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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AMALGAMATED BANK, as Trustee for the LONGVIEW COLLECTIVE INVESTMENT FUND, LONGVIEW CORE BOND INDEX FUND and CERTAIN OTHER TRUST ACCOUNTS, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. KENNETH L. LAY, JEFFREY K. SKILLING, ANDREW S. FASTOW, RICHARD A. CAUSEY, JAMES V. DERRICK, JR., J. CLIFFORD BAXTER, MARK A. FREVERT, STANLEY C. HORTON, KENNETH D. RICE, RICHARD B. BUY, LOU L. PAI, ROBERT A. BELFER, NORMAN P. BLAKE, JR., RONNIE C. CHAN, JOHN H. DUNCAN, WENDY L. GRAMM, ROBERT K. JAEDICKE, CHARLES A. LEMAISTRE, JOE H. FOY, JOSEPH M. HIRKO, KEN L. HARRISON, MARK E. KOENIG, STEVEN J. KEAN, REBECCA P. MARK-JUSBASCHE, MICHAEL S. MCCONNELL, JEFFREY MCMAHON, CINDY K. OLSON, J. MARK METTS, JOSEPH W. SUTTON and ARTHUR ANDERSEN, LLP, Defendants.	§	Civil Action No. H 01-4198 CLASS ACTION

PLAINTIFF'S *EX PARTE* APPLICATION FOR (1) A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT BE ENTERED FREEZING AND IMPOSING A CONSTRUCTIVE TRUST OVER INSIDER TRADING PROCEEDS, (2) ACCOUNTING OF INSIDER TRADING PROCEEDS, AND (3) LIMITED EXPEDITED DISCOVERY

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LEGISLATIVE HISTORY

By counsel and pursuant to Rules 64 and 65 of the Federal Rules of Civil Procedure, plaintiff submits this *ex parte* application for a temporary restraining order and order to show cause why a preliminary injunction should not issue, and for particularized expedited discovery, with memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

This action was filed by Amalgamated Bank, a Trustee for the LongView Collective Investment Fund, Longview Core Bond Index Fund and certain other trust accounts ("Amalgamated"), on behalf of a class of all persons who purchased Enron Corporation's ("Enron" or the "Company") publicly traded securities between October 19, 1998 and November 27, 2001 (the "Class Period"). Amalgamated is America's oldest union owned and operated Labor Bank, and it has investment relationships with over 200 employee benefit funds, including union plans. Amalgamated purchased over 113,000 shares of Enron stock and $6 million in Enron bonds during the Class Period and lost over $10 million as a result of what appears to be one of the most serious securities frauds in history. By this *ex parte* application, plaintiff seeks a temporary restraining order imposing a constructive trust on over $1.1 billion in insider trading proceeds of obtained by the Individual Defendants[1] in this action, pending a hearing on an Order to Show Cause why a preliminary injunction should not issue. Plaintiff also seeks an order providing for an accounting of the insider trading proceeds obtained by the Individual Defendants and expedited, particularized discovery pursuant to PSLRA §21D(b)(3).[2]

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[1] The Individual Defendants are: Kenneth L. Lay; Jeffrey K. Skilling; Andrew S. Fastow; Richard A. Causey; James V. Derrick, Jr.; J. Clifford Baxter; Mark A. Frevert; Stanley C. Horton; Kenneth D. Rice; Richard B. Buy; Lou L. Pai; Robert A. Belfer; Norman P. Blake, Jr.; Ronnie C. Chan; John H. Duncan; Wendy L. Gramm; Robert K. Jaedicke; Charles A. LeMaistre; Joe H. Foy; Joseph M. Hirko; Ken L. Harrison; Mark E. Koenig; Steven J. Kean; Rebecca P. Mark-Jusbasche; Michael S. McConnell; Jeffrey McMahon; J. Mark Metts; Cindy K. Olson; and Joseph W. Sutton.

[2] "PSLRA" refers to the Private Securities Litigation Reform Act of 1995, codified at 15 U.S.C. §78u-4.

