled UBS to sell the notes in the US public markets, which UBS then proceeded to do. UBS brokers even used UBS's "Strong Buy" rating on Enron equity securities as a tool to sell the notes, despite UBS's "Sell" and "Hold" rating on Enron debt securities.

A. AUGUST 2001 ISSUES

176. In the very month that Chung Wu sent his infamous e-mail to his clients regarding Enron, UBS faced two significant hurdles in its relationship with Enron. At the time, UBS was poised to receive mandates on two items of investment banking business from Enron that could, in combination, generate approximately $8 million in fees to UBS. The business was especially important to UBS's attaining budget for the year. Aside from any credit exposure to Enron, which UBS had already hedged as required by firm policy for Enron, UBS also had approximately $390 million of notional trading exposure with Enron on the Equity Forward Contracts. The first hurdle faced by the parties concerned these Equity Forward Contracts. In June of 2001 as Enron's stock price approached $50.00, UBS agreed to lower the trigger price on the Equity Forward Contracts to $40.00. The Equity Forward Contracts contained a provision that gave UBS the right to force Enron to settle the contracts, prior to their Settlement Dates, if the price of Enron's stock

closed at or below a set trigger price for two consecutive days. Enron announced on August 14, 2001 the resignation of its CEO, Jeff Skilling ("Skilling"). Enron's stock price closed the next day below the trigger price at $40.25. Enron immediately requested a renegotiation of the trigger price in the Equity Forward Contracts. This request resulted in a broad debate within UBS's corporate finance, equity risk management, credit, trading, and legal departments regarding the viability of Enron as a counterparty. The significance of the debate was such that UBS's most senior global executives were kept current, including the UBS equivalent of a global CEO and the UBS global credit risk officer.

177. In the course of this debate, the heads of UBS's trading desk and equity risk management espoused their opinions that the trigger prices should not be lowered unless Enron offered specific concessions. Dan Coleman ("Coleman"), the head of UBS's North American trading desk, went so far as to state

> [for the record" his concerns regarding Enron's trading "focus] on exotic structures in illiquid markets" and the potential for Enron "to blow up due to [this] exotic derivative exposure.

Additionally, Chris Glockler ("Glockler"), UBS's credit risk officer for Enron at the time, voiced to a superior his assumption that a "direct link" existed between Skilling's sudden resignation and a deterioration of Enron's quality of credit. Before making a decision on lowering the Equity Forward Contract trigger prices,

UBS required Enron to provide non-public information on the number, amounts, and trigger prices of equity forward contracts with other parties, as well as information concerning Enron's recent trading activity in its own shares. Without UBS knowing the extent of Enron's exposure and terms under similar contracts with other parties, UBS's traders were concerned that a "run for the door situation" could develop before UBS could fully unwind its positions.

178. Enron notified UBS that it had two other similar equity forward contracts covering an equal number of combined shares as the UBS contracts. UBS ultimately agreed to lower the trigger price of the Equity Forward Contracts, but only upon certain terms, including a commitment to settle the large equity forward contract at its October maturity. UBS also forced Enron to increase the number of shares with which Enron could net share settle the contracts. The effect of this requirement was that **only** at a share price below $9.93 would UBS fail to receive enough shares from Enron to recover the full amount Enron owed under the contract at the time of settlement.

179. Finally, UBS required Enron to provide UBS with "Most Favored Nation" status, meaning Enron could not allow its other equity forward trades to have a higher trigger price or more favorable unwind conditions than UBS's contracts. These terms were communicated to UBS's global executives on August 17, 2001, along with a note that UBS equity analyst, Ron Barone, "has been widely quoted in the press as bullish on Enron's shares." As Glocker admits, if UBS

and Barone had been publishing less than favorable information concerning Enron, it would have been difficult for UBS to unwind these trading positions.

180. UBS investment bank employees recognized the relationship damage avoided with the renegotiation of the Equity Forward Contracts and expressed their relief internally. However, within a matter of days, the Chung Wu incident occurred, causing additional trouble.

B. MATURITY OF EQUITY FORWARD CONTRACTS

181. UBS knew the Enron waters would not remain calm for long. On August 27, 2001, UBS credit executive Gary Riddell ("Riddell") e-mailed other credit executives saying, "Enron is sure to be a hot topic again, in October when the equities trade matures if not before." In an apparent follow up to Coleman's expression of concern regarding Enron's potential to "blow up" from its exotic derivative trading exposure, Riddell recommended a UBS due diligence visit to Enron "to evaluate in depth [Enron's] trading operation and risk control" and "to get beyond the standard dog and pony show." Enron's subsequent stock price decline, however, did not allow UBS this opportunity.

182. Internal discussions regarding the early settlement of the Equity Forward Contracts began again in earnest during the first week of September, 2001, when Enron once more requested an agreement by UBS to lower the trigger price of the contracts. The

smaller of the two Equity Forward Contracts, with a notional value of approximately $54 million, had a Settlement Date of September 13, 2001. The larger of the two Equity Forward Contracts, with a notional value of approximately $340 million, had a Settlement Date of October 12, 2001. In response to Enron's request for a lower trigger price, UBS required Enron to settle the smaller contract at maturity while the parties negotiated with respect to the larger contract. As part of UBS's internal discussion on the issue, on September 7, 2001, UBS records show UBS considered providing Enron a senior status loan to facilitate the settlement of the Equity Forward Contracts and elevate UBS's default position from that of an equity position to a senior creditor position. The disruption of the commercial paper markets by the events of September 11, 2001 forced this issue.

183. In order to secure the settlement of the smaller contract during this period of market disruption, UBS agreed to and did purchase directly from Enron $104 million of two-week commercial paper, $54,342,275.36 of which was used to settle the contract and the remainder of which UBS bought specifically to provide Enron with short term liquidity. Although Enron settled the smaller of the two contract [sic], the larger issue of whether to require Enron to settle the $340 million forward contract early remained, as Enron's stock traded below its trigger price. UBS prepared an early termination notice, but decided not to serve it on Enron if Enron agreed to: (1) settle immediately 42% of the remaining equity forward exposure,

equating to 50% of the total exposure prior to Enron settling the smaller contract; (2) streamline the early termination notification process; and (3) fully settle at maturity the remainder of the large equity forward contract. These terms did not please Enron.

184. DeSpain and Freeland told Hunt "in no uncertain terms" that requiring a full settlement by the October 12th Settlement Date will terminate the relationship between UBS and Enron – "period." Enron specifically requested that UBS not take any action to terminate the contract prior to September 30th, the end of the quarter, to avoid a balance sheet hit on Enron's debt/equity ratio. Enron explained to UBS that an early settlement would have a "double dip" effect on Enron's balance sheet by reducing equity and adding debt in equal amounts. Enron emphasized that its other banks had "stepped up" and that "no other banks [were] asking for [an] unwind." Because a settlement would impact Enron's financials at the end of an already difficult quarter, UBS was "sensitive" to Enron's concerns. In addition, UBS's Corporate Finance Department "argued strenuously for lenience in order not to jeopardize an existing mandate for a debt exchange and another one being sought for a securitization [of Enron receivables,]" which together could generate about $8 million in fees.

185. UBS was so concerned about Enron's liquidity at this point that it initially demanded Enron to escrow $142 million in a UBS account to prevent termination; however, UBS evidently believed even this situation did not adequately address the risk posed by

Enron because it decided to exercise its early termination rights as to about $142 million of the remaining contract. UBS required a partial settlement on September 21, 2001 and agreed to extend the maturity of the balance until January 14, 2002 in exchange for Enron lowering the trigger price to $20.00 and committing sufficient shares such that UBS could recover that which it was owed on the contract at a stock price as low as $5.00. Additionally, as a condition of extending the maturity date past the year end, UBS specifically required a written acknowledgment from Fastow, as Enron's Chief Financial Officer, that Enron was obligated to purchase from UBS 2,555,076 shares of Enron common stock at a price per share of $77.4438 when the current market price per share was $28.30. These conditions were seen to be as far as UBS could go without permanently ruining its relationship with Enron.

186. After the foregoing actions, three equity derivative trades between UBS and Enron remained outstanding, the remainder of the equity forward contract and two equity swap contracts. One equity swap contract matured on October 24, 2001, and, on that same day, with Enron stock trading below the amended trigger price on the remaining forward contract, UBS exercised its early termination rights on the remaining forward contract as well. Thus, within a matter of days, UBS received from Enron a cash payment of $22,347,457.54 to settle the equity swap and a cash payment of $153,453,776.44 to settle the remainder of the forward contract. UBS immediately sold into the market the 2.2 million shares of Enron

stock it held as a hedge to its obligations under these contracts.

187. Enron voiced hard feelings about the treatment it received from UBS's credit and trading departments during this critical period. Enron considered UBS's purchase of commercial paper to fund the prior equity forward settlement a small concession because "'all of [Enron's] banks' came to their rescue with liquidity." Requiring cash payments with the effect of an increase to debt on Enron's balance sheet at the end of what was already a bad quarter troubled Enron and made it "wonder about whether [UBS could] be counted on when needed." By understanding the default risk Enron posed throughout this period, UBS was able to unwind its positions and nearly eliminate all of its exposure to Enron before Enron's liquidity crisis hit. Glockler, UBS's credit officer for Enron, received special "congratulations" from UBS's global executives for the result and Coleman received recognition from his peers for his "crystal ball" e-mail from August of 2001 concerning Enron's potential to "blow up." Interestingly, not one member of the team of UBS employees dealing with Enron has expressed any sincere surprise about Enron's ultimate demise. To the contrary, when addressing the fact that UBS unwound its Enron positions at the same time that its brokers were promoting a "Strong Buy" recommendation both on Enron equity and debt securities, the general UBS employee response is: "that's just the way it is."

X. SECTION 10(b)/RULE 10b-5 LIABILITY

188. UBS violated Section 10(b) of the 1934 Act, as implemented through Rule 10b-5, by employing a scheme to defraud, or a course of conduct or business practices that operated a fraud upon Plaintiffs and those they seek to represent. UBS owed Plaintiffs a duty of disclosure. It wholly failed to disclose to Plaintiffs material information within its knowledge. UBS knew of and actually participated in, a false public characterization of Enron's financial position throughout the 1934 Act Class Period in an effort to progress their deceptive purpose of maximizing earnings from Enron at the expense and in conflict with the interests of its retail clients purchasing, acquiring, and/or holding Enron securities. This information was material in that a reasonable investor would have considered it important in making an investment decision in Enron securities and UBS had duty to disclose this information to the Plaintiffs.[16] This duty arose from the 1934 Act itself and from UBS's retail brokerage relationship with Plaintiffs. When the information UBS participated in concealing and failed to disclose to its retail clients was ultimately made public, it had a negative impact on the price of Enron securities, thereby causing damage to Plaintiffs.

189. The fraud perpetrated by UBS on its retail clients is exactly the type of scheme/course of business

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[16] Plaintiffs rely on the presumption afforded by the Supreme Court's decision in *Affiliated Ute Citizens v. United States*, 406 U.S. 125 (1972) for purposes of their class action allegations of transaction causation.

that securities laws exist to prevent. To make an informed decision about their Enron securities, Plaintiffs needed to know the very things UBS acted upon to protect itself yet failed to disclose to its retail clients.

190. UBS's actions were committed with scienter. Scienter is a mental state embracing intent to deceive, manipulate, or defraud. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976); *Lovelace v. Software Spectrum, Inc.*, 78 F.3d 1015, 1018 (5 Cir. 1996). The Fifth Circuit has further defined scienter as including "severe recklessness" that involves "'an extreme departure from the standards of ordinary care and that present[s] a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it.'" *Rosenzweig*, 332 F.3d at 865 (quoting *Nathenson v. Zonagen, Inc.*, 267 F.3d 400, 408 (5th Cir. 2001)). Scienter may be partially satisfied by pleading facts showing a defendant's "regular pattern of related and repeated conduct[.]" *See In re Enron Corp. Sec. Litig.*, 235 F. Supp.2d 549, 694-95 (S.D. Tex. 2002). The nondisclosure of material information in violation of a duty to disclose itself constitutes deception in securities fraud cases. *In re Enron*, 235 F. Supp. 2d at 569 n. 9 (citing *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 470 (1977)). UBS's actions certainly show it acted with requisite scienter.

A. UBS'S COURSE OF DEALING – INVESTMENTS

191. On August 17, 2001, literally the same day that UBS released another "Strong Buy" research report, Enron filed a Prospectus as part of a Registration Statement for $1,907,698,000 of Zero Coupon Convertible Senior Notes Due 2021 (the "Notes"). Enron was registering these Notes through this Registration Statement as well as the common stock that was issuable upon conversion of the Notes. The Notes were originally sold pursuant to a private placement on February 7, 2001 and UBS AG acquired some of the Notes (from first tier purchasers of the Notes) totaling $250,000,000 as the principal amount at maturity (the "UBS Notes"). Enron registered 1,439,125 shares of its common stock that were issuable upon conversion of the UBS Notes pursuant to Prospectus Supplement No. 2 dated August 15, 2001.

