UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. JORDAN H. MINTZ and REX R. ROGERS, Defendants.	Civil Action No. **COMPLAINT** JURY DEMANDED

Plaintiff Securities and Exchange Commission (the "Commission" or "SEC") for its complaint alleges as follows:

SUMMARY

1. This case involves a fraudulent scheme by two in-house attorneys of Enron Corp. ("Enron") to make material misrepresentations in, and to omit material disclosures from, Enron's public filings. The two attorneys were Jordan H. Mintz, a former Vice President and General Counsel of Enron's Global Finance group, and Rex R. Rogers, a former Enron Vice President and Associate General Counsel (collectively "defendants"). The relevant disclosures, covering reportable events in both 2000 and 2001, concerned Enron's related party transactions with partnerships controlled by its then Chief Financial Officer, Andrew Fastow, and undisclosed insider stock sales by Enron's then Chairman, Kenneth Lay. Mintz also substantially participated in a fraudulent related party transaction that forms the basis of the related party disclosure fraud. Defendants, highly compensated Enron executives, participated in a scheme

that had the effect of hiding the extent of Enron's financial troubles from the public.

2. In the late 1990s, Enron began experiencing problems meeting the earnings and operating cash flow targets necessary to sustain its rising stock price. In order to address this issue, senior officers turned to an increasing number of transactions, including related party transactions with entities called LJM1 and LJM2 (collectively referred to as "LJM" or "the LJM entities"). The LJM entities were partnerships created and controlled by Enron's then Chief Financial Officer, Andrew Fastow, to transact business with Enron.

3. The Enron-LJM transactions were typically structured financings that relied upon special purpose entities ("SPEs"). The parties typically capitalized the SPEs with 97 percent Enron debt and three percent LJM equity, a ratio dictated by the relevant accounting rules. If LJM controlled the SPEs and LJM's equity in the SPEs remained at risk, Enron's auditor, Arthur Andersen LLP ("Andersen"), permitted Enron to treat the SPEs as third parties. This allowed Enron to recognize earnings and operating cash flows from its transactions with the SPEs, as well as move associated debt off of its books, through a process called deconsolidation. However, several Enron-LJM transactions, including the transaction related to a power plant and related pipelines in Cuiaba, Brazil discussed below, did not properly meet the requirements necessary to obtain favorable accounting because, among other reasons, LJM's equity in the SPEs typically was not at risk as Enron officers orally promised Fastow that LJM would not lose any money.

4. Accordingly, deconsolidation was improper and the financial results Enron reported from its transactions with LJM were fraudulent. According to its own internal records, LJM estimated that Enron recognized cash flows of more than $3.6 billion and earnings of almost $1 billion from Enron's transactions with the LJM entities. In addition, according to the

court-appointed examiner in Enron's bankruptcy proceedings, Enron moved approximately $14 billion of debt off of its balance sheet through structured finance transactions involving SPEs.

5. The group within Enron responsible for structuring, negotiating and documenting the related party transactions with LJM was Enron Global Finance ("EGF"). This group was managed by Fastow's lieutenant, Michael Kopper. Kopper was an Enron Managing Director and a co-investor with Fastow in the LJM entities. EGF also had its own legal department reporting to EGF's general counsel. The entire EGF group, including Kopper, its legal department and its general counsel, reported directly to Fastow.

6. In approximately October 2000, Fastow offered the position of General Counsel of EGF to Mintz. At the time, Mintz was an experienced lawyer and an Enron Vice President of Tax/Tax Structuring (in a wholly-owned Enron subsidiary, Enron Capital and Trade Resources Corp., later known as Enron North America Corp.). Mintz was well compensated as the General Counsel of EGF, earning more than $1.8 million in 2001. As General Counsel of EGF, Mintz was responsible for the related party disclosures in Enron's public filings concerning the Enron-LJM transactions.

7. Rogers was Enron's top securities and disclosure counsel responsible for the timing and content of all Enron legal disclosure matters, including all SEC filings. Rogers was highly compensated for his efforts and experience, earning more than $1.6 million in 2001.

8. At all times material to this complaint, Enron's transactions with LJM were generating internal and external concerns. These concerns included, among other things, the conflicts of interest inherent in Fastow acting simultaneously as Enron's Chief Financial Officer and LJM's controlling member, being generously compensated for acting in both capacities, and the growing use of structured finance transactions, including the Enron-LJM transactions.

9. These concerns coincided with, and were exacerbated by, a steady decline in Enron's stock price from approximately $80.00 per share in January 2001 to less than $1 in December 2001. Beginning in 2000 and continuing through 2001, Enron Chairman Lay was selling millions of dollars worth of Enron stock back to the company.

10. Senior Enron officers were aware of these concerns. Fastow told Mintz that he wanted Enron to limit and/or avoid related party disclosures concerning his interest in the LJM entities and their transactions with Enron.

11. To address these concerns, Mintz and Rogers knowingly or recklessly participated in a scheme, among other things, to avoid making required disclosures in Enron's public filings concerning Enron's related party transactions. In furtherance of the scheme, Rogers also knowingly or recklessly avoided making required disclosures regarding Lay's stock sales.

12. In these circumstances, Mintz and Rogers committed the violations described in this complaint. By engaging in this conduct, Mintz and Rogers violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Sections 10(b) and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78n(a)] and Exchange Act Rules 10b-5 and 14a-9 [17 C.F.R. §§ 240.10b-5, 240.14a-9]. In addition, Mintz violated Exchange Act Section 13(b)(5) [15 U.S.C. § 78m(b)(5)] and Exchange Act Rules 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.13b2-1, 240.13b2-2], and aided and abetted violations of Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)]. Through their conduct, Mintz and Rogers also aided and abetted violations of Exchange Act Sections 10(b), 13(a), and 14(a) [15 U.S.C. §§ 78j(b), 78m(a), 78n(a)] and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-13 and 14a-9 [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-13, 240.14a-9]. Rogers also aided and

abetted violations of Exchange Act Section 16(a) [15 U.S.C. § 78p(a)] and Exchange Act Rules 16a-2 and 16a-3 [17 C.F.R. §§ 240.16a-2, 240.16a-3].

13. The Court should permanently enjoin defendants from violating the federal securities laws cited in this complaint, order them to disgorge all ill-gotten gains as a result of their violations and pay prejudgment interest on those gains, and order them to pay appropriate civil money penalties. The amount of such civil money penalties should be added to and become part of a disgorgement fund for the benefit of the victims of their unlawful conduct. In addition, defendants should each be prohibited permanently and unconditionally from acting as officers or directors of any issuer of securities that has a class of securities registered pursuant to Exchange Act Section 12 [15 U.S.C. § 78l] or that is required to file reports pursuant to Exchange Act Section 15(d) [15 U.S.C. § 78o(d)], and order such other and further relief as the Court may deem appropriate.

JURISDICTION AND VENUE

14. The Court possesses jurisdiction over this action pursuant to Exchange Act Sections 21(d), 21(e), and 27 [15 U.S.C. §§ 78u(d), 78u(e), 78aa] and Securities Act Sections 20(b), 20(d)(1) and 22(a) [15 U.S.C. §§ 77t(b), 77t(d)(1), 77v(a)].

15. Venue lies in this District pursuant to Exchange Act Section 27 [15 U.S.C. § 78aa] and Securities Act Section 22 [15 U.S.C. § 77v(a)] because certain acts or transactions constituting the violations occurred in this District.

16. In connection with the acts, practices, and courses of business alleged herein, Mintz and Rogers, directly or indirectly, made use of the means and instruments of transportation and communication in interstate commerce, and of the mails and of the facilities of a national securities exchange.

17. Defendants, experienced corporate attorneys, unless restrained and enjoined by this Court, will continue to engage in transactions, acts, practices, and courses of conduct as set forth in this complaint, or in similar illegal acts and practices in the future.

DEFENDANTS

18. Jordan H. Mintz, 50, is a resident of Houston, Texas. Mintz joined Enron as a Vice President in January 1996. In October 2000, he became General Counsel of EGF. Mintz was responsible for closing a fraudulent related party transaction between Enron and LJM while knowing or recklessly disregarding that the transaction was in fulfillment of a secret oral side agreement that was inconsistent with Enron's accounting treatment of the transaction. Mintz also was responsible for the related party disclosures in Enron's 2000 Proxy Statement and the 2001 second quarter Form 10-Q.

