UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	Civil Action No. H-03-4883
v.	§	**COMPLAINT**
DAVID W. DELAINEY,	§	JURY DEMANDED
Defendant.	§	

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

SUMMARY

1. David W. Delainey, a senior executive of Enron, participated in several aspects of a wide ranging fraudulent scheme carried out by Enron to manipulate Enron's reported financial results. Further, while in possession of material non-public information, namely, that Enron was engaged in this fraudulent scheme, Delainey engaged in unlawful insider trading by selling large amounts of Enron stock at a substantial profit. Delainey's conduct breached his fiduciary duties and relationship of trust and confidence that he owed to Enron and its shareholders. By his conduct, Delainey engaged in a scheme to violate the federal securities laws.

2. The Commission requests that this Court order Delainey to pay disgorgement, prejudgment interest, and a civil penalty, enjoin Delainey from violating the federal securities laws cited herein, and prohibit him from acting as an officer or director of any issuer of securities that has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of

1934 (“Exchange Act”).

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the 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, Delainey, 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.

6. Delainey, unless restrained and enjoined by this Court, will continue to engage in transactions, acts, practices, and courses of business as set forth in this Complaint or in similar illegal acts and practices.

DEFENDANT

7. David W. Delainey was an employee of Enron from May 1994 to March 2002. Delainey began working in Enron's natural gas business in Canada and was steadily promoted to senior management positions within Enron. In May 1998, Enron promoted Delainey to a senior position within Enron Capital and Trade ("ECT") and transferred him to Enron's Houston headquarters. ECT was the location of Enron's growing energy trading business. From 1998 to early 2001, Delainey reported to and interacted regularly with the top managers of Enron's corporate department and its ECT business unit, which was later renamed Enron Wholesale Services ("Enron Wholesale"). In March 2000, Enron promoted Delainey to Chief Commercial

Officer of Enron North America ("ENA"), the unit within Enron Wholesale in which Enron managed all of its asset- and trading-based energy business in the United States and Canada. In June 2000, Enron promoted Delainey to Chief Operating Office ("COO") of ENA. In September 2000, Enron named Delainey Chief Executive Officer ("CEO") of ENA. In February 2001, Enron made Delainey CEO of Enron Energy Services ("EES"). EES was a retail energy contracting business which Enron heavily touted for several years as headed for vast future earnings growth. Delainey served as CEO of EES through the end of 2001.

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 Delainey and others engaged in the fraudulent 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.

FACTUAL ALLEGATIONS

Delainey's Fiduciary Duties To Enron And Its Shareholders

9. Delainey signed an employment agreement with Enron in which he acknowledged and agreed that he owed a duty of trust and confidence to Enron and that personal use of confidential information of Enron was prohibited. Delainey agreed he owed a fiduciary duty to act only in the best interests of Enron and its shareholders. The employment agreement signed

by Delainey was in effect during the time period relevant to this Complaint.

Enron's Scheme To Defraud Through Earnings Manipulation

10. From at least 1998 through late 2001, Enron's executives and senior managers engaged in a wide-ranging scheme, through a variety of devices, to deceive the investing public about the true nature and profitability of Enron's businesses by manipulating Enron's publicly reported financial results and making false and misleading public representations.

11. The scheme's objectives were, among other things, to produce reported earnings that steadily grew by approximately 15 to 20 percent every year; to meet or exceed, without fail, the published expectations of investment analysts about Enron's reported earnings-per-share results; and to persuade investors that Enron's future profitability would continue to grow, chiefly due to its wholesale energy trading business and the purported groundbreaking success of its two principal new businesses, EES and Enron Broadband Services ("EBS").

12. In order to achieve these objectives, Enron's senior management imposed quarterly earnings targets ("budget targets") on each of the company's business units. These budget targets were imposed on the basis of earnings-per-share goals set at the corporate level rather than on true forecasts of the actual earnings likely to be generated by the company's various commercial operations. When the budget targets could not be met through results from business operations, they were achieved through the use of fraudulent devices, including but not limited to those described below.