192. UBS Warburg, LLC also purchased some of the Notes (from first tier purchasers of the Notes) totaling $800,000 as the principal amount at maturity (the "UBS Warburg LLC Notes"). Enron registered 4,605.20 shares of its common stock that were issuable upon conversion of the UBS Warburg LLC Notes pursuant to Prospectus Supplement No. 2 dated August 15,2001. UBS AG and UBS Warburg, LLC together owned 13.14% of the Notes outstanding. In fact, UBS AG was the third largest holder of the Notes, after Salomon Smith Barney Inc., which held 19.38% of the Notes, and HighBridge International LLC, which held 10.75% of the Notes.

193. The Prospectus was filed on July 18, 2002, and the Amendment No. 2 announcing the inclusion of UBS AG and UBS Warburg, LLC was filed with the SEC on August 15, 2001. Interestingly, UBS also issued a STRONG BUY report and Barone analysis on August 15, 2001. Enron stated that the Prospectus:

> Will be used by selling security holders to resell their notes and the shares of our common stock issuable upon conversion of their notes. We will not receive any proceeds from sales by the selling security holders.
>
> We will not pay interest on the notes prior to maturity. Instead, on February 21, 2021, the maturity date of the notes, note holders will receive $1,000 per note. . . . . .Note holders may require Enron to purchase all or a portion of their notes on February 7, 2004, February 7, 2009, and February 7, 2014 at a price per note of $698.13, $775.96 and $862.46, respectively. We will pay cash for all notes purchased on February 7, 2004, but on the other two purchase dates we may choose to pay the purchase price in cash, in common stock valued at its Market Price, or in a combination of cash and common stock, at our election.
>
> The notes are unsecured obligations of ours and rank equally with all of our other unsecured senior indebtedness.[17]

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[17] Front page of Prospectus dated July 18, 2001, filed by Enron Corp for $1,907,698,000 Zero Coupon Convertible Senior Notes Due 2021.

194. As unsecured creditors of Enron, UBS stood to gain quite a bit if Enron's stock held its value until they sold their Notes backed by the common stock conversion. There is a clear conflict of interest if UBS did not disclose that they were trying to sell their unsecured notes and Enron common stock, while they were advocating a "Strong Buy" rating on Enron stocks ***and bonds*** to PW's retail customers. This conflict of interest is alarming because of the following facts.

> Dan Scotto, a bond analyst at BNP Paribas Securities in New York, was fired late last year after writing a negative report on Enron bonds in August 2001, just as the company began to unravel. Mr. Scotto, who had been an analyst for 25 years, said he had seen a deterioration in compliance in recent years.
>
> "Twenty years ago, firms worried more about their reputations", he said. "Research wasn't a sales job. But as the commission structure broke down, there was a shift in compliance department to be more sensitive to the revenue side of things, or the 'deal' side of things. That accelerated in the '90's."[18]

In an eerily similar incidence to the Wu firing, Daniel Scotto had advised his clients on August 23, 2001 that Enron securities "should be sold at all costs

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[18] Gretchen Morgenson, The Enforcers of Wall St.? *Then Again, Maybe Not*, N.Y. TIMES, June 20, 2002, *available at* www.nytimes.com.

and sold now."[19] Scotto was fired in December, 2001 after a long suspension by his firm for making this recommendation which had no "reasonable basis."

195. Also UBS AG and its affiliates purchased Enron's lucrative trading arm for no money down, literally two and a half months after Enron filed bankruptcy. At the hearings before the Enron bankruptcy court on this sudden purchase, it was disclosed that this trading arm was the largest "and most profitable business creating substantially all the company's profits in excess of $2 billion. . . . . Over a nine to twelve-month period of time."[20]

196. The UBS/Enron relationship was very close, with the expert at that hearing testifying that UBS was Enron's partner. There were some considerable objections made during this hearing on January 18, 2002 hearing [sic]. Mr. Lauria, an attorney for one of the debtors, has the following statements to make concerning UBS AG and its affiliates:

> I think the clear fact is that there is up to $35 million that's got to be paid on the front end and 6 million of that is to be paid by Enron in cash, the remaining 29 comes out of royalties, if royalties are ever earned, but it comes out off the top. It's first dollars. So, in effect, we

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[19] "Ex-Analyst at BNP Paribas Warned His Clients in August About Enron", The Wall Street Journal, January 29, 2002.

[20] January 18, 2002 Transcript of Hearing re: Approval of sale of Enron's wholesale trading business: objections filed. At Page 12, line [sic] 6 through 11.

are paying UBS-Warburg to take over this business.

Now, there are a number of important negative factors that should be considered carefully by the Court in trying to determine whether or not this transaction, in fact, has positive value for the estate: Number one, UBS-Warburg has no obligation to operate this business going forward, none whatsoever, nor are they prohibited from using the assets they acquire here for other businesses.

Number two, as I have alluded to, there is a negative incentive built into the deal because by operating at a low to moderate level during the first three years, Warburg will be able to exercise the right to buy the Debtor's royalty back at a low price.

Number three, this transaction contemplates a royalty based on net profits.

Your Honor, without more that simply opens the door to Hollywood accounting. This is not a royalty on gross, this is a royalty on net profits. The problems with trying to protect that royalty stream and verify that we're getting what we're supposed to be getting are going to be legion, particularly when you consider the confidentiality provisions in this agreement. . . . . .

And, finally, Your Honor, the appetite of the future owner for risk: Enron created this market that generated $90 billion in revenues and $3 billion in gross margin in the last year by

> taking incredible risk, by being a very active trader, by creating liquidity in markets for commodities and products that nobody else could or would.
>
> The question has to be asked: Can we reasonably assume that this bank is going to use its Double A rated balance sheet and take that kind of risk to run $90 billion in transactions per year through this vehicle? At least the public statements of UBS indicate there's not a chance. Public statements of UBS is this transaction does not represent a material change in the business or profile of UBS. $90 billion a year would, Your Honor.[21]

197. In the Master Agreement Among Enron Corp., Enron North America Corp., Enron Net Works LLC and UBS AG dated January 14, 2002, under Article II, Section 2.2.(d), Brokers, it states as follows:

> Except for UBS Warburg, the fees and expenses of which shall be borne by UBS, no agent, broker, investment banker, person or firm acting on behalf of UBS or under the authority of UBS is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly from any of the parties hereto in connection with any of the transactions contemplated hereby for which the Enron Parties will be liable.

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[21] January 18,2002 Transcript of Hearing re: Approval of sale of Enron's wholesale trading business: objections filed. At Page 31, line [sic] 15 through 18.

198. In the Comprehensive License Agreement Among Enron Corp., Enron North America Corp., Enron Net Works LLC and UBS AG dated January, 2002, under Article XVIII, Section 18.2.(d), Brokers, it states as follows:

> Except for UBS Warburg, the fees and expenses of which shall be borne by UBS, no agent, broker, investment banker, Person or firm acting on behalf of UBS or under the authority of UBS is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly from any of the parties hereto in connection with any of the transactions contemplated hereby for which the Enron Parties will be liable.

199. As the *Houston Chronicle* reported:

> While it may seem like a bad time to be getting into the energy trading business, UBS Warburg doesn't see it that way. The affiliate of Swiss banking giant UBS AG, whose assets are financial ones, likes its odds. The company already trades any number of products, commodities and securities around the globe. . . . . .
>
> Earlier this year, UBS acquired Enron's Internet trading technology at no up-front cost. Instead, it agreed to pay Enron's estate a cut of future profits.
>
> UBS, which also hired about 630 of Enron's former trading employees, opened for business in February, occupying a brand-new downtown trading floor built for Enron.

> "We have limited downside and a tremendous amount of upside," said John Costas, UBS Warburg's president and chief executive officer, on a recent visit to Houston. . . . . .UBS Warburg is stressing that it's not Enron. It didn't assume any of Enron's old trading contracts and UBS sets its business practices. . . . . .Costas said his goal is to become the market leader.[22]

200. Furthermore, PW and UBS made quite a few million from its investment banking relationship with Enron. This relationship fed UBS "Strong Buy" advocation for many years. The following charts outline the public offerings that PaineWebber or UBS was serving as underwriter:

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[22] "Affiliate of Swiss bank giant already trades many goods", *Houston Chronicle*, June 9, 2002.

PAINEWEBBER, INC.

Date	Enron SEC Filing	Enron Offering	PaineWebber Participation	Potential Compensation
07/27/94	424(b)(5) Prospectus Supplement	3,000,000 Preferred Securities	472,000 securities	$371,700.00

PAINEWEBBER, INC.

Date	Enron SEC Filing	Enron Offering	PaineWebber Participation	Potential Compensation
05/17/95	424(b)(2) Prospectus Supplement	$150,000,000 of 7 1/8% Notes	$15,000,000.00	$97,500.00

PAINEWEBBER, INC.

Date	Enron SEC Filing	Enron Offering	PaineWebber Participation	Potential Compensation
11/18/96	424(b)(4) Prospectus	8,000,000 of 8.30% Trust Preferred Securities	1,300,000 securities	$1,023,750.00

PAINEWEBBER, INC.

Date	Enron SEC Filing	Enron Offering	PaineWebber Participation	Potential Compensation
01/13/97	424(b)(1) Prospectus	6,000,000 8 1/8% Trust Preferred Securities	880,000 securities	$693,000

UBS SECURITIES

Date	Enron SEC Filing	Enron Offering	PaineWebber Participation	Potential Compensation
11/13/97	424(b)(2) Prospectus Supplement	$300,000,000 of 6.45% Notes	$75,000,000.00	$262,500.00

PAINEWEBBER, INC.

Date	Enron SEC Filing	Enron Offering	PaineWebber Participation	Potential Compensation
05/05/98	424(b)(4) Prospectus	15,000,000 Common Stock	1,250,000 Shares	$1,875,000.00

PAINEWEBBER, INC.

Date	Azurix* SEC Filing	Azurix Offering	PaineWebber Participation	Potential Compensation
06/09/99	424(b)(4) Prospectus	36,600,000 Common Stock	5,426,000 Shares	$6,185,640.00

*Azurix Corp. is an Enron-related company

PAINEWEBBER INTERNATIONAL (U.K.) LTD.

Date	Azurix* SEC Filing	Azurix Offering	PaineWebber Int'l (U.K.) Participation	Potential Compensation
06/09/99	424(b)(4) Prospectus	36,600,000 Common stock	1,464,000 Shares	$1,668,960.00

*Azurix Corp. is an Enron-related company

PAINEWEBBER, INC.

Date	TNPC* SEC Filing	TNPC Offering	PaineWebber Participation	Potential Compensation
10/04/00	424(b)(1) Prospectus	24,000,000 of Common Stock	3,228,341 Shares	$3,898,221.76

*TNPC, Inc. ("New Power") is an Enron-related company

201. The clear ties that UBS had with Enron were substantial and were indicative of the motive for its blind eye and deaf ear to the red flags that waived during the Class Period. In his testimony before The Committee on Energy and Commerce, John Olson, Senior Vice President and Director of Research, stated as follows:

> ENE's top management was not remotely interested in objectivity. You were either for them or against them. Some purely anecdotal evidence.
>
> ! In one telephone call several years ago, the then CEO told me quite succinctly: "we are for our friends," and proceeded to itemize the monthly history of my own "unfriendly" Enron ratings over the prior two years.
>
> ! Enron had a considerable investment banking agenda every year, and attracted bankers like roaches to honey. The common unspoken, unwritten understanding came back thus: ENE would be happy to do banking business, provided the analyst had a strong buy recommendation on the stock. . . . . .
>
> But if this Committee wonders aloud why, oh why, there was such an embarrassment of Buy recommendations on this Company; they need not look farther than the interface between investment banking and research. In recent years, investment banking held all the marbles on Wall Street. . . . . .Why didn't analysts change their ratings from $90 to $80 all the

way down to zero in some cases? It made no sense not to. These people are not dumb

Recommendations:

From a securities analyst point of view, there are some very pragmatic fixes that need to be made in the marketplace. . . . .Undertake a thorough review to minimize or remove Investment Banking influences/pressures/and personnel from Securities Research.

! In my opinion, Investment Banking has gamed Research, solely to their advantage. Investors do not need analysts who simply make Strong Buy recommendations. Robots can do that.

