

Ex. 1

CARRINGTON

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SLOMAN &

BLUMENTHAL L.L.P. 200 CRESCENT COURT • SUITE 1500 • DALLAS, TEXAS 75201-1848 • TEL 214.855.3000 • FAX 214.855.1333

ATTORNEYS AT LAW

BRUCE W. COLLINS

TEL: 214.855.3018

FAX: 214.758.3718

E-MAIL: BCOLLINS@CCSB.COM

September 15, 2003

VIA FACSIMILE AND U.S. MAIL

Mr. Luis R. Mejia
Assistant Chief Litigation Counsel
Securities and Exchange Commission
450 Fifth Street N.W.
Washington D.C. 20549-0911

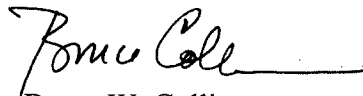
Re: Kenneth L. Lay Document Production

Dear Mr. Mejia:

On Friday, September 12, 2003, we discussed over the telephone your request that we produce to you the documents withheld on Fifth Amendment grounds from Ken Lay's production to the SEC on January 16, 2003. You asserted that you did not believe that the production of these documents was protected by the Fifth Amendment. In response, I advised you that there is a good faith basis for asserting the Fifth Amendment, but that we were prepared to produce the documents to avoid the fees and expenses of litigating the issue, provided that you acknowledged on behalf of the SEC that production of these documents would not waive any Fifth Amendment rights that our client, Mr. Lay, may have, including but not limited to the documents produced and any related documents or testimony. You agreed that the SEC would not assert that Mr. Lay has waived any rights he may have under the Fifth Amendment as a result of his production of the documents. We would appreciate it if you would send to us a confirmation letter and, upon receipt, we will proceed with production of the documents in issue.

Please call if you have any questions concerning these matters.

Sincerely,


Bruce W. Collins

rb

Ex. 2



DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Luis R. Mejia
Assistant Chief Litigation Counsel
Telephone: (202) 942-4744
Facsimile: (202) 942-9569
E-Mail: MejiaL@sec.gov

September 16, 2003

Via Fax and U.S. Mail

Bruce W. Collins
Carrington, Coleman, Sloman & Blumenthal L.L.P.
200 Crescent Court
Suite 1500
Dallas, Texas 75201-1848

Re: In the Matter of Enron

Dear Mr. Collins:

This responds to your letter dated September 15, 2003 regarding the subpoenaed documents withheld from the SEC by Kenneth L. Lay on Fifth Amendment grounds. This includes documents withheld on Fifth Amendment grounds from Mr. Lay's productions to the SEC on January 16, 2003, June 4, 2002, and February 21, 2002 (as asserted in cover letters accompanying production from Mr. Lay's counsel to the SEC on those dates and restated in a letter from Mr. Lay's counsel to the SEC dated March 4, 2003).

As I conveyed to you in our telephone conversation of September 12, 2003, the SEC's position is: (1) the documents withheld by Mr. Lay are corporate records of Enron; (2) as such, under the collective entity doctrine, see e.g., Braswell v. United States, 487 U.S. 99 (1988), Mr. Lay cannot assert a personal Fifth Amendment right as a basis for withholding such documents; and (3) since Mr. Lay does not have a Fifth Amendment right to withhold the corporate records in his possession, Mr. Lay's production of such records will not waive any Fifth Amendment rights that Mr. Lay may have, and the SEC will not assert that his production constitutes such a waiver.

Please produce the documents at issue via FedEx to my attention.

Sincerely,

Handwritten signature of Luis R. Mejia in black ink.
Luis R. Mejia

Ex. 3

Mejia, Luis

From: Mejia, Luis
Sent: Wednesday, September 24, 2003 12:28 PM
To: 'Bruce Collins'
Subject: RE: Ken Lay production

Bruce,

This is NOT acceptable. I am faxing a letter that states the SEC's position.

Lou

-----Original Message-----

From: Bruce Collins [mailto:BCOLLINS@ccsb.com]
Sent: Thursday, September 18, 2003 11:57 AM
To: MejiaL@SEC.GOV
Cc: earl.silbert@piperrudnick.com
Subject: Ken Lay production

Luis--

In response to your request that I e-mail you with proposed language clarifying your letter of September 16, 2003 to me concerning the production of documents by Ken Lay as to which he has asserted Fifth Amendment objections, please consider the following:

When I state in my September 16, 2003 letter that "Mr. Lay's production of such records will not waive any Fifth Amendment rights Mr. Lay may have, and the SEC will not assert that his production constitutes such a waiver" I am referring to all documents produced by Mr. Lay whether or not they ultimately are characterized as corporate or personal records or otherwise have Fifth Amendment protection.

If this clarification is acceptable to you, please simply confirm that it is acceptable by e-mail, and we can proceed with the production.

Thank you,
Bruce

This electronic message is confidential and is intended only for the use of the individual to whom it is addressed. The information may also be legally privileged. This transmission is sent in trust, for the sole purpose of delivery to the intended recipient. If you have received this transmission in error, you are hereby notified that any use, dissemination, distribution or reproduction of this transmission is strictly prohibited. If you are not the intended recipient, please immediately notify me by electronic message or telephone at 214-855-3000, and delete the message from your system.