19. Rex R. Rogers, 58, is a resident of Houston, Texas. Rogers is a former SEC enforcement lawyer who worked in the Commission's former Houston, Texas office from 1979 through 1984. Rogers was hired by Houston Natural Gas in 1985, which later became Enron. He began working on SEC compliance issues in approximately 1989. From 1997 through 2002, Rogers was an Enron Vice President and Associate General Counsel, responsible for the timing and content of all SEC filings, including Enron's 2000 Proxy Statement, 2001 second quarter Form 10-Q and then Enron Chairman Lay's 2001 Form 4 filings. Rogers also made disclosure decisions concerning, and edited and/or commented upon, the relevant language in each disclosure at issue in this complaint.

RELATED ENTITIES AND INDIVIDUALS

20. Enron was an Oregon corporation with its principal place of business in Houston, Texas. At all times material to the complaint, the common stock of Enron was registered with

the Commission pursuant to Exchange Act Section 12(b) and traded on the New York Stock Exchange. Among other operations, Enron was the nation's largest natural gas and electricity marketer, with reported annual revenue of more than $150 billion. In 2000, Enron rose to number seven on the *Fortune 500* list of companies. By December 2, 2001, when it filed for bankruptcy, Enron's stock price had dropped in less than a year from more than $80 per share to less than $1.

21. Andrew S. Fastow, age 45, was Enron's Chief Financial Officer from March 1998 to October 24, 2001. Fastow oversaw many of Enron's financial activities and reported directly to Enron's Chief Executive Officer. Fastow also owned and controlled the general partner of the LJM partnerships that served as the counterparties to Enron for the transactions described below. On January 14, 2004, Fastow pleaded guilty to, among other items, conspiracy to commit wire and securities fraud. He was sentenced to six years in prison for his role in the transactions described below and other fraudulent Enron transactions.

22. Richard A. Causey, age 47, was Enron's Chief Accounting Officer from 1998 to 2002. He was responsible for approving the transactions described below on behalf of Enron. On December 28, 2005, Causey pleaded guilty to conspiring with members of Enron's senior management in efforts to mislead the investing public by making false and misleading statements or omissions in violation of the securities laws, rules and regulations.

23. Michael Kopper, age 42, held various positions at Enron from approximately 1994 through July 2001. For most of that time, Kopper reported to Enron's Chief Financial Officer, Fastow. Between January 2000 and July 2001, Kopper was a managing director of the general partner of one of Fastow's LJM partnerships. In late July 2001, Kopper left Enron to run the LJM partnerships after purchasing Fastow's interests in them for approximately $16.5

million. On August 21, 2002, Kopper pleaded guilty to conspiracy to commit wire fraud and money laundering.

24. In June 1999, Andrew Fastow formed a partnership called LJM Cayman, L.P. ("LJM1"). Enron granted Fastow a limited waiver of Enron's conflict of interest rules so he could run LJM1, through affiliated entities, as its general partner. LJM1 served as the counterparty for the Cuiaba and Rhythms transactions discussed below.

25. In late 1999, Fastow formed a partnership called LJM2 Co-Investment, L.P. ("LJM2"). Enron again granted Fastow a limited waiver of Enron's conflict of interest rules so he could run LJM2, through a series of affiliated entities, as its general partner. LJM2 served as the counterparty for, among others, the Raptors transactions discussed below.

FACTUAL ALLEGATIONS

A. The Fraudulent Sale of Enron's Cuiaba Interest to LJM1

26. Enron, through a wholly-owned subsidiary, Enron South America ("ESA"), whose financial results were consolidated with Enron's publicly-filed financial statements (collectively "Enron"), held an approximate 65 percent interest in a power plant and related pipelines under construction in Cuiaba, Brazil (the "Cuiaba" project). Enron was developing the project to generate and sell electricity. The project required cash infusions from Enron as a result of massive cost overruns and other problems, including a delayed schedule.

27. In 1999, Enron and ESA were falling short of their earnings estimates. In order to generate earnings, Enron sought to sell a percentage of ESA's Cuiaba interest so that it could deconsolidate the Cuiaba project, and recognize earnings on contracts related to Cuiaba on Enron's financial statements.

28. Enron proposed using LJM1, an entity controlled by Fastow, as a short-term buyer to deconsolidate the Cuiaba project until a long-term buyer could be found.

29. Fastow was willing to allow LJM1 to enter into the transaction, provided Enron gave him certain protections. First, he wanted Enron to commit to either buy back the asset or find a third party buyer within a relatively short period of time. Second, he wanted a fixed rate of return. Third, he wanted Enron to promise that LJM1 would not lose money on the deal.

30. Enron was able to largely accommodate the first two protections in the deal documents. It promised to use its best efforts to find a long term buyer for LJM1's Cuiaba interest, to pay LJM1 a 13 percent rate of return if LJM's interest was purchased within six months, and to step up the return to 25 percent if it took longer to find a buyer.

31. The third protection, however, was inconsistent with accounting requirements. Enron, nonetheless, entered into a secret oral side agreement with Fastow promising that LJM1 would be "made whole" and not lose money on the deal (the "make whole" agreement). The "make whole" agreement was hidden from Enron's auditor Andersen.

32. The sale of Enron's Cuiaba interest to LJM1 closed as of September 30, 1999 (the "selldown"). Enron sold LJM1 a 13 percent interest in the Cuiaba project for $11.3 million. This amount constituted a $10.8 million payment for the Cuiaba interest, and a $500,000 payment for "preferred shares" in Enron's Cuiaba holding company. LJM1 formed a Cayman Islands company, LJM BrazilCo, to hold the Cuiaba interest. Fastow was a director of this entity.

33. Enron employees, some acting for Enron and others for LJM1, and all reporting directly or indirectly to Fastow, negotiated both sides of the selldown.

34. Enron used the sale of this Cuiaba interest to LJM1 to conclude that Enron did not control the Cuiaba project and, consequently, improperly deconsolidated the Cuiaba project. By deconsolidating Cuiaba, Enron improperly recognized earnings of approximately $34 million of income in the third quarter of 1999, $31 million of income in the fourth quarter of 1999, $14 million in 2000 earnings, and $5 million in 2001 earnings. The Cuiaba-related earnings were material to Enron's publicly-filed financial statements for those periods.

B. The Cuiaba Buyback

35. By January of 2001, Enron had not found a long-term buyer for the LJM1 interest in Cuiaba. The project continued to require cash infusions, and was still over budget, unfinished, and not producing income.

36. In order to satisfy the oral promise to make LJM1 whole, Enron agreed to buy back the interest that LJM1 held in the Cuiaba project (the "buyback"). Again, Enron employees and Fastow subordinates represented both Enron and LJM1 in the buyback transaction.

37. As part of the "make whole" agreement, Enron and LJM1 executed a buyback agreement (also known as the share purchase agreement) on March 28, 2001, reflecting Enron's agreement to repurchase LJM1's interest in Cuiaba, pending satisfaction of certain conditions precedent. The purchase price reflected LJM1's initial $10.8 million investment plus a return of $2.4 million, as well as a fee of $4,000 each day from the date of the written agreement until the closing date. In April 2001, Enron repurchased the "preferred shares" in Enron's Cuiaba holding company for $750,000, the same shares that Enron had sold to LJM1 in September 1999 for $500,000 as part of the selldown.

38. Pursuant to the terms of the buyback agreement, the conditions precedent were satisfied on or about May 30, 2001, and the buyback should have closed on that date. However,

the closing was delayed until August 15, 2001 in furtherance of Mintz's and Rogers' scheme to avoid related party disclosures in Enron's public filings (alleged in detail below).

39. After calculating the fees for the period between the agreement to repurchase and the closing, and including the redemption price for the "preferred shares," and the purchase price, Enron paid LJM1 $14.002 million for LJM1's interest in the Cuiaba project, which provided LJM1 a profit of $3.202 million on its $11.3 million investment. Enron agreed to pay LJM1 this profit despite the fact that LJM1's "investment" had actually decreased in value over the time it held the interest.

40. This buyback fulfilled the "make whole" agreement and completed the fraud that began in the fall of 1999 with the selldown of the Cuiaba interest to LJM1.

41. The "make whole" agreement eliminated all of LJM1's risk from the Cuiaba project. Accordingly, Enron's sale to LJM1 did not satisfy the requirements for sales recognition under generally accepted accounting principles ("GAAP").

42. As a result, Enron improperly deconsolidated the Cuiaba project and improperly recognized earnings from the related gas supply contracts in the relevant periods. These improper earnings were incorporated into Enron's year-end financial reports for fiscal years 1999 and 2000, as well as its third quarter 1999 Form 10-Q, first, second and third quarter 2000 Forms 10-Q, and first and second quarter 2001 Forms 10-Q, and thereby caused Enron's books and records for those periods to be materially misstated.

