UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| UNITED STATES SECURITIES AND EXCHANGE COMMISSION, | § | |
| Plaintiff, | § | |
| v. | § | Civil Action No. HO-06-1020 |
| DAVID T. LEBOE, DALE G. RASMUSSEN, | § | **COMPLAINT** |
| Defendants. | § | |

Plaintiff Securities and Exchange Commission for its Complaint alleges as follows:

## SUMMARY

1. David T. Leboe, an Enron accountant, and Dale G. Rasmussen, an Enron attorney, engaged in a scheme to defraud with others in violation of the federal securities laws. In coordination with other Enron employees, Leboe and Rasmussen engaged in conduct that manipulated Enron's publicly-reported earnings through devices designed to produce materially false and misleading financial results.

2. The Commission requests that this Court order Leboe and Rasmussen each to pay disgorgement and a civil penalty, and enjoin each of them from violating the federal securities laws cited herein.

## JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and

27 of the Securities and Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and (e) and 78aa].

4. Venue lies in this District pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain acts or transactions constituting the violations occurred in this District.

5. In connection with the acts, practices, and courses of business alleged herein, Leboe and Rasmussen, 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.

## DEFENDANTS

6. David T. Leboe, 38, resides in Houston, Texas. Leboe joined Enron in December 1997 and, until March 2001, worked as an accountant in an Enron business unit known as Enron North America ("ENA"). During the relevant time period, Leboe was licensed in Texas as a Certified Public Accountant.

7. Dale G. Rasmussen, 46, resides in Portland, Oregon. During the relevant time period, Rasmussen was a senior counsel in ENA's West Power Origination Legal Group. Rasmussen is licensed to practice law in the State of Oregon.

## ENTITIES INVOLVED

8. Enron Corp. is an Oregon corporation with its principal place of business in Houston, Texas. During the relevant time period, Enron's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. During the time that defendants and others engaged in the conduct alleged herein, Enron raised millions in the public debt and equity markets. Among other operations, Enron was

the nation's largest natural gas and electric marketer. 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.

9. ENA, the largest and most profitable business unit within Enron Wholesale Services ("Wholesale"), was Enron's largest and fastest growing business segment in 2000 and 2001. ENA included Enron's wholesale merchant energy business related to natural gas and power across North America, including trading, marketing and new asset development activities in that region. In its segment disclosures, ENA's results were reported within the Wholesale segment.

## FACTUAL ALLEGATIONS

10. During the second and third quarters of 2000, Leboe and Rasmussen, and others, worked on a project known as Coyote Springs 2 ("CS2") that involved the sale of a power plant development project in Oregon originally scheduled for completion in June 2002. CS2 was part of the Coyote Springs Cogeneration Project, located in the city of Boardman, Oregon, designed by Portland General Electric ("PGE") to support the construction and operation of two power plants. The first power plant, Coyote Springs Unit 1, was constructed by PGE and placed into commercial operation in November 1995. The CS2 project was co-developed by ENA and PGE. PGE already owned the project site and necessary permits for constructing and operating CS2.

11. During the spring of 2000, ENA's West Power Origination group was negotiating the sale of an interest in the CS2 project to Avista Power ("Avista"). The original deal consisted of an equity interest in a power plant, an engineering construction contract to build a power generation facility, and a turbine to be placed in the plant. Under the agreement, National Energy

Production Corporation ("NEPCO"), a wholly-owned subsidiary of Enron, was to be the engineering procurement and construction ("EPC") contractor for the CS2 facility. In conformity with the relevant accounting rules, revenues from such a construction contract could only be recognized over time, on a percentage of completion basis, as the construction progressed.

12. ENA managers, under enormous pressure to hit very aggressive earnings targets, subsequently came up with a scheme to improperly recognize an immediate gain based on the appreciation in price of the turbine generator that was to be installed at the CS2 power plant. The scheme involved the unbundling of the original deal into two separate transactions: (1) the sale of the turbine, and (2) the sale of CS2 equity and the execution of the construction contract. ENA would "sell" the turbine to Avista, recognize a gain, and then a short time later enter into a contract with Avista to build the CS2 plant using the turbine previously sold by ENA to Avista.

13. Enron determined that in order to make the two transactions "appear" separate, even though the turbine was essential to the power generation project, there needed to be a two week gap in executing the two transactions. Avista was willing to accommodate ENA in its desire to conduct the turbine sale separately as long as the economics of the deal remained the same. However, Avista was uncomfortable assuming the risk that the second transaction, the equity sale/construction contract, would not close after the intervening two weeks. Avista had no desire to own a turbine generator except as part of a functioning power plant and, if the second part of the deal failed to close, Avista would have been left holding a very expensive turbine with no associated use for it.