13. Ultimately, the primary purpose of the scheme was artificially to inflate the share price of Enron's stock. The scheme succeeded. In early 1998, Enron's stock traded at approximately $30 per share. By January 2001, even after a stock split in August 1999, Enron's

stock was trading at over $80 per share and Enron had become the seventh-ranked company in the United States, according to the leading index of the "Fortune 500." Throughout the scheme, rising stock prices led to enrichment of Enron's senior managers in the form of salary, bonuses, grants of artificially appreciating stock options, restricted stock, and phantom stock, and prestige within their professions and communities.

14. The devices employed in furtherance of this fraudulent scheme included but were not limited to:

a. manipulating reserve accounts to maintain the appearance of continual earnings growth and to mask volatility in earnings by concealing earnings during highly profitable periods and releasing them for use during less profitable periods;

b. concealing losses in the earnings of Enron's individual "business segments" through fraudulent manipulation of "segment reporting," that is, the manner in which Enron recorded and reported the earnings of its primary businesses, and deceptive use of reserved earnings to cover losses in one segment with earnings in another;

c. manufacturing earnings through fraudulent inflation of asset values and avoiding losses through the use of fraudulent devices designed to "hedge," or lock-in, inflated asset values; and

d. structuring of financial transactions using improper accounting techniques in order to achieve earnings objectives and to avoid booking of large losses from write-downs in asset values.

15. The manner and means in which these fraudulent devices were used included but were not limited to those described below.

Manipulation of Reserves to Conceal Earnings Volatility and Losses

16. During 2000, Enron's wholesale energy trading business, primarily its ENA business, began generating larger profits for reasons including rapidly rising energy prices in the western United States, especially in California. This growth outpaced Enron's internal mandate of smooth, predictable annual earnings growth of 15 to 20 percent designed to dovetail with analysts' predictions and support management's description of Enron's trading profits as attributable to its position as an "intermediator" in the energy markets, rather than a speculative trader.

17. Beginning in the first quarter of 2000 and continuing in increasing scope and size throughout 2000 and 2001, Enron improperly reserved hundreds of millions of dollars of earnings, primarily within the ENA business unit, to conceal volatility in its energy trading profits and used large amounts of those reserves to cover-up losses in ENA's "merchant" asset portfolio and from other business units such as EES. This misuse of reserves in order to manipulate Enron's earnings results was discussed and approved among Enron and ENA's senior commercial and accounting managers, who treated ENA's reserves as a slush fund from which earnings could be taken to meet Enron's overall objectives. Most of these reserves were booked in accounts maintained on an internal Enron ledger designated as "Schedule C." While Enron reported that it was making use of reserves, senior managers refused to disclose details about Enron's reserves to the investing public, arguing that such disclosure would harm Enron's "competitive position."

Concealment of Uncollectible Receivables Owed to EES by California Utilities

18. Enron also used reserves to conceal huge receivables that California public utilities owed to Enron, incurred during the California energy crisis and that Enron believed it could not collect. By December 2000, these ballooning debt receivables were valued in the hundreds of millions of dollars. The California utilities were refusing to pay these monies, which were owed to Enron's EES business, and they likely were headed for bankruptcy. Enron concluded that it should book a large reserve for these uncollectible receivables.

19. In the fourth quarter of 2000 and again in the first quarter of 2001, Enron and ENA senior commercial and accounting managers concealed the existence of these uncollectible receivables by booking them as reserves on the unreported "Schedule C" within ENA, even though they were in fact owed to EES. They then covered the impact of these reserve entries by manipulating ENA's trading profits and its reserve accounts for the fourth quarter of 2000 and the first quarter of 2001 to ensure that ENA's earnings met Enron's budget targets notwithstanding the impact of these reserves. If booked in EES, these hundred of millions of dollars of reserves would have wiped out EES's earnings and resulted in a large recorded loss. Enron's senior management thereafter refused, when pressed, to detail for the investing public the nature or extent of Enron's exposure to what had become a full-blown crisis and scandal in the California energy markets, maintaining simply that Enron was "adequately reserved for California" and refusing to provide details for "competitive" reasons.

