

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

vs.

ROYAL BANK OF CANADA, ROYAL BANK
HOLDING INC., ROYAL BANK DS HOLDING
INC., RBC DOMINION SECURITIES LTD.,
RBC DOMINION SECURITIES, INC., RBC
HOLDINGS (USA) INC., and RBC DOMINION
SECURITIES CORP.,

Defendants.

§ Civil Action No. _____

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§ CLASS ACTION

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DEMAND FOR JURY TRIAL

COMPLAINT FOR VIOLATION OF THE SECURITIES LAWS

1. This is a securities class action on behalf of purchasers of Enron Corporation's ("Enron" or the "Company") publicly traded equity and debt securities between January 9, 1999 and November 27, 2001 (the "Class Period"), including securities whose repayment depends on Enron's credit, financial condition and ability to pay, against defendant Royal Bank of Canada and certain of its subsidiaries and affiliates.

2. Each of the defendants engaged in or participated in the implementation of manipulative or deceptive devices to inflate Enron's reported profits and financial condition and participated in a scheme to defraud or a course of business that operated as a fraud or a deceit on purchasers of Enron and Enron-related publicly traded securities between January 9, 1999 and November 27, 2001. Before and during the Class Period, Enron reported very strong profits and profit growth and a strong balance sheet that enabled it to maintain an investment grade credit rating. As a result of defendants' wrongful conduct and scheme, Enron's common stock was artificially inflated to as high as \$90-3/4 per share, giving Enron a market capitalization of over \$70 billion in August 2000, while the Enron and Enron-related preferred and debt securities also traded at artificially inflated prices. Through defendants' scheme and fraudulent course of business, Enron and Enron-related entities issued billions of dollars of new equity and debt securities to investors during the Class Period.

3. By this fraudulent scheme and course of business, defendants pocketed millions of dollars in fees, interest and credit facility payments. In October 2001, Enron suddenly reported \$1 billion (after-tax) in write-offs and wrote down a billion dollars of shareholder equity. Enron then restated its previously reported financial results to eliminate hundreds of millions of dollars of previously reported profits and billions more in shareholders' equity. Enron's stock collapsed, its credit rating was downgraded to "junk" and it went bankrupt, as investors realized the huge profits Enron had reported over the past several years had been grossly inflated and falsified and Enron had

hidden billions of dollars of debt that should have been reported on its balance sheet. The fraudulent scheme to misrepresent Enron's financial condition and results is detailed in The Regents' First Amended Consolidated Complaint filed May 14, 2003, No. H-01-3624. Enron filed its bankruptcy petition on December 2, 2001.

4. Lead Plaintiff received notice of the conduct alleged herein by the public filing of the Report of Harrison J. Goldin, the Court-Appointed Examiner in the Enron North America Corp. Bankruptcy Proceeding ("ENA's Examiner"), Respecting His Investigation of the Role of Certain Entities in Transactions Pertaining to Special Purpose Entities ("Goldin Report"), consequently the Complaint is filed in this format for (among other reasons) purposes of expedience.

JURISDICTION AND VENUE

5. The claims asserted herein arise and pursuant to §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. §240.10b-5.

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1367 and §27 of the 1934 Act, 15 U.S.C. §78aa.

7. Venue is proper in this District pursuant to §27 of the 1934 Act and 28 U.S.C. §1391(b). Enron maintained its principal place of business in this District and many of the acts and practices at issue occurred in substantial part in this District.

8. In connection with the acts alleged in this Complaint, defendants directly or indirectly used the means and instrumentalities of interstate commerce, including, without limitation, the mails, interstate telephone communications and the facilities of the national securities markets.

PARTIES

A. Plaintiff

9. The Regents of the University of California, Court appointed Lead Plaintiff in *Newby v. Enron Corp.*, No. H-01-3624 (S.D. Tex.), purchased more than 2 million shares of Enron securities at artificially inflated prices during the Class Period as detailed in its Certification, filed herewith, and suffered damages of more than \$144 million as a result thereof.

10. The Regents of the University of California, the nation's premier public research university, was founded in 1868 and is composed of 10 campuses with a mission of teaching, research and public service. The University has over 183,000 graduate and undergraduate students, three law schools, five medical schools and the nation's largest continuing education program. The University has more than 155,000 employees and is governed by a 26-member Board of Regents. The Regents oversees the management of a portfolio totaling more than \$54 billion. The investment funds managed consist of the University's retirement, defined contribution and endowment funds, including both actively managed equity portfolios and passively managed index funds. These investments provide substantial benefits to current and retired employees and support the University's mission of education, research and public service.