14. To ease Avista's discomfort, ENA offered to provide Avista with a put option on the turbine that would require ENA to repurchase the turbine in the event that the second leg of

the CS2 transaction fell through. When Enron's accountants concluded that ENA could not provide the put and still treat the turbine transaction as a true sale, ENA asked LJM2, the partnership controlled by Enron's CFO, Andrew Fastow, to enter into a put option on the turbine with Avista.

15. On July 7, 2000, Avista entered into an agreement with LJM2 which gave Avista the right to put the turbine to LJM2 at the original sale price. The option expiration date was two weeks from the date of the turbine sale – the same day the CS2 equity sale and construction contract were expected to close.

16. The option premium paid to LJM2 was $3,540,000, of which $357,000 was characterized as LJM2's "use of balance sheet" fee. As additional evidence that the put arrangement was a sham, ENA negotiated the put option pricing directly with LJM2, even though Avista was the "purchaser" of the option on the turbine.

17. In a verbal side agreement, LJM2, recognizing that there was virtually no chance that Avista would ever exercise the put option, agreed if the option was not exercised to keep only the $357,000 fee and to refund the remaining $3,183,000 to ENA. Because Avista was only agreeing to the bifurcated sale as an accommodation to ENA, Avista did not want to pay for the put option. Thus, ENA funded the put option premium by reducing the turbine sale price by an amount equal to the option premium.

18. In addition to the put option, ENA gave Avista further comfort that it would not be stuck with the turbine if the second leg of the CS2 deal did not close. In a verbal agreement, ENA committed to repurchase the turbine from Avista at the original sale price prior to any exercise by Avista of the put option. In the unlikely event that Avista chose to exercise the put

option, ENA and LJM2 had a verbal agreement that ENA would repurchase the turbine from LJM2. ENA did not disclose to Enron's outside auditors, Arthur Andersen, the existence of the put option, LJM2's involvement, or the undocumented verbal side agreements.

19. Essentially, ENA, through a related party, LJM2, provided Avista with the right to cancel the turbine sale contingent on completion of the second leg of the CS2 deal. The put option and verbal agreements were structured so that if the put option was exercised, ENA would ultimately end up with the turbine. Further, both ENA and Avista understood that the turbine and its installation was a key component of the CS2 power plant construction project. Generally Accepted Accounting Principles ("GAAP") does not allow an entity to bifurcate a construction contract to recognize sales and profits from construction materials separate from the construction contract taken as a whole. Thus, ENA never should have treated the turbine transaction as a sale separate and apart from the rest of the CS2 deal, and thus, the income recognized from the turbine sale was recorded improperly in the third quarter of 2000.

20. Leboe was the lead accountant for ENA on the CS2 transaction. He was aware that the sole purpose of unbundling the deal was to accelerate earnings and book a profit from the turbine sale. He worked with others to come up with a reasonable timeframe after the turbine sale in which ENA could then sell the CS2 equity and enter into the construction contract with Avista and still recognize the earnings from the sale of the turbine up front. Ultimately, it was decided that two weeks would be a reasonable timeframe in order to permit treatment of the two transactions separately. Leboe knew or was reckless in not knowing that it was improper to bifurcate a construction contract to recognize sales and profits from construction materials separate from the construction contract taken as a whole.

21. In addition, during Leboe's communications with Arthur Andersen on this topic, he did not disclose to Arthur Andersen the existence of the put option agreement between Avista and LJM2. In fact, he actively sought to keep that information from Arthur Andersen and reminded others to do the same in a series of contemporaneous emails. For example, an email from Leboe to Rasmussen, copying others, stated: "Thanks for the legal doc's. With respect to the turbine sale, I was surprised to see documentation relating to LJM2/GE Put Option and LJM2/GE/Avista Consent to Assignment included in the record. My preference would be for these transaction records to be maintained separately. *AA's knowledge of the LJM2 transaction could query gain treatment.* I will provide minimal, piecemeal documentation to AA focusing only on the transaction between Avista and Enron. In connection with their third quarter review, should you receive any calls from AA directly with respect to CS2, please do not discuss LJM." (Emphasis in original).

22. Rasmussen was the primary Enron in-house attorney working on the CS2 deal. He actively negotiated various terms of the agreement and drafted several of the key deal documents. While doing this, he worked closely with Leboe to ensure that the wording in the various deal documents did not jeopardize ENA's efforts to circumvent GAAP. In addition, he provided deal documentation to LJM2 and worked as an intermediary between LJM2 and Avista to help facilitate the timely closing of the option transaction.