Concealment of EES Failures by Manipulating Reporting

20. In the first quarter of 2001, new EES managers discovered and quantified hundreds of millions of dollars in inflated valuations of EES contracts that would have to be

recorded as losses. If recognized as required, these valuation losses would have wiped out EES's modest reported profits and revealed it to have been a badly mismanaged business that was losing large amounts of money and was in peril of failure. This revelation was unacceptable to Enron's managers, who had been describing EES for over two years as an enterprise with promising potential for profits and who had ascribed a large portion of Enron's stock value to EES's success.

21. At the end of the quarter, Enron's senior management decided to conceal these EES losses from investors by hiding the losses in Enron Wholesale's financial results, and offsetting them with Enron Wholesale trading profits earned in that quarter, as well as profits improperly reserved in prior periods. This was accomplished through a "reorganization" of Enron's business segments that was made effective for the first quarter of 2001, enabling Enron to avoid reporting the losses in the EES segment. This "segment reporting" change from EES to Enron Wholesale was explained deceptively to Enron's auditors and investors as meant to improve "efficiency" by combining management of Enron's wholesale and retail energy trading portfolios. In addition to concealing the over-valuation of EES's contracts, this maneuver helped to conceal the hundreds of millions of dollars in reserves booked within ENA for the uncollectible California receivables owed to EES. At the time of and after this business segment reorganization, senior management continued falsely to tout EES as a successful business.

Fraudulent Valuation of "Merchant" Assets

22. Enron's ENA business unit managed a large "merchant" asset portfolio, which consisted primarily of ownership stakes in a group of energy and related companies that Enron recorded on its quarterly financial statements at what it alleged to be "fair value." Senior Enron

and ENA commercial and accounting managers engaged in a pattern of fraudulent conduct designed to generate earnings needed to meet budget targets by artificially increasing the book value of certain of these assets, many of which were volatile or poorly performing. Likewise, to avoid recording losses on these assets, Enron's management fraudulently locked-in these assets' value in improper "hedging" structures.

23. Mariner: ENA's largest merchant asset was an oil and gas exploration company known as Mariner Energy ("Mariner"), which Enron was required to book at "fair value" every quarter. In the third quarter of 2000, Enron and ENA accounting and commercial managers began discussing how the valuation technique Enron used for Mariner could be fraudulently manipulated upward to enable Enron to meet quarterly earnings objectives. When ENA did not need additional earnings in the third quarter to meet demands from Enron's corporate managers, the valuation technique temporarily was left undisturbed and Mariner's value changed only slightly from the second to the third quarter.

24. During the fourth quarter of 2000, however, Enron corporate management called upon ENA management to provide earnings to help cover a shortfall of approximately $200 million in Enron's quarterly earnings objectives. Senior Enron and ENA accounting and commercial managers decided to increase artificially the value of the Mariner asset by approximately $100 million in order to close half of this gap. ENA personnel were instructed to manipulate fraudulently Mariner's "fair value" in order to produce a value that was approximately $100 million greater than Mariner's then-current book value. Mariner's reported value accordingly increased from the third to the fourth quarter of 2000 by approximately $100 million. Enron failed to record a substantial write-down in Mariner's value in subsequent periods, despite

factors that should have warranted such a reduction.

25. Raptor: In the third quarter of 2000, other ENA "merchant" assets were similarly manipulated in value before being inserted into an elaborate hedging mechanism known as the "Raptors." Enron and ENA commercial and accounting managers instructed ENA managers that Enron had constructed a device that would allow ENA to lock in approximately $400 million in book value of its assets, thereby protecting them from later write-downs. This Raptor mechanism was not a legitimate hedge. The counter-party willing to invest in the Raptor structures (an investment partnership known as LJM-2 Co-Investment LLP, run by Enron's own Chief Financial Officer) neither asserted independent control from Enron nor, because of the immediate and guaranteed return of all of its investment, was ever actually at risk in the deal. In addition, Enron funded the Raptor entity mostly with value Enron "captured" from appreciation in its own stock price -- appreciation that itself was a product of Enron management's scheme to manipulate the company's reported financial results.