! Terrible IPOs have been done, which essentially compromised the system with bad deals coupled with favorable research recommendations. Azurix and New Power Company were cases in point.[23]

B. UBS's Course of Dealing – Brokers

202. In addition to the discussion regarding Wu and the rules and policies of the Heritage branch office, financial advisors at other UBS offices worked hard to sell Enron to retail clients. As Enron's stock continued to plummet and, when the stock reached the $10.00 to

[23] Prepared Witness Testimony of John Olson, Senior Vice President and Director of Research, Sanders, Morris, Harris, The Committee on Energy and Commerce. Financial Collapse of Enron Corp., Subcommittee on Oversight and Investigations, February 7, 2002.

$12.00 level, UBS began to actively seek investors to support the stock value. Tim Kruger, manager of a UBS Florida retail branch, specifically represented to investors that $10.00 to $12.00 per share was "book value" for Enron stock. Kruger represented that Enron stock had fallen, not because the company had problems, but as the natural fallout surrounding the resignation of Jeff Skilling. Kruger represented that UBS rarely advised clients to "catch-up" on stock, but that Enron was such a "Strong Buy" at book value that it had to recommend the purchase.

203. UBS's abysmal failure to balance the investment picture with their own concerns about Enron financial reporting practices, their failure to reveal other adverse information regarding Enron that they had knowledge of, and their failure to provide Plaintiffs and the Class with unbiased information about Enron's financial condition to help them make a truly informed investment decision regarding their Enron stock combined to cause, or at least become a significant contributing cause, to the financial losses suffered by Plaintiffs and the Class they seek to represent. Defendants' actions or inactions in these regards caused its customers to artificially support a market in Enron stock that should not have existed.

204. All the while, others called it like it was on June 18, 2001:

> But even at $50 a share, Enron is no bargain, say its detractors, among them short seller James Chanos of Kynikos Associates, whose

> short position in the stock means he'll profit if share prices drop. "Enron is basically a giant hedge fund," he says, and not a very lucrative one at that. "Investors are paying four times book value for returns on capital of 7 percent," complains Chanos. "You can do that in the bond market for a lot less risk." . . . Presumably, though, corporate insiders know what's what. Insider selling spiked last year, when more than 8 million shares were sold. Insiders have sold or said they will sell 2 million more shares this year. Says short seller Chanos: "They're voting with their feet."[24]

C. UBS'S COURSE OF DEALING – REPORTS

205. UBS purports to have "Research Principles." During the class period, it represented to clients that the purpose of its equity research was to benefit the investing clients by (1) analyzing companies, industries and countries to forecast their financial and economic performance; and (2) providing opinions on the value and future behavior of securities. UBS represented that its equity research was objective, had a reasonable basis and was balanced and objective. Perhaps most importantly, UBS represented that its Equity Research would not be used by UBS " **. . . to advance its own interests over those of its client, or to advance analysts' own interests."**

206. Barone is the managing director in the energy group at UBS Equity Research and has been an

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[24] U.S. News & World Report, June 18, 2001.

analyst since 1971. At UBS, he specializes in natural gas transmission, distribution, independent power production and energy marketing companies. He has been ranked on *Institutional Investors'* "All Star Team" for 27 consecutive years. In 2001, Barone was ranked No. 2 in the natural gas category by *Institutional Investors'* All-American Research Team. Prior to joining UBS, Barone was the natural gas analyst at PaineWebber, Inc.

207. UBS's fraudulent course of business is evidenced, in part, by its (1) willingness to allow Barone to continue coverage on Enron when he espoused positions that UBS ***knew*** were ***wrong***; and (2) requiring, in the face of its knowledge, that Barone's "Strong Buy" Research Notes be given to each and every client who asked questions regarding Enron. Within the UBS investment bank it was openly discussed that Barone analysis and "Strong Buy" rating was inconsistent with the investment bank's knowledge of Enron's finances. Moreover, the investment bank's senior credit officers admitted shortly before Enron's bankruptcy that Barone's continuous "Strong Buy" rating when highlighted by the press was "very embarrassing."

208. UBS allowed Barone to accept, apparently blindly, Enron upper management's nonsensical explanations and ignore known hard data. More importantly, UBS did not manage Barone, took advantage of Barone's contrary rating to mitigate UBS's exposure to Enron, and used Barone to serve Enron, UBS's "true" client, by enhancing its investment banking and retail revenues at the complete

expense of the Plaintiffs, to whom UBS owed concrete regulatory duties of disclosure.

2. Undisclosed Conflicts Of Interest

209. Today, "the whole world" knows about the surreptitious way in which "disinterested, objective" Wall Street research analysts were paid for investment banking services. What most people do not realize is that analysts were used as "bird dogs" to attract investment banking business from the get go. UBS is no exception. UBS hired Barone to obtain investment banking business and paid Barone for investment banking business obtained through his efforts. Of course, none of Barone's activities, or payments, were disclosed to the investing public or to Plaintiffs.

a. Investment Banking Duties

210. At UBS, it was assumed that Equity Research Analysts would assist the investment banking department of the Bank. For example, equity analysts would frequently meet with top management of companies they covered. In the course of these meetings, the analysts would identify investment banking opportunities. Upon their return, they would alert the bankers of the opportunities. Mark Altman, deputy head of U.S. Equity Research for UBS, characterized the activity as "something that was done with some regularity."

211. Another way that research analysts assisted in investment banking activities was to initiate

coverage of a company as an incentive for the company to do business with the Bank. From 1999 - 2001, Altman admitted that investment bankers within UBS would contact the Equity Research department and request that analysts initiate coverage on companies with whom the bankers wanted to do business. The Equity Research department would capitulate and initiate coverage. Brian Barefoot, the head of PW's investment bank until its integration with UBS was complete, was more forthcoming:

> If investment banking wanted to pursue business with a corporate client, in the equity financing area, research had to have an opinion on the stock, had to follow the stock. If it didn't, there was nothing to talk about. If it did, that was one of the criteria that a company who was looking to use Wall Street services required, was that the firm doing business, in this case PaineWebber, follow their stock. So there, obviously – the business relationship was influenced by whether or not, first of all, the company was – that PaineWebber following that company from a research perspective and then, secondarily, what was the view of the research department of that company's equity securities.

Thus, clearly, the investment bankers were far likelier to obtain investment banking business from Enron if Ron Barone maintained a "Strong Buy," UBS's highest rating on a stock.

212. At PW, and at UBS, research analysts, as part of their yearly evaluation, were required to keep

track of the investment banking activities in which they participated. In his evaluations, Barone was not shy about explaining the ways in which he assisted in investment banking activities, not the least of which involved Enron and/or Enron related companies. In his 1999 evaluation, he pointed out that he took 18 clients to visit Enron in August. He assisted in the Enron owned Azurix IPO. Barone specifically noted that, without his Enron relationship, PW would not have been involved in the transaction. In September, he was involved with EOTT (an Enron subsidiary) secondary and senior note offerings. In February, 2000, Brian Barefoot, on behalf of the investment banking department, contributed money to the "research compensation pool for Barone's efforts, including those related to Azurix and EOTT, the very Enron-related transactions specified by Barone.

213. At the end of each year, the investment bank would issue a report on each analyst, specify the deals with which the analyst assisted the bank, and determine how much money would be paid. The Bank would also comment regarding the analyst's investment banking work. In 1999, PW investment banker Kevin McCarthy characterized Ron Barone's help on a number of transactions as: (1) "Analyst covered and supported;" (2) " 'Easy deal: analyst provided solid support;" (3) "Very tough deal; analyst provided significant help;" and (4) "Analyst provided significant support."

214. By 2001, although the analysts no longer identified as part of a self-evaluation the specific investment banking customers and relationships (s)he

nurtured, Barone still evaluated himself in terms of investment banking activities. He stated, " . . . helped to get UBSW chosen as a lead-or-co-manager for investment banking transactions; successfully marketed all these transactions . . . " In 2001, UBS was chosen as co-lead manager and/or co-manager on Enron investment banking deals.

b. Investment Banking Pay

215. Pre-UBS merger, PW's compensation for Ron Barone was clear and unequivocal. In his 1999 employment contract with PW, he received a $200,000.00 base salary, a guaranteed incentive bonus of at least $1,800,000.00, plus payment in "customary fashion for investment banking revenue" he generated. The 1999 contract indicated that the same pay scheme would continue for the years 2000 and 2001.

216. Post UBS/PW merger, in October, 2000, Barone entered into a new employment contract with UBS. Under the UBS contract, Barone was paid a base salary of $200,000.00 and a guaranteed incentive bonus of at least $2,300,000.00. The guaranteed incentive bonus stated it was exclusive of any investment banking related revenue. For the year 2001, UBS eradicated the "former PaineWebber investment banking related compensation program." In lieu of the PW program, Barone's 2001 compensation scheme with UBS included his base salary of $200,000.00 and a guaranteed incentive bonus of at least $3,000,000.00, which stated it was inclusive of consideration for any

investment banking related compensation to which he would have been entitled under the former PW program.

217. Though UBS eliminated the PW investment banking compensation program, it was a form-over-substance change because it did not eliminate the compensation for investment banking related activities. In fact, UBS clearly valued Barone's investment banking activities at around $700,000.00, which constitutes an additional 28% of his base salary and former incentive bonus. Mark Altman confirmed that the compensation changes were in name only, and that the increase in the guaranteed incentive bonus was actually the investment banking related compensation.

218. Pre-2001, under the old plan, the investment banking department would determine how valuable the analysts' work was and contribute a percentage of the investment banking fee to the research pool, which was used to pay analyst bonuses. In 1999, the investment bank issued a report indicating that Ron Barone alone was involved in assisting bankers to generate over $6,000,000.00 in fees. This figure included over $2,000,000.00 in fees for Enron related Azurix and EOTT. The total contribution to the research departments bonus pool, for Barone's efforts, was nearly $500,000.00.

3. UBS Debt/Credit Analyst Stewart Morel

219. Within the "research umbrella" of UBS lay another, far less celebrated research analyst for Enron:

Stewart Morel. Morel was a debt/credit analyst. Where Barone issued reports on Enron equity, Morel issued reports on Enron bonds. While the two review similar documents, their research is different. Barone concentrates on whether stock values will rise or fall. Morel concentrates upon whether a company has the ability to pay its debts.

220. In analyzing Enron, and 89 other companies in his sector, Morel looked at the amount of cash generated relative to the amount of debt outstanding. He relied upon publicly disclosed debt to perform his analysis. Anyone within UBS was entitled to have a copy of Morel's opinions. Among those on his list of recipients to whom his opinions were automatically sent was the Enron relationship banker, Jim Hunt.

221. In performing his analysis of Enron' s public filings, Morel noticed an increase in debt consistently over the period from third quarter of 2000 until Enron went out of business. Since Osprey and Marlin were public bond deals, Morel knew about the debt obligations. They caused him concern because Enron's deteriorating credit nature, combined with the prospect of losing its investment grade status, would have resulted in an acceleration of those obligations. That in turn would increase the amount of short-term money Enron would need to satisfy its debt. that [sic] they were Enron debt obligations.

222. Up to November, 2000, Morel listed Enron debt as a "Buy." After November, 2001 [sic], Morel reduced his rating on Enron debt to a "Hold." In early

2001, Morel moved from a "Hold" position to a "Sell" position on Enron Bonds. He moved to a "Sell" based upon a credit metrics he created, wherein he created financial ratios that allowed a comparison of one company to another. He compared the "relative strength" of 80 companies, including Enron, to each other. Based upon his comparison, by June 30, 2001, Morel moved to his "Sell" position on Enron Sr. Bonds. However, unlike Ron Barone's "Strong Buy" opinion on Stock, Morel's "Sell" opinion on bonds was not circulated to retail investors, not even those encouraged by UBS to ***buy*** Enron bonds after Morel's downgrade.

4. Fraudulent Practices Related To Analysts

223. This is not an "analyst" case. Plaintiffs do not sue UBS because Barone's research was wrong or because Morel's research was right. However, the manner in which UBS actively ***used*** Barone's Research notes, and hid Morel's, was a part of the scheme and artifice to deceive its retail clients. As described above, UBS required that its investment advisors send copies of Barone's research to retail clients. In fact, post-8/21/01, UBS instituted a policy at the Heritage Branch, requiring its financial advisors to ***only*** provide Barone's research, couched as advice, to retail clients.

224. At the same time, UBS represented to retail clients that its equity research was objective, fair, sound and founded upon a reasonable basis. UBS did not reveal to its retail clients that the "objective"

research analysts received significant amounts of money as a result of investment banking activity, cozied up to corporate management in order to determine whether there was investment banking business to be had, and even covered companies, at the request of the Bank, to facilitate investment banking business. This knowledge would be absolutely material to any investor who was inundated with Barone's research opinions and would be necessary information for the investor to know so as to make an informed investment decision.