C. Mintz Knew About the Cuiaba Selldown and the "Make Whole" Agreement

43. Mintz learned about the Cuiaba selldown by at least October 2000 during a meeting with Fastow held soon after Mintz became General Counsel of EGF. Fastow told Mintz that in 1999, Enron had sold an interest in Cuiaba to LJM1 to deconsolidate the project and

recognize earnings, and that LJM1 was temporarily holding the asset for Enron. In March 2001, Mintz also reviewed the selldown deal documents and discussed Enron's accounting objective of the Cuiaba selldown with ESA's Chief Accounting Officer, who was working on the transaction.

44. Mintz knew and understood the practice of selling an asset to deconsolidate it and take it off the balance sheet. Mintz also knew and understood the accounting requirement that the entity to which a sale is made must maintain its three percent equity investment at risk at all times in order for the seller to deconsolidate the entity and recognize earnings.

45. Because Fastow discussed the existence of the oral side agreement with Mintz, and for other reasons, by no later than May 2001, Mintz knew, or was reckless in not knowing, that the oral side agreement existed.

46. Mintz also knew, or was reckless in not knowing, that the oral side agreement negated the sale of the Cuiaba interest because of the accounting requirement that the seller (Enron) transfer to the buyer (LJM1) the usual risks and rewards of ownership in a sale.

47. Thus, Mintz knew, or was reckless in not knowing, that the purpose of the Cuiaba buyback was to allow Enron to improperly recognize earnings from contracts related to the Cuiaba project, and that Enron materially misstated its financial statements when recognizing income as a result of the selldown.

D. Mintz Documents and Closes the Cuiaba Buyback in Furtherance of the Secret Oral "Make Whole" Agreement

48. By at least February 15, 2001, Mintz learned that Enron was in no hurry to buy back LJM1's Cuiaba interest because of Enron's problems with, and the deteriorating value of, the Cuiaba project. For this reason and other reasons, Mintz knew, or was reckless in not knowing, that the value of LJM1's interest in the Cuiaba project deteriorated in value during LJM1's ownership.

49. By at least March 1, 2001, Mintz learned that Enron nonetheless agreed to enter into a written agreement to buy back the interest that LJM1 held in the Cuiaba project. As General Counsel of EGF, Mintz was responsible for the documentation and closing of the buyback transaction. He supervised an attorney within EGF's legal department (hereinafter called "the subordinate EGF attorney") who hired outside counsel to draft the deal documents and coordinate comments to the deal documents from Enron's deal team. Mintz received and reviewed drafts of the buyback deal documents, communicated certain material deal terms (including the purchase price) to the deal team, and decided when the buyback agreement would be signed and closed. The buyback documents were signed on March 28, 2001.

50. Mintz knew, or was reckless in not knowing, that despite the fact that LJM1's "investment" had actually decreased in value over the time it held the interest, Enron agreed to pay LJM1 for its Cuiaba interest: (1) the purchase price of $13.2 million; (2) the fee of $750,000 to repurchase LJM1's "preferred shares"; and (3) the fee of $4,000 per day from the date of the share purchase agreement until the closing date. Mintz also knew, or was reckless in not knowing, that these sums in total provided LJM1 a profit of $3.202 million on its $11.3 million investment in the Cuiaba project.

51. Mintz knew, or was reckless in not knowing, that the conditions precedent to close the deal were satisfied on or about May 30, 2001. Mintz also knew, or was reckless in not knowing, that Enron had partially performed the Cuiaba buyback in furtherance of the "make whole" agreement by repurchasing LJM1's "preferred shares" in April 2001. Nonetheless, to avoid disclosure of the Cuiaba buyback as a related party transaction in Enron's second quarter 2001 Form 10-Q, Mintz decided to delay the Cuiaba buyback closing several times. He decided to finally close the Cuiaba buyback on August 15, 2001, the day after Enron filed its second

quarter 2001 Form 10-Q.

52. When directing the closing of the Cuiaba buyback, Mintz knew or was reckless in not knowing, that the buyback satisfied, and was entered into in furtherance of, the secret oral "make whole" agreement between Enron and LJM1 entered into at the time of the selldown that was inconsistent with controlling accounting standards and concealed from Enron's auditor. Mintz knew, or was reckless in not knowing, that despite Enron's repurchase of the LJM1 interest in Cuiaba, Enron did not intend to, and did not, timely unwind the earnings that were fraudulently reflected on its income statement by the purported sale and deconsolidation of Enron's Cuiaba interest.

53. Accordingly, Mintz directed the closing the Cuiaba buyback on August 15, 2001, and allowed Enron to recognize improper earnings from the Cuiaba transaction that Enron materially misstated in its financial statements.

E. Mintz Fails to Disclose the Cuiaba Buyback in Enron's 2000 Proxy Statement

54. By at least early 2001, Fastow and other senior Enron officers wanted to limit and/or avoid disclosing Enron's related party transactions. Mintz's decision not to disclose the Cuiaba buyback in Enron's 2000 Proxy Statement, like his decisions to (1) close the Cuiaba buyback despite the oral "make whole" agreement and (2) delay the closing of the Cuiaba buyback to avoid disclosing it in Enron's second quarter 2001 Form 10-Q (alleged in detail below), were part of this fraudulent scheme.

55. Pursuant to Item 7 of Schedule 14(a) of the Exchange Act, an issuer's proxy statement must include, among other things, "information required by Items … 404(a) and (c) … of Regulation S-K." Exchange Act, Form 10-K, Item 13 also requires an issuer to furnish information required by Items 404(a) and (c) of Regulation S-K.

56. Item 404(a) of Regulation S-K, in effect at the relevant time, required Enron to disclose in its proxy statement, among other things, any "currently proposed" transaction between Enron and an executive officer when the dollar amount of the transaction exceeded $60,000 and the executive officer had a direct or indirect material interest in the proposed transaction.

57. On March 27, 2001, Enron filed a Proxy Statement covering the period from January 1, 2000 through the date of filing (the "2000 Proxy Statement"). This 2000 Proxy Statement failed to disclose the Cuiaba buyback as a "currently proposed" transaction between Enron and LJM1, in which Fastow had a material interest. Enron incorporated its 2000 Proxy Statement into its 2000 Form 10-K filed on April 2, 2001.

58. The purchase price of the Cuiaba buyback more than exceeded the $60,000 threshold in Item 404(a) of Regulation S-K in effect at the relevant time. Fastow controlled the general partner of LJM1 and, therefore, had an interest in the Cuiaba buyback. Fastow's interest was material. Of the $16.35 million Kopper paid to Fastow for his LJM interests, the purchase agreement between Kopper and Fastow states on its face that Fastow and Kopper assigned a value of $7.8 million to the general partner's (i.e., Fastow's) interest in Cuiaba.

59. All the material terms of the Cuiaba buyback had been agreed upon before Enron's 2000 Proxy Statement was filed on March 27, 2001. Those same terms were memorialized in an agreement executed a day later, on March 28, 2001. The Cuiaba buyback was therefore a "currently proposed" transaction within the meaning of Item 404(a) of Regulation S-K and was required to be disclosed in Enron's 2000 Proxy Statement.

60. As General Counsel of EGF, Mintz was responsible for making the required related party disclosures in Enron's 2000 Proxy Statement. In a memo Mintz prepared in June

2001, he stated that he “[m]anaged the related-party disclosures for the Company’s Proxy and related filings [and] [o]rchestrated internal management of related party transactions….”

61. Mintz knew the related party disclosures in Enron’s 2000 Proxy Statement were governed by Item 404(a) of Regulation S-K. For example, on March 5, 2001, Mintz asked another attorney in an email, “is my understanding correct that transactions that ... are contemplated ... prior to the filing of the proxy, are required to be disclosed ...?” The attorney informed Mintz that his understanding of the disclosure requirement was correct. Thus, Mintz knew and understood Regulation S-K’s requirements, including the language that required “currently proposed” transactions to be disclosed.

62. As alleged above, from actively working on the Cuiaba buyback and being responsible for documenting and closing it, Mintz understood that virtually all essential terms of the Cuiaba buyback, including the price, had been agreed to before Enron’s 2000 Proxy Statement was filed on March 27, 2001. Thus, Mintz knew, or was reckless in not knowing, that the Cuiaba buyback was “currently proposed” before Enron filed its 2000 Proxy Statement.

63. As part of the scheme to avoid related party disclosures, Mintz knowingly or recklessly failed to disclose the buyback as a “currently proposed” transaction in Enron’s 2000 Proxy Statement.

64. Mintz then also sought to limit the paper trail showing that the Cuiaba buyback’s terms were agreed upon prior to the filing of the Proxy Statement. Accordingly, Mintz delayed the signing of the Cuiaba buyback agreement until the day after the 2000 Proxy Statement was filed. Mintz has contemporaneous notes of a meeting with an ESA accountant from March 9, 2001 that also discuss delaying the signing of the buyback: “3/9 [ESA Chief Accounting Officer]: Move interest into Cuiaba and out of Int’l book (MTM Adjust) – Hold off until 3/29.”