A. Basis for the Temporary Restraining Order[3]

1. Summary of Facts Concerning the Enron Fraud and Individual Defendants' Insider Trading

a. Enron's Record Earnings 1997-2001

Enron was an "energy merchant" which traded in natural gas, electricity and communications to wholesale and retail customers. In the four quarters of 2000 and first and second quarters of 2001, Enron reported sales and net income, respectively, of $13 billion and $338 million, $16 billion and $289 million, $30 billion and $292 million, $41 billion and $347 million, $50 billion and $406 million, and $50 billion and $404 million. Jaconette Decl., Exs. 1-6. And, in the past four years, Enron's reported annual revenue grew fivefold, from $20 billion to $101 billion. Jaconette Decl., Ex. 7. Those financial results, attested to by the Company's officers and directors as being in conformity with Generally Accepted Accounting Principles ("GAAP"), were manipulated and falsely inflated by hundreds of millions of dollars.

b. The Bogus Transactions and Accounting Falsities

To inflate Enron's reported profits and hide the Company's true debt burden, Fastow, Skilling, and other top Enron executives created limited partnerships which they called Special Purpose Entities ("SPE"). The purported SPEs were actually "strawmen" and were not independent from Enron. *See* Jaconette Decl., Ex. 14; Ex. 13 at 9-13, 18-20; Ex. 13 at Ex. 99.1 (Enron press release). Enron executives controlled the limited partnerships with the Company and Enron financed their operations. Jaconette Decl., Ex. 13 at 9-12.[4] The limited partnerships borrowed huge sums to purchase assets such as Broadband network cable used by Enron. They also did billions of dollars in paper transactions with Enron, such as trading Enron stock or assets in exchange for notes

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[3] The cited assertions made by plaintiff in this section, in addition to being supported by the Exhibits attached to the Declaration of James I. Jaconette ("Jaconette Decl."), are supported by information gathered from the investigation of plaintiff's counsel.

[4] Indeed, as reported by securities analysts, two "strawmen" being investigated by the SEC, are Cayman Islands limited partnerships "LJM Cayman LP" ("LJM1") and "LJM2 Co-Investment LP" ("LJM2") formed and operated by defendant Fastow, former Chief Financial Officer of Enron, which were named with the initials of each first name of Fastow's children. *See* Jaconette Decl., Ex. 14. Enron "now" believes that Fastow made in excess of $30 million from the limited partnerships while serving as Enron's CFO. Jaconette Decl., Ex. 13 at 10.

receivable to Enron which Enron then falsely reported as "assets" on Enron's balance sheet. Jaconette Decl., Ex. 13 at 7-8 ("Accounting Basis for $1.2 Billion Reduction in Shareholders' Equity"), at 11-12 ("General Summary of LJM Transactions" and "Sale of Assets").

Two of the limited partnerships alone, "Chewco" and "JEDI," concealed hundreds of millions of dollars of both debt and losses during 1997-2000. Jaconette Decl., Ex. 13 at 5 ("Table 1"). In 2000-2001, Enron's falsified balance sheet reflected over $1 billion in equity which did not exist. *Id.* In 2000 and 2001, Enron's falsified balance sheet reflected $728 million and $1 billion in assets, respectively, which also simply did not exist. *Id.* Bogus transactions with Fastow's "LJM1" limited partnership in 1999 alone were used to inflate the assets on Enron's balance sheet by $222 million. *Id.* Using these bogus transactions to inflate the Company's reported net income and assets on its balance sheet, Enron sold billions of dollars of debt and stock on the public securities markets. ¶17.[5]

c. Insider Trading of the Individual Defendants Exceeded $1.1 Billion

Enron's consistently improving reported financial performance artificially inflated the price of the Company's stock to as high as $90.75 during the Class Period.[6] ***Meanwhile, Enron's top insiders sold 17.3 million shares of their Enron stock for proceeds of $1.1 billion.***