225. Further, as far back as 1997, Union Bank knew that Enron maintained material, off-balance sheet debt. Off balance sheet debt, by its very nature, is something the public can't know because it is not reflected on the company's audited financial statements. A company's use of off-balance sheet financings are a concern in the industry because they are not transparent. Further, off-balance sheet debt is not reflected in the company's published leverage ratios. The consolidated UBS knew about significant off-balance sheet debt as a result of its investigating potential deals, and participating in the deals discussed above. Simultaneously, UBS knew that Ron Barone accepted Enron's representations regarding the financial stability of the company, while UBS knew material information regarding the financial instability of Enron. At a time when UBS was hedging its risk and securing its future, it not [sic] allowed but mandated that its retail clients receive incorrect information and/or opinions based on false premises.

226. When an investment bank obtains detrimental knowledge that is different from assumptions that its research analyst makes, the bank should stop the analyst's coverage on the stock. In fact, in a situation where the bank discovers corporate malfeasance, and knows that it has an array of clients who maintain positions in that company, PW's former head of investment banking articulates the industry standard for the action the bank should take:

> Well, first of all, you would suspend the stock if it were. You would suspend the market making activities. You would certainly suspend research coverage if they had equity outstanding, even if it was something like this that's not equity related but it does impact. That's the first thing you would do, and I'm sure we would enter into some sort of a, quote, unquote, investigation, assign somebody the responsibility to take a look at this thing before any action, whether it was to resume offering an opinion or some other course of action.

In fact, Brian Barefoot states that the bank should suspend coverage on a stock even if something occurs like

> a piece of information, a public announcement that produces an unusual reaction . . . you would suspend coverage pending further investigation so that you could respond as the analyst to whatever the facts were with some more understanding that just a knee-jerk reaction to something that was unexpected or unanticipated.

227. UBS, on the other hand, took none of the actions detailed by Brian Barefoot. Instead, UBS relentlessly hawked the "Strong Buy" opinion, which served to support the market's perception of the stock's value, while attempting to rid itself of all Enron exposure. In fact, it used the material, non-public information that it possessed when making decisions to sell its own Enron equity and debt securities to the investing public. UBS's actions evidence its scheme/artifice to deceive the investing public, for its own gain.

XI. SECTION 12(a)(2) LIABILITY

228. Class-Representatives Lampkin, Ferrell, and Swiber bring a claim in this lawsuit against UBS PW for violations of Section 12(a)(2) of the 1933 Act on behalf of themselves and a similarly situated sub-class of plaintiffs who purchased or acquired options to purchase Enron securities, and/or purchased or acquired Enron securities through the exercise of an option to purchase Enron securities pursuant to the prospectuses connected with the registration statements identified below.

229. Generally, Section 12(a)(2) of the 1933 Securities Act imposes near strict liability on any person who: (1) offers or sells (2) a security (3) by means of a prospectus or oral communication (4) which includes an untrue statement of material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading.

A. THE PROSPECTUSES/REGISTRATION STATEMENTS INVOLVED

230. Plaintiffs' Section 12(a)(2) claims involve the acquisition of options to purchase Enron equity securities and the exercise of those options to receive Enron common stock pursuant to one or more of the prospectuses (the "Prospectuses") accompanying the following registration statements filed with the SEC on Form S-8 (the "Registration Statements"):

DATE	FILE NO.	SHARES	BENEFIT PLAN	TOTAL VALUE
01/26/01	333-54448	10,000,000	1991 SOP	$714,100,000
01/26/01	333-54452	32,000,000	1994 SOP	$2,285,120,000
01/26/01	333-54454	3,000,000	1999 Sop	$214,230,000
08/12/99	333-84999	10,000,000	1991 SOP	$850,625,000
08/12/99	333-85001	15,000,000	1994 SOP	$1,275,937,500
07/02/99	333-82225	10,000,000	1994 SOP	$771,250,000
07/02/99	333-82227	10,000,000	1991 SOP	$771,250,000
03/18/98	333-48193	100,000	1994 Deferral Plan	$4,600,000
01/03/97	333-19253	415,448	Zond Exchange	$17,708,471
06/30/95	033-60821	11,000,000	1994 SOP	$379,500,000
	TOTALS:	**101,515,448**		**$7,284,320,971**

231. The use of a prospectus is required under federal securities law to be prepared by the issuer and delivered to a prospective offeree of the securities. Form S-8 mandates the inclusion of specific information in the Prospectuses and that the Prospectuses be sent or given to employees as specified by Rule 428(b)(1) of the Act. The Prospectuses do not have to be filed with the SEC, but they must be sent or given to the individuals to whom the offering is extended.

232. The Prospectus required in an S-8 offering includes documents incorporated by reference in the Registration. Statement pursuant to Item 3 of Part II of Form S-8, which documents, taken together, constitute a Prospectus that meets the requirements of Section 10(a) of the Act.[25] Enron had to provide a written statement to participants advising them these documents were incorporated by reference in the Prospectus. General Instruction "G" of Form S-8 specifies updating information that should be contained in the Prospectus during the offering period.[26]

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[25] See Rule 428(a)(1) of the Securities Act of 1933, as amended.

[26] "[U]pdating of information constituting the Section 10(a) prospectus pursuant to Rule 428(a) during the offering of the securities shall be accomplished as follows:

1. Plan information specified by Item 1 of Form S-8 required to be sent or given to employees shall be updated as specified in Rule 428(b)(1). Such information need not be filed with the Commission.
2. Registrant information shall be updated by the filing of Exchange Act reports, which are incorporated by reference in the registration statement

233. In other words, the Prospectuses given or delivered to Enron employees, Enron affiliate employees, and other individuals eligible to participate in the continuous offering of Enron common stock would have been comprised of a copy [sic] the 1991 Stock Option Plan, the 1994 Stock Option Plan, the 1999 Stock Plan and any and all restatements or amendments to these stock plans, as well as all documents subsequently filed by Enron pursuant to Sections 13(a), 13(e), 14 and 15(d) of the Securities Exchange Act of 1934, but prior to the filing of any post-effective amendment which indicated that all securities offered have been sold or which deregistered all securities then remaining unsold. Enron also had to furnish to all eligible participants its annual report to security-holders containing the information required by Rule 14a-3(b) under the Securities Exchange Act of 1934 for its latest fiscal year, its annual report on Form 10-K, and the latest prospectus filed pursuant to Rule 424(b) under the Act that contains audited financial statements for Enron's latest fiscal year, provided that the financial statements are not incorporated by reference from another

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and the Section 10(a) prospectus. Any material changes in the registrant's affairs required to be disclosed in the registration statement but not required to be included in a specific Exchange Act report shall be reported on Form 8-K pursuant to Item 5 thereof.

3. An employee plan annual report incorporated by reference in the registration statement from Form 11-K (or Form 10-K as permitted by Rule 15d-21) shall be updated by the filing of a subsequent plan annual report on Form 11-K or 10-K."

filing, and provided further that such prospectus contains substantially the same information required by Rule 14a-3(b) or Enron's effective Exchange Act registration statement on Form 10 containing audited financial statements for Enron's latest fiscal year.[27]

234. These Prospectuses sent to eligible plan participants were used to offer or sell securities according to the three (four, if the amended and restated 1994 Stock Option Plan is included) Stock Option Plans offered by Enron through services rendered by UBS PW. Furthermore, Enron undertook to file specific information mandated by Form S-8.[28]

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[27] Rule 428, Securities Act of 1933, as amended.

[28] (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "1933 Act");

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or in the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; provided however, that paragraphs (1)(i) and (1)(ii) do not apply if the information

B. UNTRUE STATEMENTS & OMISSIONS

235. Class-Representatives Lampkin, Ferrell, and Swiber base their Section 12(a)(2) misrepresentation and omission claims on the restatement of the Enron financial information included (or omitted) in the Prospectuses prior to November 8, 2001. Enron provided formal notice of its restated financials on November 8, 2001 by filing a Form 8-K. Enron's restatement of financials was also contained in Enron's November 19, 2001, Form 10-Q for Quarter Ended September 30, 2001. Both of these documents are incorporated herein by reference. It is undisputed the Prospectuses and the Registration Statements contained incorrect financial statements and other information, and omitted material facts, as evidenced by the undisputed fact that they had to be restated.

> required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.
>
> (2) That, for purposes of determining any liability under the 1933 Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the **initial bona fide offering** thereof. [emphasis added]

236. Enron's November 8, 2001 Form 8-K stated it would be providing information to investors concerning several important matters, to wit:

- A required restatement of prior period financial statements to reflect: (1) recording the previously announced $1.2 billion reduction to shareholders' equity reported by Enron in the third quarter of 2001; and (2) various income statement and balance sheet adjustments required as the result of a determination by Enron and its auditors (which resulted from information made available from further review of certain related-party transactions) that three unconsolidated entities should have been consolidated in the financial statements pursuant to generally accepted accounting principles.
- Enron intended to restate its financial statements for the years ended December 31, 1997 through 2000 and the quarters ended March 31 and June 30, 2001. As a result, the previously-issued financial statements for these periods and the audit reports covering the year-end financial statements for 1997 to 2000 should not be relied upon.
- The accounting basis for the $1.2 billion reduction to shareholders equity.
- The Special Committee appointed by Enron's Board of Directors to review transactions between Enron and related parties.
- Information regarding the LJM1 and LJM2 limited partnerships formed by Enron's then

> Chief Financial Officer, the former CFO's role in the partnerships, the business relationships and transactions between Enron and the partnerships, and the economic results of those transactions as known thus far to Enron, which are outlined [in the attached Tables to the report].

- Transactions between Enron and other Enron employees.

237. Further revelations in this Form 8-K revealed Enron's financial restatements would 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. These changes to net income were the result of the retroactive consolidation of JEDI and Chewco beginning in November 1997, the consolidation of the LJM1 subsidiary for 1999 and 2000 and prior year proposed audit adjustments. The consolidation of JEDI and Chewco also increased Enron's debt by approximately $711 million in 1997, $561 million in 1998, $685 million in 1999 and $628 million in 2000.

238. The Prospectuses were false and misleading due to, among other things, the incorporation by reference of Enron's 10-K's from 1997-2001. These 10-Ks contained Enron's admittedly false financial statements. Enron filed 10-Ks for those years which misrepresent Enron's financial results, including earnings,

the debt-to-equity ratio, total debt, and shareholder equity, by failing to consolidate non-qualifying SPEs, as required by GAAP and numerous other accounting misstatements and omissions which misstatements and omissions were outlined by Enron in its November, 2001 and post November, 2001 Exchange Act filings, all of which are incorporated herein by reference.

239. Interestingly, the Enron 1997 Form 10-K, which was incorporated by reference in Form S-8 filings, misstated and understated the loss incurred by EES for 1997, reported $107 million, due to the overvaluation of the EES contracts and abuse of mark-to-market accounting, as detailed herein. Additionally, Enron's 1996 Form 10-K, which was incorporated by reference in Form S-8 filings, reported that Phase I of Enron's Dabhol plant was to begin commercial operations in December, 1998. This was false and misleading because cost overruns on the Dabhol project and problems with political and regulatory officials, which had occurred by December 31, 1997, ensured the plant would likely never begin commercial operations on the terms represented and, if begun, commercial operations would result in huge losses because to break even Enron would have to charge its only customer (the Indian state government) four times the price other power generators were charging to supply electricity energy in order to recoup Enron's investment.

240. The November 8, 2001 restatements filed by Enron evidenced a charge to earnings of approximately $500 million or about 20 percent of earnings during that period. On November 19, 2001, Enron filed its

Form 10-Q, which for the first time, disclosed the November 9, 2001 downgrade to BBB- had triggered a demand for $690 million from Enron which it could not pay. This $690 million obligation was associated with an entity called "Whitewing," a structure in which UBS had been involved in as detailed herein.

C. UBS PW LIABILITY AS A SELLER

241. UBS PW is a "seller" under Section 12(a)(2) with respect to the securities offered and sold by means of the Prospectuses. A "seller" of a security for the purposes of Section 12(a)(2) liability includes *one who successfully promotes or solicits* the purchase of a security motivated at least in part by a desire to serve his own financial interests or the financial interests of the securities owner.[29]

242. As the United States Supreme Court recognizes, "brokers and other solicitors are well positioned to control the flow of information to a potential purchaser, and, in fact, such persons are the participants in the selling transaction who most often disseminate material information to investors."[30] Understanding that an investor is most likely to be injured when a broker allows only certain information to reach the investor, the Supreme Court concludes a natural reading of the "seller" language of Section 12 includes within it the persons who urged the investor to purchase the

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[29] *Crawford v. Glenns, Inc.*, 876 F.2d 507 at 510-12 (5th Cir. 1989).