65. Mintz knew, or was reckless in not knowing, that the omission of the Cuiaba buyback as a "currently proposed" transaction made Enron's 2000 Proxy Statement materially false and misleading. Because the 2000 Proxy Statement was incorporated into Enron's annual report for fiscal year 2000, Mintz knew, or was reckless in not knowing, that this omission also caused Enron's 2000 Form 10-K to be materially misstated.

F. Mintz Delays the Closing of the Cuiaba Buyback to Avoid Disclosure in Enron's Second Quarter 2001 Form 10-Q

66. Pursuant to the terms of the written Cuiaba buyback agreement, signed on March 28, 2001, the buyback should have closed on or about May 30, 2001. However, shortly before the closing was scheduled to occur, Mintz and Rogers were informed in an email from an Enron accountant that the May closing would require the Cuiaba buyback to be disclosed in Enron's second quarter 2001 Form 10-Q as a related party transaction with Enron.

67. To avoid this result, Mintz decided to (1) cancel the impending Cuiaba buyback closing, (2) in his own words, "freeze" the Cuiaba buyback transaction, and (3) postpone its closing until after Enron's second quarter 2001 Form 10-Q was filed. Mintz informed Rogers about these three decisions, and discussed the second and third decision with Rogers before making them.

68. More specifically, according to the Enron accountant, if the Cuiaba buyback closed while Fastow controlled LJM1, Enron would be required to make a related party disclosure in the Form 10-Q for the quarter in which the transaction closed. Accordingly, Mintz delayed the closing until Fastow completed the sale of his LJM interests to Kopper, which was already under discussion, and then closed the buyback after Kopper replaced Fastow as LJM's principal.

69. Fastow sold his LJM interests to Kopper on or about July 31, 2001, and the

Cuiaba buyback deal was closed on August 15, 2001. Mintz and Rogers discussed the timing and details of Fastow's sale of his LJM interests to Kopper.

70. Mintz instructed the subordinate EGF attorney and an outside attorney documenting the Cuiaba buyback to date deal documents in a manner calculated to hide the fact that the terms of the August closing of the Cuiaba buyback (when Kopper was general partner of LJM1) were actually agreed to in March 2001 (when Fastow was general partner of LJM1).

71. Specifically, on June 29, 2001, at which point drafts of an agreement extending the closing date were already circulating, Mintz instructed the subordinate EGF attorney, who in turn instructed a junior associate at Enron's outside law firm, as follows: "[Junior associate]: for you only. Jordan [Mintz] wants a rabbit trail of e-mails contemplating extensions beyond July 2nd."

72. Similarly, on August 13, 2001, the day before the second quarter 2001 Form 10-Q was filed and two days before the new date for the closing of the Cuiaba buyback, Mintz wrote the following email to the subordinate EGF attorney: "I think the doc [extending the closing date of the buyback from May to August] needs to be effective post-July 31 and limits any audit trail that suggests an agreement was reached before that time."

73. Thus, Mintz instructed the subordinate EGF attorney to date documents to hide the fact that the deal Enron was closing with Kopper (as the general partner of LJM1) in August 2001 was the same deal reached with Fastow (as the general partner of LJM1) in March 2001, and thereby limit the evidence that would show that the Cuiaba buyback was a related party transaction between Enron and LJM1 at the time of its closing.

74. As alleged in more detail below, in addition to delaying the Cuiaba buyback closing until after Enron's second quarter 2001 Form 10-Q was filed, Mintz and Rogers

affirmatively informed the public about Fastow's sale of his LJM interests in the second quarter Form 10-Q (despite the fact that the sale did not take place until the third quarter).

G. Mintz and Rogers, in Furtherance of The Scheme to Avoid Public Disclosures, Make a False and/or Misleading Statement in Enron's Second Quarter 2001 Form 10-Q

75. When working on the second quarter 2001 Form 10-Q, Mintz and Rogers made a materially false and/or misleading statement to follow through on the scheme to avoid related party disclosures. Mintz and Rogers undertook to make this misstatement on their own, without direction from Fastow or any other executive officer of Enron.

76. As General Counsel of EGF, Mintz had responsibility for the related party footnote of the Form 10-Q to ensure it properly disclosed all related party transactions assigned to EGF.

77. As Enron's principal SEC disclosure lawyer responsible for the timing and content of all SEC filings, Rogers participated in the preparation of Enron's Forms 10-Q, reviewing and providing comments to all Forms 10-Q before they were filed. In a June 2001 memo to his supervisor, Rogers claimed to be "[r]esponsible for timing and content [of] all Company legal disclosure matters, including SEC filings" and that a "major strength is being able to employ my 23 years experience as a corporate securities lawyer ... to counsel the Company on difficult ... disclosure issues...."

78. With regard to the Cuiaba buyback transaction, Mintz and Rogers discussed at a meeting in June 2001 (with another lawyer and two Enron accountants) that (1) Enron may want to inform the public in a Form 10-Q when Fastow sold his LJM interests, (2) Enron may want to include the statement that LJM was no longer a related party to Enron, and (3) Mintz had postponed the closing of the Cuiaba buyback until after Fastow sold his LJM interests to Kopper.

79. Despite this meeting, Mintz and Rogers knowingly or recklessly failed to mention item three in the Form 10-Q. In an email dated July 27, 2001, Mintz instructed another lawyer: "[Draft] disclosure language regarding the 'Related Party' no longer being a related party post-July 31." Mintz and Rogers then reviewed the language drafted by the other attorney and discussed whether to make edits to the language before the Form 10-Q was filed.

80. Enron's related party footnote in its 2001 second quarter Form 10-Q, filed August 14, 2001, among other things, stated: "During the second quarter of 2001, Enron did not recognize any material revenues or income from transactions with the limited partnerships discussed below. Additionally, the senior officer [Fastow] who previously was the general partner of these partnerships [LJM1 and LJM2] sold all of his financial interests as of July 31, 2001, and no longer has any management responsibilities for these entities. Accordingly, such partnerships are no longer related parties to Enron."

81. These statements in the Form 10-Q were materially false and/or misleading because they omitted to state several material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. For example, it failed to disclose that (1) Enron was planning to close the Cuiaba buyback transaction with LJM1 on August 15, 2001, the day after the Form 10-Q was filed, on terms that were not negotiated on an arm's length basis, (2) the terms of the imminent closing were negotiated and agreed to when LJM1 was still controlled by Fastow, and (3) pursuant to the existing arrangement between Enron and LJM, LJM would continue to use Enron employees, equipment and facilities.

82. Mintz and Rogers knew, or were reckless in not knowing that the statement "as of July 31, 2001 . . . the [LJM] partnerships are no longer related parties to Enron" was materially

false and/or misleading because it omitted to disclose that Enron was planning to close the Cuiaba buyback transaction with LJM1 on August 15, 2001, the day after the Form 10-Q was filed, with terms that were (1) not negotiated on an arm's length basis and (2) negotiated when LJM1 was still controlled by Fastow.

83. Mintz and Rogers knew, or were reckless in not knowing, that the Cuiaba buyback was not an arm's length transaction. Mintz, with Rogers' assistance, prepared a March 8, 2001 memorandum expressing their concerns about whether the Enron-LJM transactions "are being conducted at arms-length in such a clear and convincing fashion that they will be respected from a GAAP earnings perspective" because (1) "[i]nherent employee conflicts exist and can contribute to a perception that Enron and LJM *cannot* transact at arm's-length," and (2) "Enron does not consistently seek to negotiate with third parties before it transacts with LJM" because "[n]o policy exists specifically requiring evaluation and pursuit of third party alternatives before transacting with LJM." (Emphasis in original).

84. Mintz, who was responsible for documenting and closing the Cuiaba buyback, knew or was reckless in not knowing that the Cuiaba buyback fulfilled an illegal oral side agreement to make LJM1 whole on its Cuiaba investment.

85. Mintz and Rogers knew, or were reckless in not knowing, that all material terms of the Cuiaba buyback were negotiated and agreed to months earlier (as of March 28, 2001) when Fastow still controlled the LJM entities and were heavily skewed in LJM's favor. For example, in a June 2001 email, Mintz told Rogers and others: "Enron and LJM currently have a contract for Enron to repurchase Cuiaba, which LJM previously purchased in 1999." Mintz also told Rogers in the same email that he had postponed the Cuiaba buyback closing until after the Form 10-Q was filed to avoid disclosing it as a related party transaction. Mintz and Rogers also

discussed these issues (with others) at a meeting in June 2001 shortly after Mintz sent the email to Rogers.