B. Defendants

11. The bank holding company sued as a defendant conducts its business affairs through a series of wholly owned and controlled subsidiaries where the bank holding company directly or indirectly owns 100% of the stock of the subsidiaries and completely directs and controls their business operations through the selection and appointment of their officers and, where necessary, directors. These controlled subsidiaries are also the agents of the bank holding company and include subsidiaries rendering financial advice and services to public companies, including Enron. The financial operations and condition of these subsidiaries are, for financial reporting and other

purposes, consolidated with the bank holding company's financial statements. Thus, all revenues, earnings and income of the bank holding company subsidiaries are upstreamed to and belong to the bank holding company. The bank holding company named as a defendant in this action participated in the fraudulent scheme and course of business complained of, not only by way of the actions of the holding company itself, but also by way of the actions of numerous of its controlled subsidiaries and agents, some of which have been named as defendants in this action.

12. Defendant Royal Bank of Canada is Canada's largest financial institution as measured by market capitalization and assets and is one of the leading financial services companies in North America. Royal Bank of Canada's businesses are organized into five groups: Royal Bank Banking, Royal Bank Insurance, Royal Bank Investments, Royal Bank Capital Markets and Royal Bank Global Services. Royal Bank Capital Markets and its Global Structured Finance group worked on many of the fraudulent Enron transactions at issue. Royal Bank of Canada is an integrated financial services institution that through known and unknown subsidiaries, divisions and affiliates, acting as the agent of and controlled by Royal Bank of Canada, such as, but not limited to, Royal Bank Holding Inc., Royal Bank DS Holding Inc., RBC Dominion Securities Ltd., RBC Dominion Securities Inc., Royal Bank of Canada Europe Ltd., RBC Holdings (USA) Inc., and RBC Dominion Securities Corp. (collectively, "RBC"). Royal Bank of Canada, through these divisions and affiliates, provides commercial and investment banking and advisory services. RBC engaged and participated in the scheme to defraud purchasers of Enron and Enron-related securities and Enron's course of business which operated as a fraud and deceit on purchasers of Enron's securities by rendering services to Enron as described in greater detail in the Goldin Report incorporated herein (and relevant portion attached hereto). The Goldin Report was first released to the public, including The Regents, on December 4, 2003.

13. In addition to Royal Bank of Canada, the following subsidiaries, divisions and affiliates, acting at the direction of and under the control of Royal Bank of Canada, are specifically named as defendants:

(a) Defendant Royal Bank Holding Inc., under the control of Royal Bank of Canada, acted, as detailed herein and in the Goldin Report, on its own and through its subsidiaries, divisions, and affiliates, to further defendants' fraudulent scheme and deceptive devices created for the purpose of falsifying Enron's reported financial disclosures.

(b) Defendants Royal Bank DS Holding Inc., under the control of Royal Bank of Canada and Royal Bank Holding Inc., acted, as detailed herein and in the Goldin Report, on its own and through its subsidiaries, divisions, and affiliates, to further defendants' fraudulent scheme and deceptive devices created for the purpose of falsifying Enron's reported financial disclosures.

(c) Defendant RBC Dominion Securities Ltd., under the control of Royal Bank of Canada, Royal Bank Holding Inc., and Royal Bank DS Holding Inc., acted, as detailed herein and in the Goldin Report, on its own and through its subsidiaries, divisions, and affiliates, to further defendants' fraudulent scheme and deceptive devices created for the purpose of falsifying Enron's reported financial disclosures.

(d) Defendant RBC Dominion Securities, Inc., under the control of Royal Bank of Canada, Royal Bank Holding Inc., Royal Bank DS Holding Inc., and RBC Dominion Securities Ltd., acted, as detailed herein and in the Goldin Report, on its own and through its subsidiaries, divisions, and affiliates, to further defendants' fraudulent scheme and deceptive devices created for the purpose of falsifying Enron's reported financial disclosures.

(e) Defendant RBC Holdings (USA) Inc., under the control of Royal Bank of Canada, acted, as detailed herein and in the Goldin Report, on its own and through its subsidiaries,

divisions, and affiliates, to further defendants' fraudulent scheme and deceptive devices created for the purpose of falsifying Enron's reported financial disclosures.

(f) Defendant RBC Dominion Securities Corp., under the control of Royal Bank of Canada, Royal Bank Holding Inc., Royal Bank DS Holding Inc., and RBC Dominion Securities Ltd., acted, as detailed herein and in the Goldin Report, on its own and through its subsidiaries, divisions, and affiliates, to further defendants' fraudulent scheme and deceptive devices created for the purpose of falsifying Enron's reported financial disclosures.