[30] *Pinter v. Dahl*, 486 U.S. 622, 682 (1988).

security at issue, such as through corporate policies requiring the delivery of positive analyst ratings without regard to whether those ratings were suitable for any particular investor.[31]

1. UBS PW's Financial Benefit

243. To understand why UBS PW promoted and solicited Enron stock as alleged below, one must first understand the intense financial motivation underlying those actions. UBS PW's relationship with Enron funneled staggering amounts of money into UBS PW's coffers and this wealth became a great motivating force for UBS PW.

244. UBS PW contractually cornered the market on the financial wealth of the Enron and Enron affiliate employees. Rocky Emery ("Emery") came to UBS PW in 1996 and developed the exclusive captive broker relationship with Enron for its stock option plans. An October 16, 1998 Letter Agreement (the "Agreement") between UBS PW and Enron formed an exclusive relationship between the parties concerning the "administration" of Enron's stock option plans.

245. UBS PW used this Agreement as its entrée into the world of all Enron's and Enron affiliates' employees. UBS PW agreed to provide certain services to these employees for free and then worked to capture at least 1/3 of the assets generated from the exercise of those stock options. Emery informed UBS's financial

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[31] *Id.* at 680.

advisors the reason for the exclusivity of the contract with Enron was to allow UBS PW the opportunity to retain a substantial portion of the net amount of wealth after the exercise of the stock options. This scheme spawned enormous financial benefit to UBS PW. All Enron employees, all Enron affiliates' employees, and all other individuals covered by the Form S-8 registered stock option plans, which was in excess of 27,000 or more individuals over 5 years, were directed by Enron and Enron Human Resources to call UBS PW for any exercise of the stock options and any questions they had regarding the stock options.

a. The UBS PW Plan to Acquire the Wealth of the Enron Employees

246. UBS PW captured the wealth of the Enron employees via a three-pronged approach. First, PW required Enron employees to open an account with UBS PW before they were able to exercise their stock options. Forcing Enron employees to open a UBS PW account before any stock options could be bought or sold was UBS PW's "foot in the door" on keeping the Enron employees' assets in the UBS PW coffers. UBS PW made it very easy for the Enron employees to rationalize keeping their account at UBS PW to avoid having more paperwork to fill out and the hassle of moving the investments to another broker-dealer or financial advisor.

247. When Enron employees opened an account with UBS PW as directed, they are guided by UBS

PW's phone bank of financial advisors to open up another account as well. The reason for the live phone bank was to immediately capture all of the telephone calls from Enron employees. The object was to have a UBS PW financial advisor establish personal one-to-one contact with the Enron employee. Having the first, second, and third personal contact with these employees was invaluable, during a vulnerable period of time when the employee was searching for guidance and understanding about the exercise of the options. UBS PW was inserting itself as an indispensable member of the option exercise at this point in terms of reliance by the Enron employee.

248. At this same time, UBS PW obtained valuable insight into this individual; e.g., how much money the Enron employee has tied up in stock options, how much money this employee has in other investment or retirement accounts, what sophistication level this employee has, what his or her financial goals and risk tolerance are, and whether this optionee needs the cash. The financial advisors would answer questions from the optionee and "close" the relationship between UBS PW and the Enron employee for the "additional services" UBS PW and Enron contemplated UBS PW would sell.

249. UBS PW's second prong in its approach to Enron's employees was to provide printed materials to the employees designed to convince them the management of their stock options involved financial considerations too complicated and numerous for them to handle without the assistance of a UBS PW financial

advisor. In making stock option issues complex for these potential retail customers and then providing stock option analysis free of charge, UBS PW made itself invaluable to Enron's employees. An example of such a publication is the *Guide to Exercising Your Stock Options Online.*[32]

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[32] PW gave the plan participant its opinion on "Valuing Your Stock Options" on page 19 of the *Guide to Exercising Your Stock Options Online.*

> Your options also enjoy value of time. . . . .Because you have a set period of time in which to exercise your options, you can time your exercise with the objective of receiving the most gain. For example, if you have 10 vested options with an exercise price of $55.50 and the market price of the stock is $40.00 per share, your options have no monetary value if you exercised at that time. However, if the option does not expire for five years, there is a possibility that over that time the market price will rise above the option price of the option. Therefore, the period of time you have to exercise your options gives you the ability to wait for the market price of the stock to increase.

And it is no surprise that PW wants to give the eligible plan participant offeree its free stock option analysis to assist in the timing of the exercise of those stock options. After all, as PW points out:

> Once your options are vested, the decision to exercise them is entirely up to you. You decide when to exercise your options and how many shares you want to exercise. . . . *.Although your options have value once there is a positive difference between the exercise price and the current market price of your company's stock, that does not mean it is the right time to exercise your options. Your stock option program was created as a long-term incentive – it is part of your total compensation – and many factors should be considered before you exercise your options.* [emphasis added]

250. UBS PW's final prong was offering certain services related to Enron employees' stock options free of charge. The result of this approach was the influx of millions and millions of dollars from Enron employees into UBS PW's managed accounts. UBS PW made these services a loss leader to the more lucrative Financial Planning Services.

251. UBS PW's Agreement with Enron would have been essentially worthless to UBS PW if it could not capture the wealth of the Enron employees. Accordingly, UBS PW ensured the Agreement explicitly enabled it to capture the wealth of the Enron employees.[33]

- How many options do you want to exercise and from which grant(s)?
- How do you want to exercise your options? What type of order do you want to place? Do you want to own shares of stock or would you like the net proceeds from a sale in cash?
- What are your current and future financial needs?
- Will you use your options as part of your overall long-term investment plan?
- When do you plan to retire? How much stock do you want to own at your retirement date?
- What are the prospects for your company's stock price? Can you tolerate fluctuations in the market price?
- What are the tax implications of exercising your options?
- Are you a Section 16 Reporting insider of your company? As an insider you are subject to SEC restrictions, including the requirement to report your exercise activity to the SEC.

[33] *The Agreement stated: "PaineWebber, however is not prohibited from offering and conducting further business with*

It is clear from this Agreement that Enron and UBS PW knew UBS PW was aggressively going to pursue "further business" with Enron's employees. This was the financial key for UBS PW to Enron's employees and the wealth tied up in their stock options and other financial assets. The Agreement paves the way for UBS PW to provide other services to Enron employees directly related to "the investment of any proceeds from the exercise and sale of shares from stock options granted by the Corporation or the deposit of any stock" and UBS PW will derive its collateral compensation from this relationship and on the "proceeds from the exercise and sale of shares from stock options."

Corporation employees who have Established Accounts (Employee Accounts which currently hold cash or securities) with PaineWebber pursuant to this Agreement and have elected to conduct further business with PaineWebber . . . PaineWebber [is not] prohibited from conducting seminars, presentations or meetings at which one or more Corporation employees may be in attendance as a consequence of general solicitation by PaineWebber. Further, PaineWebber is not prohibited from establishing accounts for and conducting business with such attendees . . . In the event an employee of the Corporation elects to conduct further business and maintain an Established Account with PaineWebber, such Established Account shall be between PaineWebber and the employee . . . . . PaineWebber agrees to require any Corporation employee, who elects to conduct further business with PaineWebber (including, but not limited to, the investment of any proceeds from the exercise and sale of shares from stock option grants by the Corporation or the deposit of any stock), to sign an agreement to acknowledge that. . . . . .any further business conducted between PaineWebber and the employee is a matter of personal discretion." Agreement, at page 2.

252. The first page of "*A Guide to Exercising Your Stock Options Online*," welcomes the eligible participant with these words:

> Enron Corp. has rewarded your hard work and dedication with an opportunity to share in the success of Enron through participation in its stock option program. A well-thought-out plan for exercising these options is a critical factor in making the most of your stock options. PaineWebber is pleased to assist you in your option transactions. . . . .This brochure describes the PaineWebber five-step process for exercising your options and the basics of a stock option program. *In addition, it addresses important information including . . . . additional services offered by PaineWebber* . . . . PaineWebber representatives are available to assist you with the Internet Web site and to answer questions about your stock options. We look forward to working with you. [emphasis added].

253. At the very first introduction of UBS PW to the optionee, UBS PW is already in sales mode trying to get the optionee to look at UBS PW's other "additional services." Again, UBS PW is telling these optionees they need UBS PW because the optionee needs a "well-thought-out plan for exercising these options," which was a "critical factor in making the most of [their] stock options." This sales pitch to get these Enron employees to use UBS PW for assistance in preparing this "well-thought-out plan for exercising these options" is not UBS PW confining itself to merely

exercising the stock options for the optionee. UBS PW was selling itself and the "additional services" UBS PW had, all in a concerted plan, approved by Enron, to get these individuals as ultimate retail customers for UBS PW. This is, by anyone's definition, not confining itself to simple administrative services. Instead, UBS PW focused on offering voluminous financial services to these customers (as set forth in the *Guide to Exercising Your Stock Options Online*), including access to UBS's equity research analyst's reports and ratings.[34]

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- ! Dedicated toll-free phone number to UBS PW Representatives.
- ! Transaction fee of $4.50 was waived on all stock option exercise transactions.
- ! Wire fee of $25,00 was waived for wiring proceeds to the employee's bank account.
- ! Low commission rates of $0.06 on the sale of shares and no fee for exercising options.

UBS PW also offered a number of additional complimentary brokerage and financial services to Enron Employees.

Resource Management Account (RMA)

The RMA is UBS PW's traditional full-service account available to all UBS PW clients. However, for Enron employees, the regular $85.00 annual fee was waived. The RMA provides the following:

- ! Purchase or sell, stock, bonds, mutual funds and other investment products.
- ! Consolidate many of your investments with monthly and annual statements, as applicable.
- ! Receive year-end tax-reporting statements.
- ! Automatic sweep of any idle cash into interest-bearing money market funds.
- ! Use margin on your account.

254. Only one of the following three possible alternatives could occur when an Enron employee opened an account with UBS PW: (i) the employee exercised the stock option and kept the Enron stock; (ii) the employee exercised the stock options and immediately sold all or a portion of it into the market; or (iii) the employee did not exercise the option. The employee's decision to do one of the above-described actions was facilitated by UBS PW's advice about the

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- ! Obtain personal checks, direct deposit, electronic funds transfer and personal debit card.
- ! Access your account online through UBS PW online services.

IRA and Rollovers

The regular $35 annual fee on an IRA was waived for Enron employees. Enron employees were encouraged to consolidate all of their retirement assets at UBS PW. UBS PW explained how both RMA and IRA account statements could be combined by UBS PW for easier more efficient reporting.

UBS PW also offered programs in the areas of estate planning and personal trust services to Enron employees.

Financial Planning Services

UBS PW also offered the following services to Enron employees at no cost with the representation that the services would help the client maximize their investment benefits:

- ! Stock option analysis.
- ! Retirement savings analysis.
- ! Educational needs analysis.

Professional Asset Allocation

UBS PW also discussed its purported ability to develop an investment portfolio with asset allocations specifically tailored to meet individual investment objectives and risk tolerance and assured Enron employees that UBS PW's professional money managers would then manage their portfolios.

advisability to exercise the stock option. Indeed, all financial advisors were repeatedly advised they were not to give any opinion whatsoever regarding the exercise of the stock options until the employee had set up an account with UBS PW. This facilitated the rush of the employees and the employees of the Enron affiliates to sign up and become a UBS PW customer so they could get this free stock option analysis and financial planning. Without this information, the employee was often paralyzed with indecision about what to do with the options and how they fit into the employee's overall financial plan to maximize the options into their retirement or personal goals.

b. The Direct and Collateral Enrichment of UBS PW

255. The Agreement resulted in collateral enrichment to UBS PW far in excess of that which was the usual and customary distributors' or sellers' commission. UBS PW's plan to enrich itself collaterally through the capture of at least 1/3 of all of the wealth generated from the stock option exercise by these Enron stock plan participants spawned hundreds of millions of dollars of value to UBS PW. UBS PW actually exceeded its goal and retained up to 50-60% of this wealth. The financials [sic] advisors themselves were making obscene amounts of money off of the Enron employees too. For example, first-year financial advisors in the Enron group were making in excess of $100,000 per year.

256. In addition to the collateral enrichment received by UBS PW from the rank-and-file Enron employees, the insider trading of the control officers and directors in Enron generated millions of dollars to UBS PW. UBS PW sold over $550,000,000 for the top ranking individuals at Enron just in the latter part of 2000 and first half of 2001. UBS PW earned $.06 per share of options exercised, and placed approximately $80,000,000 in annuities, for which there was a 6% upfront fee, or $4,200,000 in fees earned. The financial advisor would get 50% and UBS PW would get the remaining 50%. And that is only $80,000,000 in annuities; there was the remainder of the $550,000,000 to try to control for these insiders and the rest of the funds generated from the other Enron employees as well.