Defendant/Position	Shares Sold	Proceeds
Pai, CEO, Enron Accelerator	5,031,105	$353,712,438
Lay, Chairman of the Board, CEO (86-2/01)	1,810,793	$101,346,951
Rice, CEO, Enron Broadband Services	1,138,370	$ 72,786,034
Mark, Vice Chairman, Director	1,410,262	$ 79,526,787
Harrison, CEO, Enron subsidiary, Director	1,004,170	$ 75,211,630
Skilling, Pres, COO (98-2/01),CEO (2/01-8/01)	1,119,958	$ 66,924,028
Frevert, CEO, Enron Wholesale Services	830,620	$ 50,269,504
Belfer, Director, Executive Comm. Member	1,052,138	$ 51,080,967
Horton, CEO, Enron Transportation Services	734,444	$ 45,472,278

[5] All paragraph references ("¶__") are to the Class Action Complaint for Violations of the Federal Securities Laws filed by Amalgamated.

[6] All share and per share amounts are adjusted to reflect Enron's 2-for-1 stock split in August 1999.

Defendant/Position	Shares Sold	Proceeds
Sutton, Vice Chairman	614,960	$ 40,093,346
Baxter, Vice Chairman, Chief Strategy Officer	577,436	$ 35,200,808
Hirko, CEO, Enron Broadband Services	473,837	$ 35,168,721
Fastow, CFO (98-10/01)	561,423	$ 30,463,609
Causey, Chief Accounting Officer	197,485	$ 13,329,743
Derrick, General Counsel	230,660	$ 12,656,238
Koenig, Vice President	129,153	$ 9,110,466
Olson, Vice President	83,183	$ 6,505,870
Kean, Director	64,932	$ 5,166,414
Duncan, Director	35,000	$ 2,009,700
Buy, Chief Risk Officer	54,874	$ 4,325,328
McMahon, Treasurer, Enron	39,630	$ 2,739,226
McConnell, President, Enron Global Markets	30,960	$ 2,353,431
Blake, Director	21,200	$ 1,705,328
Foy, Director	31,320	$ 1,639,590
Metts, Vice President, Director	17,711	$ 1,448,937
LeMaistre, Director, Compensation Comm.	17,344	$ 841,768
Jaedicke, Director, Audit Comm. Member	13,360	$ 841,438
Chan, Director, Audit Comm. Member	8,000	$ 337,200
Gramm, Director, Audit Comm. Member	10,256	$ 276,912
TOTALS:	**17,344,584**	**$1,102,544,672**

See Jaconette Decl., Ex. 24 (detailing insider sales by date and amount). *See also* Ex. A attached hereto (graph depicting the Individual Defendants' massive insider selling as the price of Enron's stock peaked and just before revelation of the fraud).

Enron's directors accounted for over $300 million of Enron's insider sales, including three members of Enron's audit committee, who reportedly "***are not independent, according to corporate***

governance experts and standards." Jaconette, Decl., Ex. 15 (emphasis added). As reported by *Bloomberg*, "Enron's Board Was Compromised by Financial Ties." *Id.*[7]

The true extent of the insider selling is not known. Amalgamated's counsel are informed and believe that certain top Enron insiders sold hundreds of thousands more in Enron derivative securities such as zero-cost collars and equity swaps through the Company's investment bankers, while not reporting these transactions. (Amalgamated seeks discovery of these trades. *See infra* §IV.A.)

d. To Avoid Credit Downgrades and Resulting Bankruptcy and Liability Exposure, the Fraud Was Desperately Hidden Until the Very End

Enron's true financial performance during this massive insider bailout was much worse than reported. In truth, its net income was falsely inflated by hundreds of millions of dollars, its shareholder equity was inflated by billions of dollars and its true debt level was understated by billions as well.

Concealing its true debt levels and inflating its reported profits was critical to Enron's illusion of success in the financial markets. As *The Wall Street Journal* reported on November 8, 2001:

> But to make all of its growth dreams possible, Enron had to make sure that its balance sheet didn't become too laden with debt. Too much debt would lead major ratings agencies, such as Moody's Investors Service and Standard & Poor's, to lower Enron's credit rating. Such downgrades could significantly increase the company's cost of borrowing and make it more difficult to finance its continued expansion.

