

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

<hr/>		§	
UNITED STATES SECURITIES		§	
AND EXCHANGE COMMISSION,		§	
		§	
Plaintiff,		§	
		§	Civil Action No. 06-3226
v.		§	
		§	
JERRY K. CASTLEMAN,		§	ORDER AND FINAL JUDGMENT AS TO
CHERYL I. LIPSHUTZ, and		§	JERRY K. CASTLEMAN
KATHLEEN M. LYNN,		§	
		§	
		§	
Defendants.		§	
<hr/>		§	

FINAL JUDGMENT AS TO DEFENDANT JERRY K. CASTLEMAN

The Securities and Exchange Commission having filed a Complaint and Defendant Jerry K. Castleman (“Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; waived any right to appeal from this Final Judgment; and it appearing that no notice of a hearing upon entry of this Final Judgment being necessary:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant’s agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section

10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
or

- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13] by filing or causing to be filed with the Commission any annual or quarterly report on behalf of any issuer required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the rules and regulations promulgated thereunder, which contains any untrue statement of material fact, which omits to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or which omits to disclose any information required to be disclosed.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)] by failing or causing the failure of any issuer having a class of securities registered pursuant to Section 12 of the Exchange Act [15

U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] to:

- (a) make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuers; or
- (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statement, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying

any book, record, or account described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2)] promulgated under Section 13(b) of the Exchange Act [15 U.S.C. § 78m(b)] by making or causing to be made false and misleading statements or omitting or causing others to omit to state material facts necessary in order to make statements made, in the light of the circumstances under which such statements were made, not misleading to independent accountants and auditors in connection with audits and examinations of required financial statements and in connection with the preparation and filing of documents and reports required to be filed with the Commission.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement in the amount of \$30,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and prejudgment interest of \$11,268.29 for a total of \$41,268.29. Based on Defendant's sworn representations in his Statement of Financial Condition dated November 6, 2006, and other documents and information submitted to the Commission, however, the Court is not ordering Defendant to pay a civil penalty and payment of all but twelve thousand dollars (\$12,000.00) of the disgorgement and pre-judgment interest thereon is waived. Defendant shall also pay post-

judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The determination not to impose a civil penalty and to waive payment of all but twelve thousand dollars (\$12,000.00) of the disgorgement and pre-judgment interest is contingent upon the accuracy and completeness of Defendant's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay or cause to be paid by wire transfer or check(s) payable to “Clerk, United States District Court, Southern District of Texas” and delivered to the Clerk of the Court, United States District Court, Southern District of Texas, 515 Rusk Avenue, Houston, Texas 77022, the twelve thousand dollars (\$12,000.00) in five (5) installments according to the following schedule:

- (1) Three thousand dollars (\$3,000.00) within fifteen (15) business days of the entry of this Final Judgment;
- (2) One thousand five hundred dollars (\$1,500.00) within ninety (90) days of the entry of this Final Judgment;
- (3) Two thousand dollars (\$2,000.00) within one hundred eighty (180) days of the entry of this Final Judgment;
- (4) Two thousand five hundred dollars (\$2,500.00) within two hundred seventy (270) days of the entry of this Final Judgment; and
- (5) Three thousand dollars (\$3,000.00) within three hundred sixty-five days (365) days of the entry of this Final Judgment.

If paid by check, the check(s) shall bear on its face the caption “Securities and Exchange Commission v. Jerry K. Castleman,” and be transmitted to the Clerk under cover of a letter that identifies Jerry K. Castleman, the caption and case number of this action, and the name of this Court. Copies of the cover letter and payment shall be sent to David J. Gottesman, Assistant Chief Litigation Counsel, U.S. Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-4030.

If Castleman fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately without further application to the Court.

IX.

The Clerk of this Court or the Financial Deputy Clerk, is hereby directed to deposit the wired proceeds or check(s) specified in Sections VII and VIII of this Final Judgment to the account holding Enron-related funds in the case captioned SEC v. J.P. Morgan Chase, H-03-2877 (Harmon), the interest bearing account with the Court Registry Investment System that is holding funds from settled and closed SEC enforcement actions relating to Enron. In accordance with the guidelines set by the Director of the Administrative Office of the United States Court, the Clerk of the Court is directed, without further order of this Court, to deduct from the income earned on the funds deposited a fee, not exceeding that authorized by the Judicial Conference of the United States, equal to ten (10) percent of the income earned on these funds. Funds in the account shall be held until further order of the Court in SEC v. J.P. Morgan Chase, and shall thereafter be distributed to victims pursuant to a plan for disposition of disgorgement funds, to be filed by the SEC with Judge Harmon. Castleman shall not be entitled to service of the plan proposed by the SEC, and shall not have the right to be heard with respect to the Court's consideration of such plan. In no event shall any of the funds paid into the Registry of the Court revert, directly or indirectly, to Castleman, his heirs, successors, or assigns.