86. Mintz discussed with Rogers and others (in the same June 2001 email and meeting discussed in the preceding paragraph) whether Enron should enter into a new Cuiaba buyback agreement with Kopper. Nonetheless, Mintz and Rogers knew or were reckless in not knowing, that Enron used the same agreement that had been negotiated and agreed to with Fastow when he was in control of LJM1 and instead merely postponed the closing date.

87. Mintz and Rogers knew, or were reckless in not knowing, that the statement that the LJM partnerships were no longer related parties to Enron was materially false and/or misleading because the LJM entities continued to use Enron employees, equipment and facilities after the Form 10-Q was filed. For example, Mintz and Rogers discussed LJM's continuing use of Enron employees, equipment and facilities both before and after the Form 10-Q was filed.

88. The statement that the LJM partnerships were no longer related parties to Enron was material. In order to make the Form 10-Q statements not misleading, in light of the circumstances under which they were made, reasonable investors needed to know, among other things, that the pre-existing undisclosed arrangements to insulate LJM from losses and requiring Enron to repurchase assets previously sold to LJM were still in effect after Fastow sold his LJM interests to Kopper.

89. The Cuiaba buyback was quantitatively material because it required Enron to once again consolidate the operating results of a power project that was expected to generate operating losses that would negatively affect Enron's future consolidated operating results. The Cuiaba buyback was also qualitatively material because it was the result of a related party transaction with Enron's Chief Financial Officer, Fastow.

90. Accordingly, Mintz and Rogers knowingly or recklessly made a materially false and/or misleading statement in Enron's second quarter 2001 Form 10-Q.

H. Mintz Makes a Misrepresentation to Andersen in Connection With Enron's Second Quarter 2001 Form 10-Q

91. Exchange Act Rule 13b2-2, prohibits an officer of an issuer of securities from, directly or indirectly, making or causing to be made a materially false or misleading statement to an accountant in connection with an audit, examination of financial statements, or the preparation or filing of any document or report required to be filed with the Commission. As an Enron Vice President, Mintz was an "officer" within the definition of Exchange Act Rule 3b-2.

92. To sign off on the disclosure in Enron's second quarter 2001 Form 10-Q that the LJM partnerships were no longer related parties to Enron, Andersen, Enron's auditor, required Enron to make certain representations. On May 30, 2001, Mintz learned from an Enron accountant that Andersen would likely ask for these representations. Mintz discussed with others the content of these representations.

93. Fastow, as an officer of Enron, represented in an August 2001 letter to Andersen that:

a. "there are no unfulfilled obligations, commitments or special arrangements between the Company [Enron] and the LJM entities under the purchase and sale documents or otherwise related to the sale [the sale of Fastow's LJM interests to Kopper];" and

b. "there were no pending transactions between the LJM entities and the Company for which the terms were negotiated and agreed to prior to the effective date of the sale [Fastow's sale of his LJM interests to Kopper]."

94. Enron had a policy that a lawyer had to review and approve in advance all documents that reasonably could be expected to impose an obligation on Enron before the

documents could be signed by company officers on behalf of the company.

95. Fastow showed Mintz his copy of the Andersen representation letter and Mintz told him it was appropriate to sign. Mintz knew or was reckless in not knowing that Fastow's letter to Andersen was materially false or misleading for the following reasons.

a. Because Mintz was responsible for documenting and closing the Cuiaba buyback, Mintz knew the Cuiaba buyback had been "pending" since at least March 28, 2001, and that the Cuiaba buyback's terms "were negotiated and agreed to" in March 2001.

b. In June 2001, Mintz also received and had transcribed a voicemail from Enron Chief Accounting Officer Richard Causey informing him that for Enron to sign the Andersen representation letter "most, if not all, material terms and conditions of the [Cuiaba] transaction between Enron & LJM need to be after the transfer of the GP [general partnership interest from Fastow to Kopper] is complete…." Despite this voicemail, Mintz reviewed and approved the representation letter to Andersen.

c. Mintz initialed a July 2001 letter (for signature on behalf of Enron by an Enron executive) addressed to Kopper to assist him to obtain financing to purchase Fastow's LJM interests that acknowledged the existence of the pending Cuiaba buyback transaction and made the Andersen representation letter false. The July 2001 letter to Kopper stated: "Enron continues to be interested in pursuing the Cuiaba interest held by LJM and expects to be able to consummate such acquisition…." At a minimum, the July 2001 letter to Kopper also acknowledged the existence of an "unfulfilled obligation," a "commitment" or "a special arrangement" between Enron and LJM1 (directly related to Enron's repurchase of LJM1's Cuiaba interest) that made the Andersen representation letter false.

d. Mintz knew or was reckless in not knowing of the existence of an "unfulfilled obligation," a "commitment" or "a special arrangement" between Enron and LJM1 (again directly related to Enron's repurchase of LJM1's Cuiaba interest) that made the Andersen representation letter false because he was present at a June 2001 meeting with Fastow, Kopper and Causey and heard Causey promise that he would fulfill for Kopper the Cuiaba "make whole" agreement Enron made with Fastow. Accordingly, Mintz knew, or was reckless in not knowing, that this promise was both a "special arrangement" and an "unfulfilled obligation" that made the Andersen representation letter false.

e. Mintz knew or was reckless in not knowing that the continued use by the LJM entities of Enron employees, equipment and facilities was another "unfulfilled obligation," "commitment," and/or "special arrangement" that made the Andersen representation letter false. Mintz's documents and emails confirm that Mintz discussed during several meetings, that LJM's use of Enron employees, equipment and facilities was continuing at the time the second quarter 2001 Form 10-Q was filed, and continued after that through at least October 2001.

96. Accordingly, for these and other reasons, Mintz knowingly or recklessly, directly or indirectly, made or caused to be made a materially false or misleading statement to an accountant in connection with the preparation or filing of a report required to be filed with the Commission.

I. Mintz and Rogers Failed to Disclose the Monetary Amount of Fastow's LJM Earnings in Enron's 2000 Proxy Statement in Furtherance of the Scheme to Avoid Enron Disclosures

97. Under Item 404(a) of Regulation S-K in effect at all times material to this complaint, the proxy statement was required, among other things, to describe any transaction exceeding $60,000 in which an executive officer had a direct or indirect material interest. The

disclosure had to include, “where practicable,” the monetary amount of the executive officer’s financial interest in any such transactions, to be determined without regard to loss or profit.

98. In January 2001, Fastow told Mintz (and Mintz conveyed to Rogers) that Fastow did not want Enron to disclose the details of his LJM earnings. Mintz’s and Rogers’ failure to disclose the monetary amount of Fastow’s LJM earnings in Enron’s 2000 Proxy Statement, (like Mintz’s failure to disclosure the Cuiaba buyback from the proxy alleged above and Rogers’ failure to disclose Enron Chairman Lay’s line of credit insider stock sales alleged in detail below), was a part of this fraudulent scheme.

99. As alleged above, Mintz was responsible for these disclosures in Enron’s 2000 Proxy Statement. Rogers, as Enron’s top securities lawyer and disclosure expert, was responsible for, and had the final say on, all of Enron’s proxy disclosures.

100. Rogers and Mintz discussed the requirements of Regulation S-K on more than ten occasions between October 2000 and March 2001. As a result of these meetings and discussions, Rogers and Mintz knowingly or recklessly failed to disclose any monetary amount for Fastow’s earnings and fees from LJM in Enron’s 2000 Proxy Statement.

101. With respect to the monetary amount of Fastow’s earnings from the Enron-LJM related party transactions, Enron’s 2000 Proxy Statement disclosed only that “the general partner of LJM2 is entitled to receive a percentage of the profits of LJM2 in excess of the general partner’s portion of the total capital contributed depending upon performance.”

102. Several Enron-LJM transactions resulted in significant distributions to Fastow, as general partner of the LJM1 and LJM2 partnerships, during the relevant period (January 1, 2000 to March 27, 2001). Fastow was the sole managing member of the entities that served as the general partners of LJM1 and LJM2. In this capacity, Fastow received the general partner

distributions and management fees from both LJM1 and LJM2, and controlled both of them.

a. Fastow received during the relevant period LJM1 distributions resulting in part from a hedging transaction that Enron entered into in 1999 with an SPE created by Enron and LJM1 to reduce Enron's earnings fluctuations from owning RhythmsNet Connections stock ("the Rhythms hedge"). When the parties unwound the Rhythms transaction in 2000, LJM1 received $16.7 million in settlement.

b. Fastow received during the relevant period LJM2 distributions resulting from four Enron hedging transactions (known as the Raptors) that Enron entered into in 2000 with SPEs controlled by LJM2 to protect Enron from similar earnings volatility. In 2000, Enron paid LJM2 approximately $41 million to participate in each of the four purported hedge transactions.