257. When considered in its totality, the amount UBS PW desired to keep as its compensation were managed assets totaling 1/3 of 7 billion dollars or $2,331,000,000, together with the $.06 per share on the sale of stock, together with the additional funds these employees might have outside of their Enron options. UBS PW made itself a "one-stop shop" for these individuals by offering all of those free financial services and accounts. Indeed, as anticipated by UBS PW, many individuals became comfortable working with UBS PW and transferred other accounts into UBS PW, in addition to their Enron accounts.

258. UBS PW jealously guarded this Enron exclusive relationship to the very end because of the wealth it generated for UBS PW. In fact, this model

was so successful that UBS PW built up a resume of major corporations in which it was also the exclusive stock option plan administrator. But Enron was special and the account was treated differently than all of UBS PW's other stock option plan clients. Until transactions like the Equity Forward Contracts, Osprey/Whitewing, Yosemite, and E-Next became publicly known, Enron's stock was valuable, and Enron was just two blocks away from the UBS PW downtown office. The experience of Wu, the former UBS PW financial advisor fired at Enron's demand, provides a clear example of the staggering wealth being funneled into UBS PW through its exclusive relationship with Enron. *In less than two years*, Wu, still a "trainee" when he was fired, collected over 26 ½ million dollars in assets from Enron employees without having to make cold calls. Wu was at the very bottom of the pecking order in terms of production at UBS PW; he and other new hires took the accounts no one else wanted. Wu built up this asset base with approximately 530 clients out of the over 27,000 or more that were Enron employees or Enron's affiliates employees. This boils down to leads generating over **one million dollars a month** in managed wealth for one financial advisor still in training at UBS PW and who had no accredited investor clients. UBS PW brokers had to do absolutely nothing to start generating solid leads, open accounts and manage wealth without the dreaded "cold calls" so prevalent at other, less fortunate firms.

259. Distribution of the revenues at UBS PW resulting from its relationship with Enron resembles a

pyramid scheme. Fisher, the financial advisor responsible for the Enron account after Emery's departure, testified that out of every dollar brought in as revenue, UBS PW's headquarters received 20%; the financial advisor received a payout, and the remainder stayed at the branch office. Wu received 29% of every dollar he generated in revenue from the Enron account (after he reached gross production revenue to $250,000 a year, he would receive 40% of every dollar he generated in revenue). Out of Wu's 29%, Emery, the group leader prior to July 2001, received 20%. UBS PW and the branch office kept the remainder of the revenue.

260. UBS PW generated revenue both from transactional services and asset management. The fee based revenue came from two sources; (i) from referring clients out to money managers, or (ii) setting up fee based portfolios the financial advisor managed himself or herself. A 2% base fee was charged for the UBS PW financial advisor to manage the account or 2.75% if the account was managed by an equity manager. UBS PW would receive a certain percentage, a "haircut" of 0.50%, leaving the remaining 2.25% to be allocated to Wu (29% of 2.25%) and the remainder of the 2.25% (or 1.5975%) to go to UBS PW and the branch office. Again, Emery was above Wu in the UBS PW pyramid and would receive 20% of Wu's cut of the revenue allocation.

261. Mendenhall, the branch office manager above Emery in the UBS PW pyramid, personally received a percentage of the overall total profitability of the branch office. He earned over a million dollars a

year from the management of the Heritage Branch of UBS PW that was the sole and exclusive promoter and broker for the Enron stock option accounts. By extrapolation of the shared percentages divided from the fees the financial advisors earned from their transactional services (buying and selling stock for accounts) and fee based accounts (managing assets), Emery earned millions in a year and UBS PW, obviously the top of the UBS PW pyramid (but not the top of the UBS pyramid), itself earned millions of dollars in a year. If UBS PW managed the accounts of the $550,000,000 from the insider's sales, for example, and charged the 2.75% fee, the fees to be divided between the financial advisors, the money managers, the UBS PW branch office and UBS PW headquarters would be $ 15,125,000 from just the few top officers and directors' accounts PW sold off during the Class Period. If UBS PW captured at least 1/3 of the 7 billion dollars and charged its 2.75% fee, UBS PW would earn a fee of $64,102,500 – annually.

262. In conclusion, UBS PW had an enormous financial motive to sell and promote Enron stock on behalf of Enron. UBS PW itself stood to collect tens of millions of dollars annually from Enron's employees, and so long as the Enron stock option plan remained at UBS PW.

2. The Solicitation and Promotion of Enron Stock

263. UBS PW relentlessly promoted Enron stock. UBS PW required its brokers to recommend

Enron stock by providing their clients with every UBS "Strong Buy" rating. UBS PW made no analysis of whether UBS's rating was appropriate for the retail client, nor did UBS PW conduct any analysis as to whether UBS's research had a reasonable basis and was free from conflicts of interest as between UBS and Enron. Instead, anytime a question was raised by an Enron employee regarding the exercise of their stock options, UBS PW's internal policy required the answer always recited UBS's "Strong Buy" rating. Importantly, the UBS analyst research note containing its "Strong Buy" rating of Enron stock specifically state they are intended to be distributed in the United States to major institutional investors only. Despite this stated intention, UBS PW required its brokers to send these analyst ratings to its retail clients disregarded the fact the "Strong Buy" rating contained within these analyst reports was not intended by the analyst to be a blanket recommendation and did not consider individual asset allocations, investment objectives, and risk tolerance.

264. This deliberate one-size-fits-all action by UBS PW added professional sponsorship to the Enron securities regardless of the suitability of the Enron securities for a particular retail client. If UBS PW and its financial advisors did not advocate the "Strong Buy" and actively promote the Enron stock to its retail clients, Enron would terminate its relationship with UBS PW and would find a more compliant broker-dealer to promote and solicit its stock in exchange for the lucrative exclusive relationship to the shelf registration

offerings. The termination of Wu expressly demonstrates this fact.

265. Enron required UBS PW to promote Enron securities. Any UBS PW employee who refused to promote Enron securities was quickly eliminated from the equation. Indeed, UBS PW's own policy was that no financial analyst could recommend anything other than a "Strong Buy" without UBS PW's permission and, even if permission was granted, the financial advisor would be forced to send the UBS "Strong Buy" rating to the retail client as well. The result of this policy would be the retail client receiving two contrary recommendations, one from a financial advisor and one from UBS. Additionally, any advice by a financial advisor necessitating a sale of Enron securities had to be couched as a plan of diversification. No negative commentary on Enron was permitted, by UBS PW or Enron.

266. UBS's involvement added a professional sponsorship to the Enron securities by a member of the perceived "disinterested" financial community. UBS PW was the first source of information about the investment in and the exercise of the Plaintiff's stock options. Further, UBS PW had a contract with each of its Enron employee clients establishing privity between the seller and the retail customers. UBS PW established accounts for these retail customers and through a mandatory corporate policy made a "Strong Buy" recommendation to the retail customer when the customer asked for advice about the sale of the Enron stock.

D. Conclusion

267. UBS PW was a "seller" of Enron securities to Plaintiff as the term is understood in the context of Section 12(a)(2) for two specific reasons: (1) because of UBS PW's direct participation in the timing and the exercise of Enron employees' stock options on Enron's behalf and its active solicitation and promotion of Enron securities during these transactions; and (2) because UBS PW's direct participation and active solicitation/promotion of Enron securities was motivated by and resulted in unprecedented amounts of collateral enrichment to UBS PW. Contrary to UBS PW's contention, UBS PW was far more than a mere conduit for Enron employees' receipt of Enron securities.

268. For purposes of this Section 12(a)(2) claim, Plaintiffs Lampkin, Ferrell, and Swiber expressly disclaim any allegations that may be interpreted as allegations of fraud and/or knowing or reckless conduct. Plaintiffs' Section 12(a)(2) claim relies entirely upon allegations of negligence and/or strict liability on the part of UBS PW. Any allegations contained within this section that may be interpreted as allegations of fraud and/or knowing or reckless conduct are included for the limited purpose of showing why UBS PW was a seller of Enron securities to the Plaintiffs during the class period.

XII. SECTION II LIABILITY

269. Class-Representative Plaintiffs Lampkin, Ferrell, and Swiber bring a claim in this lawsuit

against UBS PW for violations of Section 11(a) of the 1933 Securities Act on behalf of themselves and a similarly situated subclass of Plaintiffs who, like Lampkin, Ferrell, and Swiber, purchased or acquired securities which were offered and/or offered and sold through the Registration Statements.

270. Section 11(a) of the 1933 Securities Act imposes liability on every "underwriter" of a security for any untrue statements of material fact or omissions to state a material fact found in a registration statement.

A. Registration Statements

271. The Registration Statements upon which Plaintiffs' Section 11 claims are based are the same Registration Statements identified in Paragraph 230 above, which are hereby incorporated by reference. These S-8 Registration Statements registered the entire process for the offer and sale of Enron securities through the relevant SOPs.

B. Untrue Statements & Omissions

272. The untrue statements and omissions upon which Plaintiffs' Section 11 claims are based are the same untrue statements and omissions identified in connection with Plaintiffs' Section 12(a)(2) claims, as set forth above, which are hereby incorporated by reference.

C. PW WAS THE STATUTORY UNDERWRITER FOR ENRON'S SOPS

1. Underwriter Status

273. An "underwriter" is defined under Section 2(a)(11) of the 1933 Act as follows:

> The term "underwriter" means any person who has purchased from an issuer with a view to, **or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking**; but such term shall not include a person whose interest is limited to a commission *from an underwriter or dealer* not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.[35] (emphasis added)

274. The statutory definition of "underwriter" covers every person who participates directly or indirectly in the distribution of securities, and the Supreme Court broadly interprets participation with regard to the 1933 Act's definition of "underwriter." The plain meaning of the statute itself demands a

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[35] 15 U.S.C.S. §77b(11), as amended.

broad interpretation of participation. And, as recognized by members of the Supreme Court throughout the last century, the plain language of a statute alone provides the most reliable guide to a statute's meaning.[36]

275. In addition to the 1933 Act's plain language and the affirmation of that language by the courts, commentators also recognize that participation in a shelf registration context falls within the statutory definition of "underwriter." For example, Louis Loss and Joel Seligman state: "There have been five basic 'underwriting' techniques, sometimes with variations: [1] strict or 'old fashioned' underwriting, [2] firm commitment underwriting, [3] best efforts underwriting, [4] competitive bidding, and [5] ***shelf registration***."[37]

2. The Traditional Underwriter Function

276. Underwriters have long played the critical role of gatekeeper between the United States securities markets and issuers. The gatekeeper role gives the

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[36] *See e.g. United States v. Mo. Pac. R.R. Co.*, 278 U.S. 269, 278 (1929) (stating "where the language of an enactment is clear and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended"); *see also W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 98-99 (1991) (stating the text of a statute alone is what is presented to the President for his signature or veto).

[37] Louis Loss and Joel Seligman, SECURITIES REGULATIONS, 3D, § 2-A (2001) (*emphasis added*).

sales process an orderly structure and provides the issuer with a strong advocate in the secondary market. Indeed, one of the main roles the underwriter has is to provide sponsorship of the stock in the financial markets and ensure the issuer is providing truthful and adequate information upon which the investing public can make an informed investment decision.

277. After investigating the issuer, doing its due diligence and putting its "stamp of approval" on the issuance, the underwriter's role often changes into that of a "market maker." A market maker attempts to achieve a distribution of the company's shares among private individuals and institutional purchasers that will assure a good price in the offering and adequate trading in the shares. The underwriter supports the issuer in the financial community after the offering by making a market in the company's stock, providing research and analysis on the company for investors, organizing communications with investors and potential investors, and generally helping the company create or maintain a following in the investment community. Once issued, the company's stock will be traded in the market. The ability of the underwriter as a "market maker" to support the market is essential to the issuer. By timing purchases and sales of the company's stock in the market, the "market maker" gives the company's stock needed liquidity, which helps stabilize trading prices.

278. On the one hand, issuers contract with underwriters for their market-maker abilities and the more powerful firms on Wall Street actually promote

their analysts' reports as financial superstars that will give investors unconflicted advice on a given issuer. investment banking firms who are the underwriters vie with one another for an issuer's underwriting positions in new offerings, in consulting and other investment banking opportunities. On the other hand, the investing public relies upon underwriters for protection from the Enrons of the world. As the statutory definition of "underwriter" conveys, UBS PW cannot assume the role of market maker without also assuming the role of gatekeeper between the United States securities markets and issuers. With regard to the Registration Statements, PW embraced its role as a market maker on behalf of Enron, and has promoted, offered and sold for Enron and had a direct or indirect participation in the offer and sale and the distribution of the securities at issue into the initial and secondary security markets.