26. In addition to the fraudulent structure of the Raptor "hedge" device itself, ENA assets were hedged in the structure at fraudulently inflated values. Just before the hedge was put in place in August 2000, ENA personnel improperly inflated the value of assets in the portfolio in order to offset the approximately $100 million in planned write-downs. By the end of 2000, the ENA assets that were known to be worth over 100 million dollars less than their hedged values. The fraudulent Raptor hedge, however, allowed ENA to avoid recording any of this loss in asset values. Instead, the loss in value imperiled the financial structure of the Raptor hedge itself.

Other Manipulative Devices Used in Enron Wholesale

27. Enron employed other devices to fraudulently manipulate the financial results of Enron Wholesale and its predecessor ETC. For example, ECT entered into a large contract in 1997 to supply energy on demand at agreed prices to the Tennessee Valley Authority ("TVA") that resulted in an immediate mark-to-market earnings gain to Enron of approximately $50 million. In approximately mid-1998, when energy prices in the region in which the TVA was located sharply increased, Enron's unhedged position in the TVA contract suddenly fell to a loss in the hundreds of millions of dollars, which would have eliminated ECT's earnings at the end of the then-current reporting period. Solely to avoid immediate disclosure of the loss in Enron's next quarterly earnings results, senior Enron and ECT commercial and accounting managers removed the TVA contract from Enron's mark-to-market accounting books by instead applying accrual accounting to the contract. Enron then did not disclose the loss.

28. After avoiding immediate disclosure of the TVA loss by manipulating the accounting for the contract, senior Enron and ECT commercial and accounting managers then devised a plan to avoid later disclosure of most of the loss from Enron's obligations to the TVA. The plan called for Enron to invest hundreds of millions of dollars in the purchase of power-plant turbines and the construction of "peaker" power plants that Enron otherwise would not have purchased and that were the only means by which Enron could satisfy its contractual obligations to the TVA. This mechanism ultimately resulted, in a later reporting period, in a recorded loss to Enron from the TVA contract that was hundreds of millions of dollars less than the actual loss incurred in 1998. Enron did not reveal that its huge obligation and loss on the TVA contract triggered its investment of hundreds of millions of dollars in dozens of turbines and numerous

"peaker" plants, instead misleadingly describing the investment only as a strategy designed to yield profits from a new commercial activity.

29. During 1999, Enron attempted unsuccessfully to shed itself of its costly investment in turbines and "peaker" plants. Unable to sell these assets at a profit sufficient to satisfy budget targets, Enron devised and executed a scheme to manufacture current earnings from its "peaker" plants. It did so by agreeing to enter into a transaction with Merrill Lynch & Co., Inc. ("Merrill Lynch"), which involved back-to-back trades to sell and then repurchase energy generated by Enron's "peaker" plants. Enron had no purpose in executing these trades with Merrill Lynch, which virtually mirrored each other, other than to ensure that ENA satisfied budget targets for the fourth quarter of 1999. These targets would not have been met without successful completion of the transaction at the very close of the quarter. Early in the second quarter of 2000 and before any energy was (or even could be) exchanged between Enron and Merrill Lynch under the terms of their agreement, Enron completely "unwound," or reversed, the transaction.

Delainey's Insider Trading

30. Delainey knew of the scheme described in paragraphs 10 through 29 and he participated in aspects of the scheme. While in possession of material non-public information, namely, that Enron management was scheming to manipulate Enron's reported financial results, Delainey sold large amounts of Enron stock that he had received in the form of stock options and restricted stock as part of his compensation for his performance at Enron.

31. The information learned by Delainey about the scheme was confidential non-public information covered by his employment agreement and covered by his fiduciary duties to

Enron and its shareholders. The trades by Delainey occurred while he was in possession of material non-public information as detailed below. Delainey knew or was reckless in not knowing that the information was confidential and that trading while in possession of that information was a breach of a fiduciary duty or similar relationship of trust and confidence that he owed to Enron and its shareholders.