103. During the relevant period, Fastow received more than $18 million in distributions and management fees from LJM1 and LJM2. These amounts were material to Fastow. Because Fastow received these amounts, they were determinable and were, therefore, required to be disclosed in Enron's 2000 Proxy Statement. These omissions from Enron's 2000 Proxy Statement were materially false and misleading. Because the 2000 Proxy Statement was incorporated into Enron's annual report for 2000, Enron's 2000 Form 10-K was materially misstated as well.

104. Mintz and Rogers knew, or were reckless in not knowing, that (1) during the relevant period, Fastow received more than $18 million in distributions and management fees from LJM1 and LJM2, (2) these amounts were determinable and were therefore required to be disclosed in Enron's 2000 Proxy Statement, and (3) these omissions made Enron's 2000 Proxy Statement and 2000 Form 10-K (by incorporation) materially false and misleading.

105. For example, in early March 2001, Mintz and Rogers discussed the addendum to Fastow's 1999 Director & Officer ("D&O") Questionnaire, which did not disclose or even list any LJM transactions or any amounts for Fastow's LJM distributions, but instead referred the reader to the records of EGF. Mintz and Rogers also discussed changing the addendum to Fastow's 2000 D&O Questionnaire so that if Fastow chose again not to disclose the amount of his interest in the LJM transactions, he would have to attest that he had read the proxy for that year and was satisfied with it. However, they made no such requirements of Fastow. Instead, the final version of Fastow's 2000 D&O Questionnaire, signed by Fastow, failed to include any transactions or dollar amounts and did not include a statement that Fastow had read the proxy.

106. As other examples, Rogers knew about the Rhythms hedge that closed in 1999 because he attended the Enron Board meeting where this transaction, as the first Enron-LJM transaction, was discussed at length and approved. Rogers and Mintz both knew that Enron and LJM unwound the Rhythms hedge in early 2000, because Rogers discussed this with Mintz in October 2000. Rogers explained to Mintz that he disclosed the Rhythms hedge in the 1999 proxy (filed March 28, 2000) but not the distribution amount that flowed to Fastow as general partner. Mintz and Rogers learned that Fastow had received a distribution from the unwind of the Rhythms hedge, and discussed that it was determinable, as reflected in a January 16, 2001 email from Mintz to Rogers, which states: "I spoke, again, with Andy … earlier today and he believes (perhaps rightly so) that Skilling will shutdown LJM if he knew how much Andy earned with respect to the Rhythms transaction." Because Mintz and Rogers knew that Fastow did not want Enron to disclose Fastow's compensation from the Rhythms unwind, Mintz also writes in his January 16, 2001 email to Rogers that: "We need to be 'creative' on this point within the contours of Item 404 so as to avoid any type of stark disclosure, if at all possible."

107. In addition, Mintz knew about the Raptor transactions because EGF attorneys he supervised worked on those transactions and kept him informed about them. Mintz also updated Enron's general counsel about these hedges at weekly meetings that Rogers also attended. Rogers also signed the Enron Raptor deal approval sheets reflecting the distributions to LJM2 (approximately $41 million for each of the four Raptors) prior to hedging.

108. In a January 2001 meeting between Mintz and Rogers, as memorialized in Mintz's own notes of the meeting, Mintz and Rogers discussed their concerns that they and/or Fastow might be engaging in criminal conduct by failing to disclose Fastow's earnings in the 2000 Proxy Statement: "AF – If we are wrong, criminal act ... willful violation.... Easier to Defend that Disclosure required…. We are making a judgment call that is less than a [sic] literal rules." Of a similar conversation with Rogers regarding the 2000 Proxy Statement, Mintz wrote the following notes: "[M]odicum of good faith compensation calculation, disclosure obligation, CFO!" and "How important is this information? Technical line item violation and perhaps shareholder material omission?"

109. Accordingly, Mintz and Rogers knowingly or recklessly failed to disclose the monetary amount of Fastow's earnings from Enron's 2000 Proxy Statement.

J. Rogers Failed to Disclose Lay's $16 Million of Insider Stock Sales from Enron's 2000 Proxy Statement Consistent With Enron's Scheme to Avoid Public Disclosures

110. On May 3, 1999, the Enron Board of Director's, Compensation Committee approved Enron Chairman Lay's ability to sell his Enron stock to repay advances on a revolving $4 million line of credit from Enron. Following this approval, beginning in 1999 and accelerating throughout 2001, Lay sold large amounts of Enron stock to repay this line of credit.

111. Pursuant to Item 404(a) of Regulation S-K, in effect at all times material to this complaint, a proxy statement was required to include, among other things, a description of any

transaction exceeding $60,000 in which an executive officer had a direct or indirect material interest, naming such person and indicating the person's relationship to the registrant, the nature of such person's interest in the transaction(s), the amount of such transaction(s) and, where practicable, the amount of such person's interest in the transaction(s).

112. Pursuant to Item 404(c) of Regulation S-K in effect at all times material to this complaint, a proxy statement was required to describe, among other things, any director or executive officer indebtedness exceeding $60,000, naming the nature of the person's relationship by reason of which such person's indebtedness is required to be described, the "largest aggregate amount of indebtedness outstanding at any time during such period," the "nature of the indebtedness and of the transaction in which it was incurred, the amount thereof outstanding as of the last practicable date, and the rate of interest paid or charged."

113. Rogers, Enron's principal securities lawyer, was responsible for Enron's public filings, including disclosure of sales of Enron stock by company insiders. In addition, as alleged above, Rogers was responsible for, and had the final say on, Enron's proxy disclosures. As a result, Rogers knew and understood the requirements of Regulation S-K and was responsible for Enron's compliance with this regulation. In addition, according to Rogers' subordinates and others, Rogers reviewed all of Enron's Proxy Statements from a securities law perspective before filing them with the SEC.

114. Rogers was provided with drafts of the 2000 Proxy Statement and either reviewed them or was reckless in not reviewing them given his responsibilities at Enron.

115. With respect to Lay's line of credit, Enron's 2000 Proxy Statement, filed on March 27, 2001, stated only that: "During 2000, Mr. Lay's $4,000,000 interest-bearing line of credit was paid in full."

116. Enron's disclosure concerning Lay's line of credit in its 2000 Proxy Statement was materially false and/or misleading because it failed to disclose, pursuant to Items 404(a) and (c) of Regulation S-K, that during the relevant period Lay used his revolving $4 million Enron line of credit on multiple occasions to obtain cash advances totaling $16 million, and then paid back those advances with $16 million in Enron stock sales, transactions that were material to Lay.

117. Rogers knew, or was reckless in not knowing, that Lay had a revolving line of credit and that the Board of Director's, Compensation Committee had authorized Lay to repay the line of credit by selling his Enron stock back to the company, as well as the fact that Lay had obtained cash advances on four occasions totaling $16 million, and then paid back those advances with $16 million in Enron stock sales. For example, Rogers had a practice of proofreading all draft Board Minutes before they were finalized, including the Compensation Committee's May 3, 1999 Minutes that authorized Lay to repay his line of credit with Enron stock sales to Enron. In addition, all officers and directors of Enron, including Lay, prepared responses to questionnaires for the purposes of preparing company Proxy Statements and Forms 10-K, that include their compensation related transactions for the relevant time period of the disclosures. Lay disclosed in his response to the questionnaires that he used his $4 million line of credit on multiple occasions. Rogers knowingly or recklessly disregarded Lay's questionnaire responses. Further, in August 2000, Rogers received an email from a subordinate informing him that, in August alone, Lay sold $4 million worth of stock to Enron to repay his line of credit.

118. In addition, Rogers knew, or was reckless in not knowing, that Enron was required to disclose Lay's $16 million of Enron stock sales to Enron during 2000 in repayment of his Enron line of credit in its 2000 Proxy Statement pursuant to Items 404(a) and (c) of

Regulation S-K.

119. Accordingly, Rogers knowingly or recklessly failed to disclose Lay's $16 million of Enron stock sales to Enron in repayment of his Enron line of credit in Enron's 2000 Proxy Statement and by incorporation Enron's 2000 Form 10-K, thereby making these public filings materially false and misleading.

K. Rogers Aided and Abetted Lay's Failure to Disclose His $70 Million of Insider Stock Sales from Lay's 2001 Forms 4

120. In 2001, Lay increased his draws against his Enron line of credit and continued to sell Enron stock back to the company to repay the line. These stock sales increased from $16 million in 2000 (as alleged in the previous section) to $70 million in 2001.