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

XII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: August 2, 2007.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

JERRY K. CASTLEMAN,
CHERYL I. LIPSHUTZ, and
KATHLEEN M. LYNN,

Defendants.

§
§
§
§
§
§
§
§
§
§
§
§

Civil Action No. 06-3226

ORDER AND FINAL JUDGMENT AS TO
JERRY K. CASTLEMAN

FINAL JUDGMENT AS TO DEFENDANT JERRY K. CASTLEMAN

The Securities and Exchange Commission having filed a Complaint and Defendant Jerry K. Castleman (“Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; waived any right to appeal from this Final Judgment; and it appearing that no notice of a hearing upon entry of this Final Judgment being necessary:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant’s agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section

10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
 - (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- or

- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13] by filing or causing to be filed with the Commission any annual or quarterly report on behalf of any issuer required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the rules and regulations promulgated thereunder, which contains any untrue statement of material fact, which omits to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or which omits to disclose any information required to be disclosed.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)] by failing or causing the failure of any issuer having a class of securities registered pursuant to Section 12 of the Exchange Act [15

U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15

U.S.C. § 78o(d)] to:

- (a) make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuers; or
- (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statement, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying

any book, record, or account described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2)] promulgated under Section 13(b) of the Exchange Act [15 U.S.C. § 78m(b)] by making or causing to be made false and misleading statements or omitting or causing others to omit to state material facts necessary in order to make statements made, in the light of the circumstances under which such statements were made, not misleading to independent accountants and auditors in connection with audits and examinations of required financial statements and in connection with the preparation and filing of documents and reports required to be filed with the Commission.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement in the amount of \$30,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and prejudgment interest of \$11,268.29 for a total of \$41,268.29. Based on Defendant's sworn representations in his Statement of Financial Condition dated November 6, 2006, and other documents and information submitted to the Commission, however, the Court is not ordering Defendant to pay a civil penalty and payment of all but twelve thousand dollars (\$12,000.00) of the disgorgement and pre-judgment interest thereon is waived. Defendant shall also pay post-

judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The determination not to impose a civil penalty and to waive payment of all but twelve thousand dollars (\$12,000.00) of the disgorgement and pre-judgment interest is contingent upon the accuracy and completeness of Defendant's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay or cause to be paid by wire transfer or check(s) payable to "Clerk, United States District Court, Southern District of Texas" and delivered to the Clerk of the Court, United States District Court, Southern District of Texas, 515 Rusk Avenue, Houston, Texas 77022, the twelve thousand dollars (\$12,000.00) in five (5) installments according to the following schedule:

(1) Three thousand dollars (\$3,000.00) within fifteen (15) business days of the entry of this Final Judgment;

(2) One thousand five hundred dollars (\$1,500.00) within ninety (90) days of the entry of this Final Judgment;

(3) Two thousand dollars (\$2,000.00) within one hundred eighty (180) days of the entry of this Final Judgment;

(4) Two thousand five hundred dollars (\$2,500.00) within two hundred seventy (270) days of the entry of this Final Judgment; and

(5) Three thousand dollars (\$3,000.00) within three hundred sixty-five days (365) days of the entry of this Final Judgment.

If paid by check, the check(s) shall bear on its face the caption "Securities and Exchange Commission v. Jerry K. Castleman," and be transmitted to the Clerk under cover of a letter that identifies Jerry K. Castleman, the caption and case number of this action, and the name of this Court. Copies of the cover letter and payment shall be sent to David J. Gottesman, Assistant Chief Litigation Counsel, U.S. Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-4030.

If Castleman fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately without further application to the Court.

IX.

The Clerk of this Court or the Financial Deputy Clerk, is hereby directed to deposit the wired proceeds or check(s) specified in Sections VII and VIII of this Final Judgment to the account holding Enron-related funds in the case captioned SEC v. J.P. Morgan Chase, H-03-2877 (Harmon), the interest bearing account with the Court Registry Investment System that is holding funds from settled and closed SEC enforcement actions relating to Enron. In accordance with the guidelines set by the Director of the Administrative Office of the United States Court, the Clerk of the Court is directed, without further order of this Court, to deduct from the income earned on the funds deposited a fee, not exceeding that authorized by the Judicial Conference of the United States, equal to ten (10) percent of the income earned on these funds. Funds in the account shall be held until further order of the Court in SEC v. J.P. Morgan Chase, and shall thereafter be distributed to victims pursuant to a plan for disposition of disgorgement funds, to be filed by the SEC with Judge Harmon. Castleman shall not be entitled to service of the plan proposed by the SEC, and shall not have the right to be heard with respect to the Court's consideration of such plan. In no event shall any of the funds paid into the Registry of the Court revert, directly or indirectly, to Castleman, his heirs, successors, or assigns.

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

XII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: August 2, 2007.


UNITED STATES DISTRICT JUDGE

