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U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION
450 Fifth Street, N.W.
Washington, D.C. 20549,

Applicant,

KENNETH L. LAY
2121 Kirby Drive #137
Houston, Texas 77019

Respondent.

CASE NUMBER 1:03MS01962

JUDGE: Royce C. Lamberth

DECK TYPE: Miscellaneous

DATE STAMP: 09/29/2003

**APPLICATION OF THE SECURITIES AND EXCHANGE COMMISSION
FOR ORDERS TO SHOW CAUSE, FOR AN *IN CAMERA* REVIEW AND
REQUIRING OBEDIENCE TO SUBPOENA**

1. Respondent Kenneth L. Lay, the former Chairman and CEO of Enron Corp., has refused to comply with a subpoena requiring him to produce certain documents in the Securities and Exchange Commission's ongoing investigation of Enron Corp. and persons and entities associated with Enron.

2. The SEC hereby applies to this Court for an Order, in the form submitted, requiring Lay to show cause why he should not be ordered to produce certain documents pursuant to subpoena properly issued by the SEC and served upon him in connection with an ongoing law enforcement investigation. The SEC further requests that the Court enter Orders, in the form submitted, requiring Lay to produce the withheld documents to the Court for an *in camera* review and to obey the subpoena.

3. Jurisdiction is conferred upon this Court, and venue properly lies within the District of Columbia, pursuant to Section 21(c) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78u(c).

4. In support of this Application, the SEC submits the accompanying declaration of staff attorney Richard J. Kutchev (“Kutchev Dec.”), the Exhibits thereto, a Memorandum in Support of its Application, and proposed Orders to Show Cause, for an *In Camera* Review, and Requiring Obedience to Subpoena.

5. On October 30, 2001, pursuant to Sections 21(a) and 21(b) of the Exchange Act, 15 U.S.C. § 78u(a), the SEC issued an Order Directing Private Investigation and Designating Officers to Take Testimony in an investigation captioned, In the Matter of Enron Corp. (the “Formal Order”). Kutchev Dec. at ¶ 4. On January 2, 2002, the SEC served a subpoena on Lay requiring him to produce documents on January 9, 2002 and to give testimony on January 23, 2002. Id. at ¶ 7. The SEC gave Lay permission for a rolling production beyond the January 9, 2002 date. Id. at ¶ 8. The subpoena primarily requested documents relating to Enron and was served while Lay was the chairman and CEO of Enron. Lay has failed to comply with the subpoena by withholding certain documents under a claim that his act of production would violate his Fifth Amendment rights. Id. at ¶¶ 13-14, 19-20, 24-25.

6. Lay was the chairman and CEO of Enron during a time period when certain fraudulent activities were carried out by Enron and others. Documents in Lay’s possession that are related to Enron, and generated during his tenure at Enron, are therefore relevant to matters under investigation, and may provide evidence as to whether he or others violated the federal securities laws. The documents sought by the SEC therefore are relevant and important to the

SEC's investigation and within the scope of the Formal Order.

7. Lay's Fifth Amendment claim is without merit because, according to a description provided to the SEC by Lay's counsel, the withheld documents are corporate records of Enron. As set forth in the SEC's Memorandum in support of this Application, it is well settled that a corporation has no Fifth Amendment rights and an individual cannot resist the production of corporate records based on the Fifth Amendment, even where the records might tend to incriminate the individual personally. Thus, Lay cannot assert the Fifth Amendment with respect to corporate records in his possession.

8. The parties engaged in good faith discussions prior to the filing of this action but were unable to reach agreement. Lay informed the SEC that he would not produce the documents unless the SEC agreed that production of any *personal* records would not constitute a waiver of any Fifth Amendment rights Lay may have. The SEC would not agree to this condition because it believes the records are corporate records to which no Fifth Amendment rights attach. As to personal records, if any, 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 could not agree to the conditional production proposed by Lay.

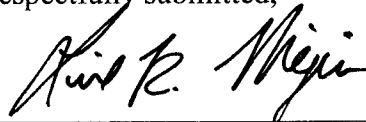
9. In an effort to avoid court action, the SEC proposed that Lay produce corporate records, and if he desired to continue withholding personal records to provide a log of such records to the SEC. Lay has refused to provide corporate records and has offered only to provide a general categorical log of all documents he has withheld.

10. The SEC will not permit Lay to dictate the conditions on which he will comply with a lawfully issued subpoena, particularly where such conditions would compromise the SEC's law enforcement objectives. The SEC has issued a subpoena to Lay for documents, he has refused to comply, and he should be ordered to produce the documents forthwith.

WHEREFORE, the SEC respectfully requests that the Court: (A) enter an Order to Show Cause, in the form submitted, directing Lay to show cause why this Court should not enter the proposed Order requiring that he produce the documents requested; (B) enter an Order, in the form submitted, requiring Lay to produce the documents to the Court for an *in camera* review; (C) enter an Order, in the form submitted, requiring Lay to fully comply with the subpoena and produce the documents requested; and (D) order such other and further relief as may be necessary and appropriate to achieve compliance with the subpoena.

Dated: September 29, 2003

Respectfully submitted,



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Of Counsel:
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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2003, a copy of the attached:

Application of the Securities and Exchange Commission for Orders to Show Cause, for an *In Camera* Review and Requiring Obedience to Subpoena and Proposed Orders

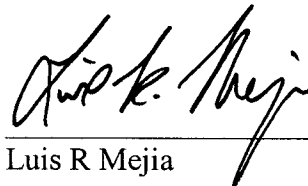
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