Jaconette Decl., Ex. 8. Consequently, as late as August 29, 2001, defendant Lay lied – he assured securities analysts that the unexpected resignation of Enron's CEO, Skilling, was not cause to fear

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[7] ***John Wakeham***, who sits on the Audit Committee, has a $72,000-a-year consulting contract. Jaconette Decl., Ex. 15. ***LeMaistre*** headed the MD Andersen Cancer Center, and ***John Mendelsohn***, who sits on the Audit Committee, and who is president of the MD Andersen Cancer Center, received over $567,000 in donations to the Cancer Center in the last five years from Enron and Lay, and the Enron Foundation pledged $1.5 million for a new clinic. *Id.* Indeed, ***Wakeham***, ***Gramm*** and ***Mendelsohn***, who comprise half of Enron's Audit Committee, "are not independent, according to corporate governance experts and standards." *Id.* ***Belfer's*** Belco Oil & Gas Corp. had $32 million in trade settlements and $1 million in option premiums with Enron Trade Resources Corp., an Enron subsidiary. *Id.* ***John Urquhart*** received an annual consulting fee from Enron of almost $200,000 a year as a special advisor to Lay. *Id.* ***Herbert Winokur's*** Natco Group Inc. garnered $370,294 in sales to Enron subsidiaries in 2000 alone. *Id.*

that "the Company may be hiding dire financial news" and that there was "nothing wrong with the Company." ¶82.

e. The Restatements, Credit Downgrades and Bankruptcy

Two weeks later, Enron suddenly revealed that it would incur losses of $1 billion, and would reduce shareholder's equity on its balance sheet by $1.2 billion. Then, on November 8, 2001, ***Enron announced it was restating its results for 1997-2000, and the first two quarters of 2001 to correct for errors which had inflated Enron's net income by $591 million in those years***. The impact of the multiple restatements was enormous:

	1997	1998	1999	2000
Recurring Net Income				
As reported	$515,000,000	$698,000,000	$957,000,000	$1,266,000,000
As restated	$419,000,000	$585,000,000	$707,000,000	$1,134,000,000
Debt				
As reported	$6,254,000,000	$7,357,000,000	$8,152,000,000	$10,229,000,000
As restated	$6,965,000,000	$7,918,000,000	$8,837,000,000	$10,857,000,000
Shareholders' Equity				
As reported	$5,618,000,000	$7,048,000,000	$9,570,000,000	$11,470,000,000
As restated	$5,305,000,000	$6,600,000,000	$8,736,000,000	$10,306,000,000

Upon these shocking revelations, Enron's stock dropped to as low as $8.20 on November 8, 2001, some 91% below the Class Period high of $90.75. Then, two weeks later, the Company revealed a $690 million note on one of the limited partnerships was being called. Jaconette Decl., Ex. 16. By late November, the rating agencies had cut Enron's debt rating to "junk" status and Enron's stock collapsed to $0.28 per share. Jaconette Decl., Ex. 9. As one securities analyst stated, "Enron is finished as a going concern." Jaconette Decl., Ex. 17. Now Enron has made the largest Chapter 11 bankruptcy filing ever. Jaconette Decl., Ex. 18. Even with these catastrophic events, the Company has admitted that it has ***not completed*** its restatements or review of its accounting practices with respect to the limited partnerships and other questionable areas of its business. Jaconette Decl., Ex. 16.

f. The Enron Fraud Destroyed Retirements and Investor Confidence, Thus Private Equitable Remedies Are Imperative

Enron is a grotesque fraud – a financial monstrosity of manipulation and falsification. As a result, thousands of investors have been cheated out of billions of dollars and countless lives and retirements have been destroyed. Yet the perpetrators have over $1 billion in their pockets.[8] For illustration, had these Individual Defendants sold their stock at market prices reflecting the ***true state*** of Enron's financial condition, the Individual Defendants would have received only one percent of the $1.1 billion they reaped by selling at artificially inflated prices. *See* Jaconette Decl., Ex. 19. Conversely, public investors, including Amalgamated, who were on the buying side of the Individual Defendants' insider sales, lost over $25 billion. ***As a result of purchasing just the stock sold in the market by Enron insiders, public investors lost over $1 billion.***