23. Various documents also detail Rasmussen's contemporaneous knowledge of the deal. For example, Leboe sent numerous emails to Rasmussen and others detailing the structure and purpose of the separate transactions. Also, Rasmussen spelled out his understanding of the

overall deal in a Legal Risk Memo to his superiors. Under the heading "structural risk," Rasmussen wrote:

> Transaction structure is unusual due to accounting requirements for current revenue recognition. . . . Accounting dept. has been active in structuring transaction. Structure requires arrangement with LJM2 Co-Investors ('LJM', a 'Friend of Enron') involving Avista's buying a 2-week put option for turbine from LJM. If option is not exercised, LJM is to return $3.2 million of $3.5 million option payment to ENA through future unspecified transactions. If option is exercised, ENA is to reimburse LJM $3.8 million. **Agreement between LJM and ENA cannot be documented due to accounting concerns and is not reflected in the [approval sheet] for the turbine sale.** (Emphasis in original)

24. In an early draft of this memo, when Rasmussen assigned a legal risk rating of four to the CS2 deal on a scale of five, with five being the riskiest, he was directed by his supervisor to change it to a rating of two to ensure that the deal went forward. A legal risk level of four would have potentially stopped the deal. Rasmussen acquiesced, and changed the rating to two.

25. In addition, in response to Leboe's request that the LJM-related documents not be included with the other CS2 documents, Rasmussen replied that he would "go through [ENA's] copies and pull the LJM2/GE documents, and [would] confirm that PGE does not have those documents in their files." Rasmussen subsequently contacted PGE and requested that specific documents "be pulled . . . and destroyed or returned to [his] office."

## CLAIMS FOR RELIEF

### FIRST CLAIM

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

26. Paragraphs 1 through 25 are realleged and incorporated by reference herein.

27. As set forth more fully above, Leboe and Rasmussen, directly or indirectly, by use of the means or instrumentalities of interstate commerce, or by the use of the mails and of the facilities of a national securities exchange, in connection with the purchase or sale of securities: has employed devices, schemes, or artifices to defraud, has 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 has engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person.

28. By reason of the foregoing, Leboe and Rasmussen violated and aided and abetted violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

### SECOND CLAIM

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

29. Paragraphs 1 through 28 are realleged and incorporated by reference herein.

30. By engaging in the conduct described above, Leboe and Rasmussen knowingly and substantially caused Enron to file with the Commission a materially false and misleading annual report on Form 10-K for the fiscal year ended December 31, 2000 and a materially false

and misleading quarterly report on Form 10-Q for the third quarter of fiscal year 2000.

31. By reason of the foregoing, Leboe and Rasmussen aided and abetted violations by Enron of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

**THIRD CLAIM**

**Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B)] and Rule 13b2-1 thereunder [17C.F.R. § 240.13b2-1]**

32. Paragraphs 1 through 31 are realleged and incorporated by reference herein.

33. By engaging in the conduct described above, Leboe and Rasmussen aided and abetted Enron's failures to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflected Enron's transactions and dispositions of its assets, in violation of Section 13(b)(2)(A) of the Exchange Act, and further aided and abetted failures to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that Enron's corporate transactions were executed in accordance with management's authorization and in a manner to permit the preparation of financial statements in conformity with generally accepted accounting principles in violation of Section 13(b)(2)(B) of the Exchange Act.

34. By engaging in the conduct described above, Leboe and Rasmussen, directly or indirectly, falsified and caused to be falsified Enron's books, records, and accounts subject to Section 13(b)(2)(A) of the Exchange Act in violation of Rule 13b2-1.

35. By reason of the foregoing, Leboe and Rasmussen aided and abetted violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and violated Rule 13b2-1 thereunder.

**FOURTH CLAIM**

**Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]**

36. Paragraphs 1 through 35 are realleged and incorporated by reference herein.

37. By engaging in the conduct described above, Leboe and Rasmussen knowingly circumvented or knowingly failed to implement a system of internal financial controls at Enron.

38. By reason of the foregoing, defendants Leboe and Rasmussen violated and aided and abetted violations of Section 13(b)(5) of the Exchange Act.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

(A) Grant a Permanent Injunction restraining and enjoining Leboe and Rasmussen from violating the statutory provisions set forth herein and ordering each of them to pay disgorgement and civil penalties;

(B) Pursuant to Section 308 of the Sarbanes-Oxley Act of 2002, enter an order providing that the amount of civil penalties ordered against Leboe and Rasmussen be added to and

become part of a disgorgement fund for the benefit of the victims of the violations alleged herein; and

(C ) Grant such other and additional relief as this Court may deem just and proper.

Dated: March 27, 2006 Respectfully submitted,

S/

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