32. On January 10, 2000, Delainey sold Enron stock, at $47.40 per share, generating proceeds of $364,694.11; and on January 24, 2000, Delainey sold Enron stock, at $69.81 per share, generating proceeds of $581,990.39. At the time of these sales, Delainey was in possession of material non-public information, including but not limited to Enron's actions, objectives, and purposes in relation to the ENA contract with the TVA, the turbine and "peaker" investments, and the ENA electricity swap transaction with Merrill Lynch.

33. On October 30, 2000, Delainey sold Enron stock, at $80.44 per share, generating proceeds of $545,900.60; and on October 31, 2000, Delainey sold Enron stock, at $79.69 per share, generating proceeds of $488,112.70. At the time of these sales, Delainey was in possession of material non-public information, including but not limited to the information described in paragraph 32 above, as well as Enron's manipulation of earnings results using ENA reserves; Enron's manipulation of ENA asset values; and Enron's manipulative hedging of ENA asset values through the Raptor device.

34. On January 11, 2001, Delainey sold Enron stock, at $69.47 per share, generating proceeds of $806,205.88; and on January 23, 2001, Delainey sold Enron stock, at $76.84 and $76.91 per share, generating proceeds of $1,469,102.99. At the time of these sales, Delainey was in possession of material non-public information, including but not limited to the information

described in paragraphs 33 and 33 above, as well as Enron's concealment of the massive receivables owed to EES by the California utilities.

35. In July 2001, Enron began to reveal, in limited fashion, the failure of its heavily touted EBS telecommunications business. On August 14, 2001, Enron's CEO abruptly resigned and left the company. Continuing through November 2001, information gradually dribbled out from Enron revealing serious, previously undisclosed problems in several important areas of its business. This information included, on October 16, 2001, the first quarterly earnings announcement during the duration of Enron's earnings manipulation scheme in which Enron recognized large write-downs in the value of any of its major assets. These write-downs included an approximately $500 million loss incurred due to Enron's "unwinding" and abandonment of the fraudulent Raptor device.

36. While the full truth about the performance and profitability of Enron's businesses had not yet been discovered, the investing public began to react. On August 20, 2001, Enron's stock had fallen to $36.25 per share. On October 25, 2001, it had fallen to $16.35 per share. On November 16, 2001, it had fallen to $9.00 per share. On December 2, 2001, Enron filed for bankruptcy protection and its stock became virtually worthless.

37. In carrying out the foregoing activity, Delainey and others at Enron engaged in a scheme to violate the federal securities laws.

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]

38. Paragraphs 1 through 37 are realleged and incorporated by reference herein.

39. As set forth more fully above, Delainey, 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.

40. By reason of the foregoing, Delainey 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 - FOURTH CLAIMS

Violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act
[15 U.S.C. §§ 78m(a), (b)(2)(A), 78m(b)(2)(B), 78m(b)(5)]
and Rules 12b-20, 13a-1, 13b2-1, & 13a-13 thereunder
[17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13b2-1, 240.13a-13]

41. Paragraphs 1 through 40 are realleged and incorporated by reference herein.

42. Second Claim – By engaging in the conduct described above, Delainey caused Enron to file materially false and misleading annual reports on Form 10-K and materially false and misleading quarterly reports on Form 10-Q with the Commission, thus Delainey aided and

abetted violations by Enron of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

43. Third Claim – By engaging in the conduct described above, Delainey 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. By engaging in the conduct described above, Delainey, 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 thereunder, and aided and abetted violations of these provisions..

44. Fourth Claim – By engaging in the conduct described above, Delainey caused Enron's failure to implement a system of internal financial controls at Enron, violating and aiding and abetting violations of Section 13(b)(5) of the Exchange Act.

JURY DEMAND

45. The Commission demands a jury in this matter.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court: (A) Grant a Permanent Injunction restraining and enjoining Delainey from violating the statutory provisions

set forth herein; prohibiting him from acting as an officer or director of any issuer of securities that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of such Act; and ordering him 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 Delainey 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: October ___, 2003

Respectfully submitted,

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