3. UBS PW Directly Participated in the Promotion, Offer, Sale, and Distribution of Enron Securities through the Registered Transactions

279. Section 11, written in the disjunctive, addresses four types of statutory underwriters, including two relevant here, one who "offers or sell [sic] for an issuer in connection with . . . the distribution of a security" and one who "participates or has a participation in the direct or indirect underwriting of any such undertaking." UBS PW's activities as a "seller" in connection with the registered transactions are detailed in

Section X. In addition to satisfying the "seller" aspect of the statutory definition of underwriter, UBS PW also satisfies the "participation" aspect of the definition.

280. According to the SEC, the words "participates" and "participation" include anyone "enjoying substantial relationships with the issuer or underwriter, or engaging in the performance of any substantial functions in the organization or management of the distribution." Opinion of General Counsel Securities Act Release No. 33-1862 (Dec. 14, 1938). Even UBS PW's most general obligations under the Agreement establish its "participation" in the underwriting of securities in the registered transactions. In consideration for an ***exclusive*** right to broker an optionee's exercise of options under the SOPS, UBS PW assumed the responsibility of the day-to-day administration of the SOPs. Specifically, UBS PW agreed to assume responsibility for the following activities relating to the Enron SOPs:

- Record keeping for Enron with respect to all stock options granted by Enron's Compensation Committee, including sending out notices of grants to the recipients;
- Coordinating with Enron all "Insider" sales subject to Section 16 of the Securities Exchange Act of 1934;
- Coordinating with Enron all "Affiliate" sales;
- Confirming employee eligibility for proposed transactions;

- Recording transactions on an individual and aggregate basis daily;
- Calculating and recording tax withholding for each transaction;
- Establishing an Omnibus Account to hold Enron shares pending transfer to employee accounts;
- Opening employee accounts, issue confirmations, Form 1099s, and monthly account statements;
- Assisting Enron affiliate employees in preparing and filing Rule 144 documentation and Stockholder Representation Letters
- Responding to communications from Enron employees within five (5) minutes;
- Wiring funds to Enron's designated bank account; and
- As of December 7, 2000, maintaining an Internet site for optionees to access and review their stock option grants.

281. In sum and substance, Enron outsourced the organization and management of its SOPs to UBS PW. UBS PW added value to this function as well. For example, Enron could not advise its employees as to whether they should exercise and sell, exercise and buy, or not exercise their stock options at all. Enron was not a broker-dealer and could not advise its own employees as to their financial position, goals, suitability, diversification, etc. Only a licensed and registered

broker-dealer and its licensed employees passing specific licenses [sic] examinations can do this. Enron could not be a market maker of its own stock. UBS PW provided sponsorship in the financial markets to support the value of the securities, a typical underwriter function.

282. Additionally, UBS PW provided market making activities with respect to these securities. Enron awarded the task of selling the common stock to the investor (and financing this sale), the task of giving investor advice and explanation of the Plan and how this exercise fit into their overall investment goals, as well as timing large blocks of exercises into the market to avoid price fluctuations. UBS PW would even at times effectuate an optionee's exercise, pay both Enron for the exercise and the optionee for the amount he or she would have realized if the shares were sold into the secondary market, and then hold the shares in UBS PW's account until it determined the market was best suited for a sale. With the enormous amounts of insider stock being dumped into the market in late 2000 and early 2001, performance of this underwriter function by UBS PW was invaluable to Enron, and UBS PW was the only broker-dealer who could, and did, support the market with respect to the sale of the SOP securities. UBS PW performed these and other traditional underwriting functions in the offer and sale of the Form S-8 registered stock, and was compensated by a commission paid by the option exerciser and a collateral opportunity to enrich itself from the exclusive arrangement.

283. Another example of a UBS PW function akin to a traditional underwriter was the initial financing of Enron employees' exercise of stock options through a broker-financed exercise pursuant to the provisions of Regulation T of the Federal Reserve Board. The 1999 SOP, for example, stated an option granted to a 1999 Plan participant could be exercised through a broker-financed exercise. A "broker financed exercise" is:

> to temporarily finance a customer's receipt of securities pursuant to an employee benefit plan registered on SEC Form S-8 or the withholding taxes for an employee stock award plan, a creditor may accept, in lieu of the securities, a properly executed exercise notice, where applicable, and instructions to the issuer to deliver the stock to the creditor. Prior to acceptance, the creditor must verify that the issuer will deliver the securities promptly and the customer must designate the account into which the securities are to be deposited.[38]

A "creditor" is a broker or dealer or any member of a national securities exchange.

284. UBS PW contractually obligated itself in the Agreement to finance the Plaintiffs' exercise of Enron stock options pursuant to Regulation T of the Federal Reserve Board. In order to comply with this SOP management function, UBS PW designed a

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[38] Section 220.3(e)(4) of Regulation T of the Federal Reserve Board.

complete system to finance Enron employees' exercise of options pursuant to Regulation T.

285. Another example of UBS PW's underwriting role with regard to the Registration Statements is its transfer of Enron stocks to Enron employees when they decided to exercise their stock options. Specifically, UBS PW agreed to:

> establish an Omnibus Account for the Corporation which PaineWebber will use solely to hold Corporation (Enron) shares pending transfer to individual Corporation (Enron) employee accounts ("Employee Accounts") on the first business day immediately following trade date and to deposit shares received from optionees to pay option price and/or amounts due for tax withholding[.]

286. UBS PW contractually arranged to be the ***exclusive conduit*** for Enron securities being placed into the hands of Enron employees and all Enron affiliates' employees through the SOPs. Enron employees were instructed "PaineWebber [was] Enron's exclusive broker for employee stock options."[39] UBS PW's ***exclusive broker*** status for Enron's SOPs meant it was the ***sole gatekeeper*** to the initial and secondary markets for the 100,000,000 securities issued via the process registered by the Registration Statements. A contractual arrangement with an issuer whereby a broker-dealer becomes the administrator, organizer, manager,

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[39] Employee Guide EnronOptions, Your Stock Option Program.

and ***exclusive conduit*** for the distribution of hundreds of millions of securities clearly falls within the statutory definition of an underwriter. As has long been recognized, statutory underwriters include any person who is "engaged in steps necessary to the distribution of security issues." *Securities & Exchange Com. v. Chinese Consol. Benevolent Ass'n*, 120 F.2d 738, 741 (2nd Cir. 1941). The Agreement establishes UBS PW as a necessary step in the registered transactions.

4. UBS PW Cannot Prove the Statutory Exemption to Underwriter Status

287. The statutory definition of underwriter does contain a statutory exemption from that designation. Specifically, the term underwriter does not include "a person whose interest is limited to a commission *from an underwriter or dealer* not in excess of the usual and customary distributors' or sellers' commission." UBS PW cannot prove its exclusive brokerage relationship with the Enron SOPs falls within this statutory exclusion by arguing UBS PW received nothing more than the usual and customary commission in connection with the distribution of the securities covered by the Registration Statements. Such an argument ignores the very language of the statute. The statute only exempts from its definition of underwriter those who receive such a commission directly "from an underwriter or dealer." UBS PW received its compensation for being the exclusive conduit into the market for the subject securities from the investor, not from an underwriter

or dealer.[40] Consequently, the statute leaves UBS PW with no defense to liability in connection with the misstatements in the Registration Statements.

D. CONCLUSION

288. When UBS PW's combined roles with regard to Enron's SOPs are viewed objectively, there is no doubt UBS PW was an "underwriter" of the securities issued pursuant to the Registration Statements and is subject to liability under Section 11 for the untrue statements of material facts and omissions of material facts in the Registration Statements. UBS PW offered and sold securities for Enron. UBS PW participated directly and indirectly in the sale and distribution of Enron stock to Lampkin, Ferrell, and Swiber, and other former employees of Enron or its affiliate companies by and through their respective employee stock option plans. UBS PW's activities cause it to fall within the statutory definition of "underwriter" found in Section 2(11) of the Securities Act.

289. For purposes of this Section 11 claim, Plaintiffs expressly disclaim any allegations that may be interpreted as allegations of fraud and/or knowing or reckless conduct. Plaintiffs' Section 11 claims rely entirely upon allegations of negligence and/or strict liability on the part of UBS PW. Any allegations contained within this section that may be interpreted as

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[40] "PaineWebber shall receive $.06 per share commission plus SEC fee from Corporation employees . . . " October 19, 1998 Letter Agreement

allegations of fraud and/or knowing or reckless conduct are included for the limited purpose of showing why UBS PW was the "underwriter" of Enron securities to the Plaintiffs during the class period.

XIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

A. Determining this action is a proper class action, and certifying Plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure;

B Awarding compensatory damages in favor of Plaintiffs and the other class members against 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. As to the Section 11 and/or Section 12 claims, awarding rescission or a recessionary measure of damages;

D. Awarding Plaintiffs and the class members their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

E. Such other and further relief as the Court may deem just and proper.

Date: _____

/s/ ANDY TINDEL
ANDY TINDEL
State Bar No. 20054500
Southern Dist. Bar No. 8015

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ATTORNEYS FOR PLAINTIFFS,
KEVIN LAMPKIN, JANICE SCHUETTE,
ROBERT FERRELL, and STEPHEN MILLER,
Individually and on Behalf of all Others
Similarly Situated

[Certificate Of Service Omitted]

EXHIBIT A

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

KEVIN LAMPKIN, JANICE SCHUETTE, ROBERT FERRELL, STEPHEN MILLER, DIANNE SWIBER, TERRY NELSON, JOE BROWN, and FRANKLIN GITTESS, Individually and on Behalf of All Others Similarly Situated,	§	
Plaintiffs,	§	Judge Melinda Harmon
VS.	§	CIVIL ACTION NO. H:02-CV-0851

UBS FINANCIAL SERVICES, INC., and UBS SECURITIES LLC,	§ § § §
Defendants.	

AFFIDAVIT OF JOE BROWN

STATE OF TEXAS	§
	§
COUNTY OF HARRIS	§

On this day, Joe Brown, appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said:

> "My name is Joe Brown. I am over 18 years of age, of sound mind, and am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
>
> "I have reviewed the Plaintiffs' Third Amended Class Action Complaint and approve it for filing. I did not purchase my Enron securities, the securities that are the subject of the complaint, at the direction of my counsel or in order to participate in any private action arising under 15 U.S.C. §78a et seq. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary. I have been a party to no other actions filed under 15 U.S.C. §78a et seq. within the last three years. I do not expect, nor will I accept, payment for serving as the class representative beyond my pro rata share of any recovery, except as ordered or

approved by the court in accordance with 15 U.S.C. §78u-4(a)(4)."

"I had an investment account at UBS PaineWebber, Inc. On February 16, 2001 I purchased 200 shares of Enron Corp. common stock at a price of $76.17 per share."

FURTHER AFFIANT SAYETH NOT

/s/ Joe Brown
Joe Brown

SUBSCRIBED AND SWORN TO BEFORE ME by Joe Brown this 18 day of August, 2006.

[NOTARY STAMP] /s/ Connie Brooks
Notary Public in and for
the State of Texas.

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

KEVIN LAMPKIN, JANICE SCHUETTE, BOBBY FERRELL, STEPHEN MILLER, DIANNE SWIBER, TERRY NELSON, JOE BROWN, and FRANKLIN GITTESS, Individually and on Behalf of All Others Similarly Situated,	§	Judge Melinda Harmon
Plaintiffs,	§	CIVIL ACTION NO. H:02-CV-0851

VS.	§
	§
UBS FINANCIAL SERVICES, INC., and UBS SECURITIES LLC,	§
	§
	§
Defendants.	§

AFFIDAVIT OF BOBBY FERRELL

STATE OF TEXAS	§
	§
COUNTY OF HARRIS	§

On this day, Bobby Ferrell, appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said:

> "My name is Bobby Ferrell. I am over 18 years of age, of sound mind, and am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
>
> "I have reviewed the Plaintiffs' Third Amended Class Action Complaint and approve it for filing. I did not purchase my Enron securities, the securities that are the subject of the complaint, at the direction of my counsel or in order to participate in any private action arising under 15 U.S.C. §78a et seq. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary. I have been a party to no other actions filed under 15 U.S.C. §78a et seq. within the last three years. I do not expect, nor will I accept, payment for serving as the class representative beyond my pro rata

share of any recovery, except as ordered or approved by the court in accordance with 15 U.S.C. §78u-4(a)(4)."