DEFENDANTS' SCHEME AND FRAUDULENT COURSE OF BUSINESS

14. Each defendant is liable for participating in a scheme to defraud and/or a course of business that operated as a fraud or deceit on purchasers of Enron and Enron-related publicly traded securities during the Class Period. By this wrongful conduct, Enron raised billions for Enron from the sale of newly issued securities during the Class Period. The wrongful conduct allowed defendants to pocket millions of dollars in fees, commissions and other charges.

A. RBC's Relationship with Enron

15. No later than 1995, RBC began to provide "structured finance" services to Enron. In 1995-1999, RBC structured, funded and executed the following deceptive transactions (among others):

- (a) **Caribou:** RBC entered into the Caribou transaction with Enron in 1995. Using swap agreements with Enron affiliates that were guaranteed by Enron, Caribou generated substantial off-balance sheet debt exposure for Enron.
- (b) **State Street:** Around January 1996, Enron entered into a five-year, \$717.8 million securitized lease transaction involving State Street Bank & Trust Co. and CXC, Inc., a securitization company serviced by Citicorp, that was 100% guaranteed by Enron.
- (c) **Sarlux:** In late 1996, RBC participated in the Sarlux transaction, which involved the financing of a power plant in Sardinia via the use of an SPE.
- (d) **Brazos Holdings:** Enron entered into a \$276 million synthetic lease transaction in 1997 involving Brazos Office Holdings L.P., an SPE that leased Enron's headquarters building and certain equipment back to an Enron affiliate, which was

effectively guaranteed by Enron in the amount of \$213 million. RBC was a participant in this transaction by at least 2000.

- (e) **Bob West Treasure:** RBC provided bridge financing in December 1999 to Bob West Treasure LLC, an SPE owned by Enron and an LJM2 entity. It funded the prepayment of a \$105 million prepaid gas forward sales contract that was 100% guaranteed by Enron.
- (f) **E-Next:** Around May 2001, RBC committed \$37 million to the E-Next FAS 140 transaction whereby Enron used off-balance sheet financing to purchase turbines and develop peaking power plants. For accounting purposes, E-Next was to have three phases to keep \$582 million in funding off-balance sheet, but Enron never intended to allow Phase III to occur, leaving Enron as a mere guarantor of the funds.

16. ENA's Examiner has concluded that certain of these transactions were manipulative devices used to distort Enron's financial statements. Other transactions demonstrate the pattern and course of conduct RBC undertook in connection with the falsification of Enron's reported financial statements as well as Enron's intent to manipulate its financial statements through deceptive structural transactions. RBC's participation in these transactions is further evidence of RBC's deceptive course of conduct respecting its involvement in Enron-related transactions.

17. ENA's Examiner found that:

Caribou in 1995, State Street in 1996, Sarlux and Brazos Office Holdings in 1997, Bob West Treasure in 1999 and JEDI and ECLN in 2000, all put RBC on notice that Enron had substantial exposure to off-balance-sheet debt.

Specifically, by "1995 RBC knew (in connection with the Caribou transaction) that Enron was using a prepay structure to obtain off-balance-sheet financing. In 1996 RBC knew (in connection with the State Street transaction) that Enron desired to monetize assets by removing them from its balance sheet and using them as security for off-balance-sheet financings, with substantial recourse against Enron Corp."

18. While noting that he had not yet found direct evidence of RBC's knowledge prior to September 2000, ENA's Examiner concluded:

RBC was conducting credit reviews of Enron before July, 1996 ... so a fact finder could infer that RBC knew that Enron's exposure in the Caribou and State Street transactions was not being disclosed in its December, 1996 financial statements and

that by participating in later transactions like Brazos, Bob West Treasure, JEDI and ECLN, RBC was helping Enron to incur additional liability that RBC knew would not be disclosed.

Furthermore, as documented by ENA's Examiner, there is "direct evidence" RBC knew in "mid-September, 2000 that Enron had substantial exposure to off-balance-sheet debt that was not disclosed in its financial statements and that the ratings agencies were confused about the amount of such exposure."