121. Pursuant to Exchange Act Section 16(a) [15 U.S.C. § 78p(a)], and Exchange Act Rules 16a-2 and 16a-3 [17 C.F.R. §§ 240.16a-2, 240.16a-3], which were in effect during 2001, Lay was required to report any change in his beneficial ownership of Enron stock on monthly SEC Forms 4, unless the stock sales were exempt, in which case reporting could be deferred to the annual report on Form 5. To be exempt from Form 4 reporting requirements, Lay's stock sales had to qualify for an exemption pursuant to Exchange Act Section 16(b) [15 U.S.C. § 78p(b)] (former Rule 16a-3(f)(1)(i)) [former 17 C.F.R. § 240.16a-3(f)(1)(i)].

122. Rule 16b-3(e) [17 C.F.R. § 240.16b-3(e)] (including Note 3 to the rule and related staff interpretations) exempted, among others, an officer's stock sales to the company from Section 16(b) short-swing profit liability provided that the terms of each specific sales transaction were approved in advance by, among others, the Board of Directors of the company. If blanket approval was given by the Board of Directors for multiple insider trades, the rule and SEC staff interpretations to the rule make it clear that "the terms and conditions of each transaction [had to be] fixed in advance."

123. The SEC staff addressed Rule 16b-3(e) [17 C.F.R. § 240.16b-3(e)] and Note 3 to Rule 16b-3 in the Division of Corporation Finance Manual of Publicly Available Telephone Interpretations at interpretation R. 48, which states: "Board approval of a buy-back plan providing for the issuer to buy back option shares at any time at fair market value would not satisfy the approval requirement of Rule 16b-3(e) because the resultant open-ended buy-back transactions would not have been approved with sufficient specificity." (Emphasis in original.)

124. The Enron Board of Director's, Compensation Committee's May 3, 1999 resolution approving Lay's ability to sell his Enron stock to repay his line of credit advances gave him a blanket approval. That is, pursuant to the Committee's resolution, the terms and conditions of Lay's repayment sales were not fixed in advance and Lay was authorized to determine by notification to Enron when and with what Enron shares he would repay his line of credit. The Board of Director's, Compensation Committee also authorized Enron to pay Lay the market price for the stock he sold to Enron in this manner (on the date of his notification to Enron of when he would repay his line of credit with Enron stock). Thus, Lay's line of credit sales were not exempt under Rule 16b-3(e) [17 C.F.R. § 240.16b-3(e)] or any other exemption, and therefore were required to be reported monthly on SEC Forms 4.

125. Rogers was Enron's top securities lawyer and disclosure expert. Consistent with Rogers' overall responsibility for all Enron's SEC filings, Rogers was responsible for overseeing the Section 16(a) filings for Enron officers. As a result of his responsibilities, Rogers knew or was reckless in not knowing that 1) Rule 16b-3(e) exempted sales of stock between the officer and the issuer only if the specific sales were approved individually in advance and 2) SEC staff had issued a telephone interpretation making it clear that a blanket pre-approval of dispositions at an unspecified price (e.g., at the market price) does not satisfy the requirements of a Rule 16b-

3(e) exemption.

126. Rogers' subordinate assisted Lay and Lay's agent to prepare and file Lay's Section 16(a) filings, including Lay's SEC Forms 4. The subordinate took direction from Rogers for the Section 16(a) filings.

127. Rogers knew or was reckless in not knowing that the Enron Board of Director's, Compensation Committee gave Lay blanket approval to sell Enron stock to the company to repay his line of credit on terms that were not fixed in advance. In addition, Rogers knew or was reckless in not knowing that Lay was selling his Enron stock back to the company to repay his line of credit. For example, in the previous year, on August 25, 2000, the Rogers' subordinate who assisted Lay on his Form 4 filings sent an email to Rogers and others questioning whether the Board of Directors approved Lay's sale of $4 million worth of his Enron stock to repay his line of credit. In addition, in June 2001, Rogers sent the same subordinate an email which included an excerpt of the May 3, 1999 Board of Director's, Compensation Committee minutes where the Committee gave Lay blanket approval to sell Enron stock to the company to repay his line of credit.

128. In or about June 2001, Rogers spoke separately with Lay, Rogers' subordinate and Lay's agent about Lay's plan to accelerate Lay's use of the line of credit and sale of Enron stock back to Enron to repay the line, and the SEC disclosure requirements relating to these transactions. Rogers informed Lay, Rogers' subordinate, and Lay's agent that Lay could defer reporting the Enron line of credit stock sales on Lay's SEC Forms 4 for 2001.

129. In June 2001, Rogers left a series of voicemails for his subordinate regarding the reporting of Lay's line of credit stock sales on his SEC Forms 4. Rogers told the subordinate:

a. "If what we have [the Committee resolution] is not adequate it can be reported as a non-exempt sale. Not the end of the world."

b. "The SEC would prefer to see very specific description and explanation of the specific transaction or transactions between the insider and the company that are being approved. Does that resolution adequately and clearly describe? . . . Nothing to do now. We can in good faith make a case that the Board approved these transactions. It's very unlikely that anyone will look behind the Form 4 treatment of this. No we don't have the board approval. The plaintiffs' lawyers look at Form 4. These are exempt transactions. I don't recommend doing anything today. If we get uncomfortable that it needs to be more precise we're not going to hold a special meeting to address. Addressed at next regularly scheduled meeting. Won't do anything until then. I think we have a good faith basis for saying that. I think it can be more precise. We are not going to address until next August [2001]. Treat it as though board approved. I think [an Enron employee's] opinion has value that's what the board discussed and intended. It won't come to that. Attorney client privilege. Good faith intention to cover these transactions. Could have done better at drafting. Not clear, more specific, I don't think we have to do anything, right now if ever."

c. "To pursue reporting issue I will continue to think about this. If we need to spiff it [the Committee resolution] up that should not change how we are proceeding at this point. Only question is would be well I'll leave it at that."

130. In addition, the subordinate documented that Lay's line of credit sales may not be exempt from SEC Forms 4 reporting requirements in a research memorandum to Rogers in June 2001. The subordinate stated: "do you think Note (3) [of Rule 16b-3] requires the Comp Committee to approve each transaction[] in advance[?]" She also attached to the memo a copy

of Romeo & Dye's Model Form 70 which stated "it is the SEC Staff's position that a blanket pre-approval of dispositions at an unspecified price (*e.g.,* at the market) … is insufficient to satisfy the requirements of Rule 16b-3(e)."

131. Knowingly or recklessly disregarding concerns raised by his subordinate and the facts and the law requiring disclosure, Rogers decided, as part of, and in furtherance of the scheme to avoid disclosures, that Lay was not required to make the monthly Form 4 disclosures of his Enron line of credit stock sales. Rogers knowingly or recklessly authorized Lay, Lay's agent, and Rogers' subordinate, who was assisting Lay to prepare and file his Form 4s, to defer the reporting of Lay's 2001 Enron line of credit stock sales until February 2002.

132. Based upon the advice of Rogers, Lay filed monthly Forms 4, among others, on July 10 and August 9, 2001, relating to a separate program 10b5-1 sales plan, and on September 7, 2001 relating to the exercise of Enron stock options, that did not include Lay's line of credit stock sales back to Enron, which ultimately totaled $70 million in 2001. Lay also failed to file an SEC Form 4 in October or November of 2001 reflecting any of Lay's line of credit stock sales during those months.

133. Accordingly, Lay violated Exchange Act Section 16(a) [15 U.S.C. § 78p(a)] and Exchange Act Rules 16a-2 and 16a-3 [17 C.F.R. §§ 240.16a-2, 240.16a-3] by failing to timely report on Forms 4 the $70 million of line of credit stock sales in 2001.

134. By engaging in the conduct alleged above, Rogers knowingly or recklessly provided substantial assistance to Lay in his violations of Exchange Act Section 16(a) [15 U.S.C. § 78p(a)] and Exchange Act Rules 16a-2 and 16a-3 [17 C.F.R. §§ 240.16a-2, 240.16a-3] and substantially caused Lay's violation of these provisions.

135. Accordingly, Rogers aided and abetted Lay's violations of Exchange Act Section

16(a) [15 U.S.C. § 78p(a)] and Exchange Act Rules 16a-2 and 16a-3 [17 C.F.R. §§ 240.16a-2, 240.16a-3].

CLAIMS FOR RELIEF

FIRST CLAIM

Violations of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)]and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]

136. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 135 above.

137. By engaging in the conduct alleged above, Mintz and Rogers, directly or indirectly, by use of the means or instrumentalities of interstate commerce, or by the use of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities, knowingly or recklessly: employed devices, schemes, or artifices to defraud, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person.