"I had investment accounts with UBS PaineWebber, Inc. in which I held Enron Corp. securities during the fraud class period. On January 18, 2000 I purchased/acquired 50 options to purchase. Enron Corp. stock at $55.50 per share as part of an Enron Corp. employee stock option plan."

FURTHER AFFIANT SAYETH NOT.

/s/ Bobby Ferrell
Bobby Ferrell

SUBSCRIBED AND SWORN TO BEFORE ME by Bobby Ferrell this 19 day of August, 2006.

[NOTARY STAMP] /s/ LaJuana Davis
Notary Public in and for
the State of Texas

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

KEVIN LAMPKIN, JANICE SCHUETTE, BOBBY FERRELL, STEPHEN MILLER, DIANNE SWIBER, TERRY NELSON, JOE BROWN, and FRANKLIN GITTESS, Individually and on	§ § § § § § § §	Judge Melinda Harmon CIVIL ACTION NO. H:02-CV-0851

Behalf of All Others Similarly Situated,	§
Plaintiffs,	§
VS.	§
UBS FINANCIAL SERVICES, INC., and UBS SECURITIES LLC,	§
Defendants.	§

AFFIDAVIT OF FRANKLIN GITTESS

STATE OF TEXAS	§
	§
COUNTY OF HARRIS	§

On this day, Franklin Gittess, appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said:

> "My name is Franklin Gittess. I am over 18 years of age, of sound mind, and am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
>
> "I have reviewed the Plaintiffs' Third Amended Class Action Complaint and approve it for filing. I did not purchase my Enron securities, the securities that are the subject of the complaint, at the direction of my counsel or in order to participate in any private action arising under 15 U.S.C. §78a et seq. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary. I have been a party to no other actions filed under 15 U.S.C. §78a et seq.

within the last three years. I do not expect, nor will I accept, payment for serving as the class representative beyond my pro rata share of any recovery, except as ordered or approved by the court in accordance with 15 U.S.C. §78u-4(a)(4)."

"I had an investment account with UBS Paine-Webber, Inc. On November 2, 2001 I purchased 1,366 shares of Enron Cap Trust II 8.125% Tops Preferred stock and purchased another 1,500 shares of Enron Cap Trust II 8.125% Tops Preferred stock on November 6, 2001."

FURTHER AFFIANT SAYETH NOT.

/s/ Franklin Gittess
Franklin Gittess

SUBSCRIBED AND SWORN TO BEFORE ME by Franklin Gittess this 19 day of July, 2006.

[NOTARY STAMP] /s/ Ifeoma Mbanefo
Notary Public in and for
the State of Texas.

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

KEVIN LAMPKIN, JANICE SCHUETTE, BOBBY FERRELL, STEPHEN MILLER, DIANNE SWIBER, TERRY NELSON, JOE BROWN, and FRANKLIN GITTESS, Individually and on Behalf of All Others Similarly Situated,	§	Judge Melinda Harmon
Plaintiffs,	§	CIVIL ACTION NO. H:02-CV-0851
VS.	§	
UBS FINANCIAL SERVICES, INC., and UBS SECURITIES LLC,	§	
Defendants.	§	

AFFIDAVIT OF KEVIN LAMPKIN

STATE OF MISSISSIPPI §
§
COUNTY OF MONROE §

On this day, Kevin Lampkin, appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said:

> "My name is Kevin Lampkin. I am over 18 years of age, of sound mind, and am fully competent to make this affidavit. The facts stated in this

affidavit are within my personal knowledge and are true and correct.

"I have reviewed the Plaintiffs' Third Amended Class Action Complaint and approve it for filing. I did not purchase my Enron securities, the securities that are the subject of the complaint, at the direction of my counsel or in order to participate in any private action arising under 15 U.S.C. §78a et seq. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary. I have been a party to no other actions filed under 15 U.S.C. §78a et seq. within the last three years. I do not expect, nor will I accept, payment for serving as the class representative beyond my pro rata share of any recovery, except as ordered or approved by the court in accordance with 15 U.S.C. §78u-4(a)(4)."

"I had an investment account with UBS PaineWebber, Inc. I purchased 600 shares of Enron Corp. stock on March 14, 2001 at $61.30 per share. On December 31, 1999 I purchased/acquired 185 options to purchase shares of Enron Corp. stock at $44.37 per share as part of an Enron Corp. employee stock option plan. On January 18, 2000 I purchased/acquired 50 options to purchase shares of Enron Corp. stock at $55.50 per share as part of an Enron Corp. employee stock option plan."

FURTHER AFFIANT SAYETH NOT.

/s/ Kevin Lampkin
Kevin Lampkin

SUBSCRIBED AND SWORN TO BEFORE ME by Kevin Lampkin this 22 day of August, 2006.

/s/ [Illegible]
Notary Public in and for
the State of Mississippi

EXPIRES 6-12-2010

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

KEVIN LAMPKIN, JANICE SCHUETTE, BOBBY FERRELL, STEPHEN MILLER, DIANNE SWIBER, TERRY NELSON, JOE BROWN, and FRANKLIN GITTESS, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, VS. UBS FINANCIAL SERVICES, INC., and UBS SECURITIES LLC, Defendants.	§	Judge Melinda Harmon CIVIL ACTION NO. H:02-CV-0851

AFFIDAVIT OF STEPHEN MILLER

STATE OF Texas §
§
COUNTY OF Jefferson §

On this day, Stephen Miller, appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said:

> "My name is Stephen Miller. I am over 18 years of age, of sound mind, and am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
>
> "I have reviewed the Plaintiffs' Third Amended Class Action Complaint and approve it for filing. I did not purchase my Enron stock, the security that is the subject of the complaint, at the direction of my counsel or in order to participate in any private action arising under 15 U.S.C. §78a et seq. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary. I have been a party to no other actions filed under 15 U.S.C. §78a et seq. within the last three years. I do not expect, nor will I accept, payment for serving as the class representative beyond my pro rata share of any recovery, except as ordered or approved by the court in accordance with 15 U.S.C. §78u-4(a)(4)."
>
> "I had an investment account with UBS Paine-Webber, Inc. in which I made the following purchases of Enron Corp. stock:

- 1000 shares of Enron Corp. stock on November 7, 2001 at $11.015 per share;
- 1000 shares of Enron Corp. stock on November 9, 2001 at $10.05 per share;
- 2000 shares of Enron Corp. stock on November 13, 2001 at $8.45 per share;
- 2000 shares of Enron Corp. stock on November 14, 2001 at $8.80 per share;
- 2000 shares of Enron Corp. stock on November 21, 2001 at $9.00 per share;
- 2000 shares of Enron Corp. stock on November 27, 2001 at $5.40 per share;
- 2000 shares of Enron Corp. stock on November 27, 2001 at $5.45 per share.

I sold all my shares of Enron Corp. stock subsequent to Enron's bankruptcy at $1.15 per share."

FURTHER AFFIANT SAYETH NOT.

/s/ Stephen Miller
Stephen Miller

SUBSCRIBED AND SWORN TO BEFORE ME by Stephen Miller this 22 day of August, 2006.

[NOTARY STAMP] /s/ Cindy King
Notary Public in and for
the State of Texas

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

KEVIN LAMPKIN, JANICE SCHUETTE, BOBBY FERRELL, STEPHEN MILLER, DIANNE SWIBER, TERRY NELSON, JOE BROWN, and FRANKLIN GITTESS, Individually and on Behalf of All Others Similarly Situated,	§	Judge Melinda Harmon
Plaintiffs,	§	CIVIL ACTION NO. H:02-CV-0851
VS.	§	
UBS FINANCIAL SERVICES, INC., and UBS SECURITIES LLC,	§	
Defendants.	§	

AFFIDAVIT OF TERRY NELSON

STATE OF Illinois §
§
COUNTY OF Will §

On this day, Terry Nelson, appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said:

> "My name is Terry Nelson. I am over 18 years of age, of sound mind, and am fully competent to make this affidavit. The facts stated in this

affidavit are within my personal knowledge and are true and correct.

"I have reviewed the Plaintiffs' Third Amended Class Action Complaint and approve it for filing. I did not purchase my Enron stock, the security that is the subject of the complaint, at the direction of my counsel or in order to participate in any private action arising under 15 U.S.C. §78a et seq. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary. I have been a party to no other actions filed under 15 U.S.C. §78a et seq. within the last three years. I do not expect, nor will I accept, payment for serving as the class representative beyond my pro rata share of any recovery, except as ordered or approved by the court in accordance with 15 U.S.C. §78u-4(a)(4)."

"I had investment accounts with UBS PaineWebber, Inc. and held Enron Corp. common stock and options to purchase Enron Corp. common stock in those investment accounts throughout the fraud class period."

FURTHER AFFIANT SAYETH NOT

/s/ Terry L. Nelson
Terry Nelson

SUBSCRIBED AND SWORN TO BEFORE ME by Terry Nelson this 21st day of August, 2006.

[NOTARY STAMP] /s/ _____
Notary Public in and for
the State of IL

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

KEVIN LAMPKIN, JANICE SCHUETTE, BOBBY FERRELL, STEPHEN MILLER, DIANNE SWIBER, TERRY NELSON, JOE BROWN, and FRANKLIN GITTESS, Individually and on Behalf of All Others Similarly Situated,	§	Judge Melinda Harmon
Plaintiffs,	§	CIVIL ACTION NO. H:02-CV-0851
VS.	§	
UBS FINANCIAL SERVICES, INC., and UBS SECURITIES LLC,	§	
Defendants.	§	

AFFIDAVIT OF JANICE SCHUETTE

STATE OF TEXAS §
§
COUNTY OF _____ §

On this day, Janice Schuette, appeared before me, the undersigned notary public, and after I administered an oath to her, upon her oath, she said:

> "My name is Janice Schuette. I am over 18 years of age, of sound mind, and am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I have reviewed the Plaintiffs' Third Amended Class Action Complaint and approve it for filing. I did not purchase my Enron stock, the security that is the subject of the complaint, at the direction of my counsel or in order to participate in any private action arising under 15 U.S.C. §78a et seq. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary. I have been a party to no other actions filed under 15 U.S.C. §78a et seq. within the last three years. I do not expect, nor will I accept, payment for serving as the class representative beyond my pro rata share of any recovery, except as ordered or approved by the court in accordance with 15 U.S.C. §78u-4(a)(4)."

"I had an investment account with UBS PaineWebber, Inc. and held approximately 434 shares of Enron Corp. common stock in that investment account throughout the fraud class period."

FURTHER AFFIANT SAYETH NOT.

/s/ Janice Schuette
Janice Schuette

SUBSCRIBED AND SWORN TO BEFORE ME by Janice Schuette this 21st day of August, 2006.

[NOTARY STAMP] /s/ Lynn West
Notary Public in and for
the State of Texas

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

KEVIN LAMPKIN, JANICE SCHUETTE, BOBBY FERRELL, STEPHEN MILLER, DIANNE SWIBER, TERRY NELSON, JOE BROWN, and FRANKLIN GITTESS, Individually and on Behalf of All Others Similarly Situated,	§	Judge Melinda Harmon
Plaintiffs,	§	CIVIL ACTION NO. H:02-CV-0851
VS.	§	
UBS FINANCIAL SERVICES, INC., and UBS SECURITIES LLC,	§	
Defendants.	§	

AFFIDAVIT OF DIANNE SWIBER

STATE OF TEXAS §
§
COUNTY OF Harris §

On this day, Dianne Swiber, appeared before me, the undersigned notary public, and after I administered an oath to her, upon her oath, she said:

> "My name is Dianne Swiber. I am over 18 years of age, of sound mind, and am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I have reviewed the Plaintiffs' Third Amended Class Action Complaint and approve it for filing. I did not purchase my Enron securities, the securities that are the subject of the complaint, at the direction of my counsel or in order to participate in any private action arising under 15 U.S.C. §78a et seq. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary. I have been a party to no other actions filed under 15 U.S.C. §78a et seq. within the last three years. I do not expect, nor will I accept, payment for serving as the class representative beyond my pro rata share of any recovery, except as ordered or approved by the court in accordance with 15 U.S.C. §78u-4(a)(4)."

"I had an investment account at UBS Paine-Webber, Inc. I purchased/acquired options to purchase Enron Corp. stock as part of an Enron Corp. employee stock option plan during the relevant time period."

FURTHER AFFIANT SAYETH NOT

/s/ Dianne Swiber
Dianne Swiber

SUBSCRIBED AND SWORN TO BEFORE ME by Dianne Swiber this 18th day of August, 2006.

[NOTARY STAMP] /s/ Frankie J. Johnson
Notary Public in and for
the State of Texas