Carrington, Coleman, Sloman & Blumenthal, L.L.P.
www.carringtoncoleman.com

Ex. 4



DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Luis R. Mejia
Assistant Chief Litigation Counsel
Telephone: (202) 942-4744
Facsimile: (202) 942-9569
E-Mail: MejiaL@sec.gov

September 24, 2003

Via Fax and U.S. Mail

Bruce W. Collins
Carrington, Coleman, Sloman & Blumenthal L.L.P.
200 Crescent Court
Suite 1500
Dallas, Texas 75201-1848

Re: In the Matter of Enron

Dear Mr. Collins:

On September 10, 2003, we advised Kenneth L. Lay, through counsel, of the SEC's intention to file a subpoena enforcement action against Lay regarding the subpoenaed documents he has withheld from the SEC on Fifth Amendment grounds. This includes documents withheld on Fifth Amendment grounds from Lay's productions to the SEC on January 16, 2003, June 4, 2002, and February 21, 2002 (as asserted in cover letters accompanying production from Lay's counsel to the SEC on those dates and restated in a letter from Lay's counsel to the SEC dated March 4, 2003).

We believe the documents withheld by Lay are corporate records of Enron and that Lay cannot assert a personal Fifth Amendment right as a basis for withholding such documents. Lay has expressed concerns regarding the effect on any Fifth Amendment rights he may have that would result by his production of documents that may be personal. Although we have engaged in good faith discussions to avoid the need for court intervention, Lay's proposal to produce the documents only if the SEC agrees to certain conditions is unacceptable.

The SEC does not and will not agree, as a condition to Lay's production of subpoenaed documents that he has withheld from the SEC, that production of personal records, if any, would not constitute a waiver of any Fifth Amendment rights Lay may have. Lay cannot have it both ways -- he cannot produce personal records that may be incriminating while preserving his Fifth Amendment rights, thereby limiting the use of such records by the government. Moreover, should Lay produce personal records to the SEC with an agreement by the SEC that Lay has not waived any Fifth Amendment rights he may have, Lay could argue in a later prosecution that his personal records had been used by the government, directly or indirectly, and led to civil or criminal charges against Lay, in violation of his Fifth Amendment rights. Thus, the SEC does

Bruce W. Collins
September 23, 2003
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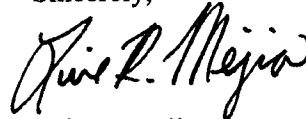
not and will not agree to any conditions on Lay's production of personal records. If Lay produces personal records to the SEC, such production is at his own peril.

If Lay believes that certain records he is withholding are personal, rather than corporate, and he intends to continue to withhold such records on Fifth Amendment grounds, please prepare and furnish to the SEC a privilege log that identifies the documents withheld. The identification of the documents should be sufficient for the SEC to determine whether Lay's assertion that the records are personal is appropriate, and whether the Fifth Amendment applies to the act of production of such records. The SEC will reserve its right to bring a subpoena enforcement action with respect to the records identified on the log.

Regarding records in Lay's possession that are corporate records, please produce such records to the SEC. The position of the SEC with respect to Lay's production of corporate records he has withheld is as stated in my letter to you dated September 16, 2003, and restated here: (1) the documents withheld by Lay are corporate records of Enron; (2) as such, under the collective entity doctrine, see e.g., Braswell v. United States, 487 U.S. 99 (1988), Lay cannot assert a personal Fifth Amendment right as a basis for withholding such documents; and (3) since Lay does not have a Fifth Amendment right to withhold the corporate records in his possession, Lay's production of such records will not waive any Fifth Amendment rights that Lay may have, and the SEC will not assert that his production constitutes such a waiver.

Please inform us of your intentions by close of business Friday, September 26, 2003. If Lay does not intend to begin compliance with the subpoena in the manner set forth above, we will file a subpoena enforcement action against Lay to resolve all issues.

Sincerely,



Luis R. Mejia

Ex. 5

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ATTORNEYS AT LAW

BRUCE W. COLLINS
TEL: 214.855.3018
FAX: 214.758.8718
E-MAIL: BCOLLINS@CCSB.COM

September 26, 2003

Via Facsimile (202-942-9569) and First Class Mail

Luis R. Mejia, Esq.
Assistant Chief Litigation Counsel
Securities and Exchange Commission
450 Fifth Street N.W.
Washington D.C. 20549-0911

Re: In the Matter of Enron

Dear Mr. Mejia:

This is in response to your letter of September 24, 2003. Let me emphasize that we have tried very hard to find a way to produce to you the documents that you have requested without putting our client in a position where you later argue that he has waived Fifth Amendment rights. As I am sure you can appreciate, the line between a personal and corporate record is often not easily discernible, but your letter makes clear that if Mr. Lay produces documents in the belief that they are corporate records but the SEC later convinces a court that they are personal records, Mr. Lay puts himself at risk that he has waived Fifth Amendment rights. Moreover, the SEC provides no assurance that its position on waiver would be limited to the documents themselves. As you say quite succinctly in your letter: "If Lay produces personal records to the SEC, such production is at his own peril." It appears to us that it is the SEC that wants it both ways – Mr. Lay must produce the documents because they are allegedly business records, but if he is wrong, the SEC still retains the records and is entitled to argue that he has waived his Fifth Amendment rights.

In requesting that we prepare a privilege log, you do raise one alternative to forcing a court to decide whether the documents are personal or corporate. Of course, the very preparation of a privilege log implicates issues of waiver if the description of the documents is too specific. We therefore propose to comply with your request for a privilege log and describe the documents withheld on Fifth Amendment grounds generally by category with sufficient information for the SEC to make a judgment whether the records are personal or corporate, while at the same time

Luis R. Mejia, Esq.
September 26, 2003
Page 2

avoiding that level of detail that would jeopardize Mr. Lay's Fifth Amendment rights. We will commence promptly with the preparation of such log.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Collins", with a long horizontal flourish extending to the right.

Bruce W. Collins

BWC/nc

cc: Earl Silbert, Esq.