138. By reason of the foregoing, Mintz and Rogers violated Exchange Act Section 10(b) [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

SECOND CLAIM

Violations of Securities Act Section 17(a) [15 U.S.C. § 77q(a)]

139. The Commission reallges and incorporates by reference each and every allegation contained in Paragraphs 1 through 138 above.

140. Mintz and Rogers, by engaging in the conduct alleged above, directly or indirectly, by the use of the means or instruments of transportation or communication in

interstate commerce or by the use of the mails, in the offer and sale of securities, knowingly, recklessly, or negligently: employed devices, schemes, or artifices to defraud, obtained money or property by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchasers of such securities.

141. By reason of the foregoing, Mintz and Rogers violated Securities Act Section 17(a) [15 U.S.C. § 77q(a)].

THIRD CLAIM

Violations of Exchange Act Section 14(a) [15 U.S.C. § 78n(a)]
and Exchange Act Rule 14a-9 [17 C.F.R. § 240.14a-9]

142. The Commission realleges and incorporates by reference each and every allegation contained Paragraphs 1 through 141 above.

143. Mintz and Rogers, by engaging in the conduct alleged above, by the use of mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, knowingly, recklessly or negligently, solicited by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing statements which, at the time and in light of the circumstances under which they were made, were false and misleading with respect to material facts, or omitted to state material facts necessary in order to make the statements therein not false or misleading or necessary to correct statements in earlier communications with respect to solicitation of the proxy for the same meeting or subject matter which was false and misleading.

144. By reason of the foregoing, Mintz and Rogers violated Exchange Act Section 14(a) [15 U.S.C. § 78n(a)] and Exchange Act Rule 14a-9 [17 C.F.R. § 240.14a-9].

FOURTH CLAIM

Violation of Exchange Act Section 13(b)(5) [15 U.S.C. § 78m(b)(5)] and
Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1]

145. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 144 above.

146. By engaging in the conduct alleged above, Mintz, directly or indirectly, falsified and caused to be falsified Enron's books, records, and accounts subject to Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)] in violation of Exchange Act Section 13(b)(5) [15 U.S.C. § 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

147. By reason of the foregoing, defendant Mintz violated Exchange Act Section 13(b)(5) [15 U.S.C. § 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

FIFTH CLAIM

Violation of Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2]

148. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 147 above.

149. By engaging in the conduct alleged above, Mintz directly or indirectly, made or caused to be made materially false and misleading statements or omitted to state or caused others to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with an audit, review or examination of financial statements or the preparation or filing of a documents or report required to be filed with the Commission, in violation of Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

150. By reason of the foregoing, defendant Mintz violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

SIXTH CLAIM

Aiding and Abetting Violations of Exchange Act Section 13(a)
[15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, & 13a-13
[17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13]

151. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 150.

152. Exchange Act Section 13(a) [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1, 240.13a-13] require issuers of registered securities to file with the Commission factually accurate annual reports on Form 10-K and quarterly reports on Form 10-Q. Exchange Act Rule 12b-20 [17 C.F.R. § 240.12b-20] further provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they were made not misleading.

153. By reason of the foregoing, Enron violated Exchange Act Section 13(a) [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13].

154. By engaging in the conduct alleged above, Mintz and Rogers had a general awareness of their roles in Enron's violations of Exchange Act Section 13(a) [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13].

155. By engaging in the conduct alleged above, Mintz and Rogers knowingly or recklessly provided substantial assistance to Enron in its violations of Exchange Act Section

13(a) [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13] and substantially caused Enron's violations of these provisions.

156. By reason of the foregoing, Mintz and Rogers aided and abetted Enron's violations of Exchange Act Section 13(a) [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13].

SEVENTH CLAIM

Aiding and Abetting Violations of Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)]

157. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 156 above.

158. Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)] requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets.

159. By reason of the foregoing, Enron violated Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)].

160. By engaging in the conduct alleged above, Mintz had a general awareness of their roles in Enron's violations of Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)].

161. By engaging in the conduct alleged above, Mintz knowingly or recklessly provided substantial assistance to Enron in its violation of Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)] and substantially caused Enron's violation of this provision.

162. By reason of the foregoing, Mintz and aided and abetted Enron's violations of Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)].

EIGHTH CLAIM

Aiding and Abetting Violations of Exchange Act Section 10(b)
[15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]

163. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 162 above.

164. By reason of the foregoing, Enron and others violated Exchange Act Section 10(b) [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

165. By engaging in the conduct alleged above, Mintz and Rogers had a general awareness of their roles in Enron's and others' violations of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

166. By engaging in the conduct alleged above, Mintz and Rogers knowingly or recklessly provided substantial assistance to Enron and others in their violations of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5] and substantially caused Enron's violations of these provisions.

167. By reason of the foregoing, Mintz and Rogers aided and abetted Enron's and others' violations of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

NINTH CLAIM

Aiding and Abetting Violations of Exchange Act Section 14(a)
[15 U.S.C. § 78n(a)] and Exchange Act Rule 14a-9 [17 C.F.R. § 240.14a-9]

168. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 167 above.

169. By reason of the foregoing, Enron and others violated Exchange Act Section 14(a) [15 U.S.C. § 78n(a)], and Exchange Act Rule 14a-9 [17 C.F.R. § 240.14a-9].

170. By engaging in the conduct alleged above, Mintz and Rogers had a general awareness of their roles in Enron's and others' violations of Exchange Act Section 14(a) [15 U.S.C. § 78n(a)], and Exchange Act Rule 14a-9 [17 C.F.R. § 240.14a-9].

171. By engaging in the conduct alleged above, Mintz and Rogers knowingly and recklessly provided substantial assistance to Enron and others in their violations of Exchange Act Section 14(a) [15 U.S.C. § 78n(a)], and Exchange Act Rule 14a-9 [17 C.F.R. § 240.14a-9] and substantially caused Enron's violations of these provisions.

172. By reason of the foregoing, Mintz and Rogers aided and abetted Enron's and others' violations of Exchange Act Section 14(a) [15 U.S.C. § 78n(a)], and Exchange Act Rule 14a-9 [17 C.F.R. § 240.14a-9].

TENTH CLAIM

Aiding and Abetting Violations of Exchange Act Section 16(a) [15 U.S.C. § 78p(a)] and Exchange Act Rules 16a-2 and 16a-3 [17 C.F.R. §§ 240.16a-2, 240.16a-3]

173. The Commission realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 172 above.

174. Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rules 16a-2 and 16a-3 thereunder [17 C.F.R. §§ 240.16a-2 and a-3] require officers, directors and beneficial owners of maore than ten percent of any class of equity security registered pursuant to Exchange Act Section 12 [15 U.S.C. § 78l] to file periodic reports disclosing any change of beneficial ownership of those securities on a Form-4.

175. By reason of the foregoing, Enron Chairman Lay violated Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rules 16a-2 and 16a-3 thereunder [17 C.F.R. §§ 240.16a-2 and a-3].

176. By engaging in the conduct alleged above, Rogers had a general awareness of his role in Enron Chairman Lay's violations of Exchange Act Section 16(a) [15 U.S.C. § 78p(a)] and Exchange Act Rules 16a-2 and 16a-3 [17 C.F.R. §§ 240.16a-2, 240.16a-3].

177. By engaging in the conduct alleged above, Rogers knowingly or recklessly provided substantial assistance to Enron Chairman Lay in his violations of Exchange Act Section 16(a) [15 U.S.C. § 78p(a)] and Exchange Act Rules 16a-2 and 16a-3 [17 C.F.R. §§ 240.16a-2, 240.16a-3] and substantially caused Lay to violate these provisions.

178. By reason of the foregoing, Rogers aided and abetted Enron Chairman Lay's violations of Exchange Act Section 16(a) [15 U.S.C. § 78p(a)] and Exchange Act Rules 16a-2 and 16a-3 [17 C.F.R. §§ 240.16a-2, 240.16a-3].

JURY DEMAND

179. The Commission demands a jury in this matter.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter an Order:

A. Permanently enjoining and restraining Mintz and Rogers from violating the provisions set forth herein; ordering Mintz and Rogers to pay disgorgement of ill-gotten gains, and civil penalties; and prohibiting Mintz and Rogers permanently and unconditionally from acting as an officer or director of any issuer of securities that has a class of securities registered pursuant to Exchange Act Section 12 [15 U.S.C. § 78l] or that is required to file reports pursuant to Exchange Act Section 15(d) [15 U.S.C. § 78o(d)];

B. Providing, pursuant to Section 308 of the Sarbanes-Oxley Act of 2002, that the amount of civil penalties ordered against Mintz and Rogers be added to and become part of a disgorgement fund for the benefit of the victims of the violations alleged herein; and

C. Granting such other and additional relief as this Court may deem just and proper.

Dated: March 28, 2007

Respectfully submitted,

______/s/___________________________
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