The Individual Defendants, top executives at the Company who were knowledgeable about the limited partnerships and the financial manipulations, must accept responsibility for their blatant violations of the federal securities laws now exposed. As reported by *The Wall Street Journal*:

> [W]hat is most striking about the latest disclosures is that they show Enron's misstatements weren't limited merely to judgment calls and gray areas for the green-eyeshade crowd to debate. Portions of Enron's accounting practices amounted to violations of elementary accounting principles ....

Jaconette Decl., Ex. 23. Concerning Enron's restatements, the former Chief Accountant for the SEC, Lynn Turner, stated: "***It is basic accounting that you don't record equity until you get cash, and a note doesn't count as cash.***" *Id.*

As Mr. Turner and numerous other securities experts recognize, the severe and flagrant nature of the Enron fraud upon its revelation is destroying investor confidence in the securities markets:

> ***Coming on the heels of a rash of similar situations – Cendant, Sunbeam, Waste Management, Xerox, Lucent, it goes on – this is just the tsunami that's going to destroy public confidence.***

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[8] We have been informed by sources that it was widely known inside Enron that top officers of the Company were pocketing additional large sums via the "sale" of Enron stock, using so-called "costless collar" transactions arranged by investment banking firms in a manner so that these "sales" were not reported via Form 4 filings.

* * *

> ***It is time – given the magnitude of this loss – for there to be a criminal investigation of the entire matter. Not just Andersen, but the C.F.O. and management team, because they're the ones who created the wrong numbers***. And this is the piece that I really hate: You've got 21,000 employees, many of whom had their retirement tied up in a 401(k) plan with Enron's stock. Those 21,000 people woke up wondering whether they were going to have jobs and wondering about Christmas, because a lot of people didn't do what they were supposed to do.

Jaconette Decl., Ex. 20 (emphasis added). Now it is widely known by the investing public that these bogus transactions were not the result of some low-level managerial shenanigans in a Bolivian subsidiary of a world-wide enterprise. ***These were huge, complex transactions specifically structured by Enron's top executives and approved by its Board that generated hundreds of millions of profits and equity***. Private equitable remedies are imperative here.

2. Plaintiff Seeks a Constructive Trust Pursuant to Equitable Remedies Under §§10(b) and 20A of the Securities Exchange Act of 1934 (Disgorgement of Insider Trading Proceeds) and §11 of the Securities Act of 1933

Amalgamated brings this application *ex parte* to prevent dissipation or concealment of insider trading proceeds in order to maintain the *status quo* and preserve its equitable remedies under the federal securities laws. *See, e.g., Board of Governors v. DLG Fin. Corp.*, 29 F.3d 993, 1002 (5th Cir. 1994) ("In general, prompt ex parte action is necessary to prevent persons ... from dissipating or concealing assets."). A constructive trust and immediate accounting is necessary to protect the Individual Defendants' insider trading proceeds from dissipation.

Amalgamated and the Class are entitled to the specific equitable relief sought herein, pursuant to §§20A, 27 and 28(a) of the Exchange Act and §11 of the Securities Act. *See infra* §II.B. The constructive trust and accounting Amalgamated seeks are necessary and especially appropriate to preserve Amalgamated's §§10(b) and 20A insider trading disgorgement claims. *See infra* §II.B.1-2. Amalgamated satisfies the prerequisites for the temporary injunctive relief sought.

There is certainly a ***reasonable probability of success*** that Amalgamated will prevail on its insider trading disgorgement claims under §§10(b) and 20A and its claims under §11. Professor Steinberg is the Radford Professor of Law at Southern Methodist University and practiced as an enforcement attorney at the SEC. He has authored numerous articles regarding SEC enforcement

and private securities litigation, and numerous textbooks regarding corporate and securities law. As Professor Steinberg declares, it is reasonable to infer that the Individual Defendants knew or were reckless in not knowing about the bogus deals and false reporting, given the positions held by the Individual Defendants at Enron and the basic nature of the inside information withheld. Steinberg Decl., ¶¶4-7. Indeed, the bogus transactions at issue were continuous, massive in scope and dollar amount, and basic to Enron's operations. Ample legal precedent supports this common sense proposition. *See infra* §II.C.1.a.2. Likewise, Enron's restatement of results from operations for 1997-2000 and the first two quarters of 2001 demonstrates a *prima facia* case of liability under §11 against the Individual Defendants who served as officers or directors during the Class Period or signed the Company's registration statements for its securities offerings. See *infra* §II.C.1.b.

Amalgamated and the Class will suffer irreparable harm unless the Court imposes a constructive trust upon the Individual Defendants' insider trading proceeds. *See infra* §II.C.2. As Professor Steinberg testifies, there is significant risk that the Individual Defendants' insider trading proceeds will be dissipated or diminished in this case. Steinberg Decl., ¶14. And disgorgement of the Individual Defendants' insider trading proceeds is the only viable avenue of recovery for Amalgamated's §§10(b) and 20A claims.[9] *See infra* §II.C.2. The law strongly supports plaintiff's claims of irreparable injury in this case.

The balance of hardships favors Amalgamated and the Class of public investors whose investments in Enron securities were destroyed by this massive fraud. *See* Steinberg Decl., ¶¶12-13. This enormous fraud has sent tremors throughout our public securities markets unlike anything in recent memory. Thousands of investors throughout the United States have lost significant portions of their retirement funds and institutions and pension funds have suffered billions in losses. The continuous high-profile coverage and reporting of the Enron fraud in the popular and financial media demonstrates the importance the public places on a just resolution of this financial catastrophe, and underlines the significance of this case to investor confidence in our securities markets ***and*** in our

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[9] While Enron no doubt has directors' and officers' ("D&O") liability insurance, these types of policies exclude coverage for insider trading claims and deliberate and dishonest acts. Also, Enron's D&O carriers may well seek to rescind, claiming they too were defrauded by Enron's false financial statements.

legal system to take prompt and decisive action to protect those victimized by these apparently deliberate violations of our federal securities laws. As *The New York Times* reported from its interview of Lynn Turner:

> Q. Are there other accounting time bombs, warning signs?
>
> A. Given the way audits have been conducted, more by inquiry than by real investigation in the last few years, ***we will undoubtedly see more. This is an iceberg, and the Titanic just hit it.***

Jaconette Decl., Ex. 20 (emphasis added). The SEC has commenced a formal investigation of this fraud and criminal inquiries are also imminent or ongoing. However, the massive scope of the fraud and importance of expeditious action to protect investors means that supplemental enforcement of the federal securities laws by private securities claims (as here) is even more important than usual. *See* Steinberg Decl., ¶11. After all, neither the SEC nor the Justice Department can recover damages for investors. The public interest as well as the facts calls for the prompt yet not unfair relief sought by Amalgamated.

B. The Particularized Expedited Discovery Sought by Amalgamated

Limited expedited discovery is critical to Amalgamated's ability to seek the equitable relief needed here. Amalgamated requests that it be permitted limited expedited discovery to further establish the Individual Defendants' insider trading and to determine the location, amount, and nature of insider trading proceeds and profits derived by certain defendants from the limited partnerships used as "straw" entities.

The discovery is limited or "particularized." *See infra* §IV.D. For example, documents evidencing defendants' knowledge during the Class Period are sought by plaintiff's requests for documents concerning the review of Enron's accounting practices, the restatement workpapers, Board reports and documents provided to the SEC. *See infra* §IV.G. Plaintiff's counsel are informed and believe from their investigation that massive trading in derivatives, such as zero-cost collars and equity swaps took place by the Individual Defendants. However, Amalgamated is also unable to allege the Individual Defendants' insider trading in derivative securities, therefore Amalgamated seeks account statements and summaries concerning these securities. *Id.*

Plaintiff's counsel are also informed and believe from their investigation that the involvement of certain executives at Enron in the limited partnership "straw" entities is far greater than what has been publicly disclosed, and there are tens of millions of dollars in hidden profits derived from these entities and held by defendants. Again, Amalgamated is unable to allege this involvement in order to seek equitable relief for claims arising out of defendants' profits derived from the limited partnerships. Thus, Amalgamated seeks documents focused on identifying Enron personnel in the limited partnerships and their profits derived therefrom. *See infra* §IV.G.

Amalgamated also requests depositions of defendants limited to two hours and not to exceed the scope of the subject matter of this Application and the documents Amalgamated seeks.

Besides its limited nature, the aim of Amalgamated's discovery (in part) is to leverage efforts that have already been made by defendants to gather documents in response to the Company's internal review of its accounting practices and the SEC's investigation. Accordingly, Enron and defendants' counsel should have these core documents in their possession and ready to produce expeditiously.

The expedited discovery Amalgamated seeks is warranted. There is a significant public interest served by this proceeding and the threat of irreparable injury to Amalgamated and the Class is great. *See infra* §II.C.2-4. With Enron's bankruptcy, there is no other source that investors may seek for the equitable relief to which they are entitled under the federal securities laws. *Id.* As Professor Steinberg declares, in a case such as this there is a significant risk that the Individual Defendants' insider trading proceeds will be diminished or dissipated. Steinberg Decl., ¶14. Precedent for granting expedited discovery when there is a threat of irreparable injury, such as here, is well established in the Fifth Circuit. *See infra* §IV.C. Discovery is not stayed under the PSLRA right now and even if a motion to dismiss were filed, the discovery Amalgamated seeks should be allowed to prevent undue prejudice for the same reasons that entitle Amalgamated to equitable relief. *See infra* §IV.E-F.

II. Argument

A. Legal Standards for Injunctive Relief

Plaintiff may seek a temporary restraining order on an *ex parte* basis. *See United States v. Hall*, 472 F.2d 261, 267 (5th Cir. 1972). This "ex parte request must be supported by a sworn documentary showing of 'immediate and irreparable injury,' as well as an explanation of why notice is impracticable or should not be required." *Marshall v. Reinhold Constr., Inc.*, 441 F. Supp. 685, 692 (M.D. Fla. 1977) (citation omitted). The primary purpose of a temporary restraining order is to "preserve the status quo only until a preliminary injunction hearing can be held." *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 422 (4th Cir. 1999). By this application, plaintiff also seeks an Order to Show Cause why a preliminary injunction should not issue.

The standard for a preliminary injunction requires that plaintiff demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the injunction is not issued; (3) that the threatened injury to the movant outweighs any damage the injunction might cause the opponent; and (4) that the injunction will not disserve the public interest. *See Blue Bell Bio-Medical v. Cin-Bad, Inc.*, 864 F.2d 1253, 1256 (5th Cir. 1989).

B. Amalgamated Is Entitled to the Equitable Relief Sought Herein Pursuant to the Federal Securities Laws

Section 27 of the Exchange Act confers general equity power upon district courts. *See SEC v. Texas Gulf Sulphur Co.*, 446 F.2d 1301, 1307 (2d Cir. 1971). And this Court has the power to grant the requested injunctive relief to preserve an equitable remedy. *See FDIC v. Dixon*, 835 F.2d 554, 560 (5th Cir. 1987) ("case law ***does*** allow district court [sic] to exercise its equitable powers in ordering a preliminary injunction to secure an equitable remedy"); *In re Estate of Marcos, Human Rights Litig.*, 25 F.3d 1467, 1480 (9th Cir. 1994); *SEC v. Int'l Swiss Inv. Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990) ("[t]he power to grant a preliminary injunction which freezes assets is among the district court's inherent equitable powers"); *International Controls Corp. v. Vesco*, 490 F.2d 1334, 1347 (2d Cir. 1974). Indeed, when justified, "a district court should temporarily freeze defendants' assets to insure that they will be available to compensate public investors." *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972).