19. As RBC knew, Enron considered it to be a "second tier" bank. RBC was sensitive to this and, as ENA's Examiner concluded, "sought to become one of Enron's ten 'top tier' banks because 'the top tier banks had an opportunity to consider more transactions than the non-top tier or the top ten banks, so it would have potentially resulted in [RBC] being able to transact more business for Enron.'" RBC moved towards accomplishing this by hiring approximately 25 bankers in August 2000 from the NatWest structured finance group. According to ENA's Examiner:

[The NatWest structured finance group] had worked on several Enron transactions while at NatWest and brought to RBC detailed knowledge about how Enron structured off-balance-sheet transactions to make it appear to investors, analysts and rating agencies that Enron had current cash flow from sales of assets, when, in fact, the profits were only on paper and had not been realized.

The NatWest bankers included Gary Mulgrew, who led NatWest's structured finance group and then Royal Bank's Global Structured Finance Group; Giles Darby, a managing director in NatWest's structured finance group and the Enron "relationship manager"; and David Bermingham, a director in NatWest's structured finance group. These bankers have been indicated for illicit conduct associated with their relationship with Enron and currently are fugitives.

20. At RBC, the NatWest bankers sought to raise the Bank's profile within Enron and thereby increase its fees. RBC's desire to become a top tier bank for Enron, for example, was a motivating consideration in the Bank's decision to participate in a deceptive LJM2 transaction.

After arrival of the bankers from NatWest, RBC structured, funded, and executed several deceptive transactions with Enron including:

- (a) **Alberta Prepay:** In September 2000, RBC participated in a disguised loan to Enron in the form of a commodity prepay.
- (b) **Cerberus:** RBC structured, funded, and executed Cerberus as a short-term financing for Enron to monetize gains in Enron Oil & Gas shares owned by Enron. The economics of the transaction confirm the financing was a mere loan.
- (c) **Hawaii 125-0:** The Hawaii transaction involved the creation of special purpose entities to purchase non-performing assets from Enron. Although deceptively structured and reported as sales, the true economic substance of these transactions were loans – a fact known by RBC.
- (d) **JEDI:** In April 2000, RBC was the managing agent and a \$32 million participant in a loan to JEDI totaling \$513.5 million. The loan was secured by Enron common stock and an Enron swap designed to provide funds to repay the principal and interest on the loan. RBC knew this loan was guaranteed by Enron.
- (e) **Second Bob West Treasure:** Around May 30, 2000, RBC arranged a credit swap of the Bob West Treasure bridge financing that shifted the risk of an Enron or Bob West Treasure default to European Finance Reinsurance, a subsidiary of Swiss Reinsurance Co.; the transaction retained full recourse against Enron for the off-balance sheet debt of Bob West Treasure.
- (f) **ECLN or Yosemite III:** In August 2000, RBC funded \$50 million in the fraudulent Yosemite III transaction, which hid Enron's debt from \$475 million in prepay financing by Citigroup and Delta Energy. This transaction created the false appearance that RBC was a \$50 million equity participant in Yosemite III.

B. RBC's Knowledge of Enron's Accounting Objectives and Financial Condition

21. Years before the Class Period commenced, RBC knew Enron's accounting objectives included using prepay transactions to "monetize" assets, which involved pledging assets as security to conceal financings guaranteed by Enron. RBC knew Enron was engaging in off-balance sheet transactions from its participation in Caribou in 1995. Subsequent transactions, including the 1996 State Street transaction, the 1997 Brazos Office Holdings transaction, and the 1999 Bob West Treasure transaction, greatly increased RBC's knowledge of Enron's systemic deceptions. By April 2000, RBC knew that through a swap agreement Enron was guaranteeing a substantial amount of JEDI's off-balance sheet debt. At the end of May 2000, RBC arranged a credit swap for Bob West

Treasure. By August 10, 2000, RBC knew of Enron's fraudulent off-balance sheet financing using Enron's own common stock and using JEDI and Chewco SPEs to improperly report the increase in market value of Enron's stock as profit on Enron's financial statements.

22. After the arrival of the NatWest team in August 2000, Enron sought \$300 million (Canadian) in off-balance sheet financing for Enron Canada to purchase an Alberta power purchase arrangement. RBC proposed three separate structures to achieve off-balance sheet treatment for the Alberta financing. By early September 2000, RBC knew Enron's off-balance sheet obligations could be as much as \$16 billion. RBC bankers even observed, "being Enron's auditor would be a thankless task." In addition, RBC had learned that Standard & Poor's calculated Enron's off-balance sheet debt exposure at \$3 billion; Moody's calculated it at \$6.8 billion. Because it had estimated Enron's debt at more than \$16 billion, RBC knew the rating agencies did not account for Enron's debt exposure from fraudulent prepaid gas contracts it knew existed from Caribou and Bob West Treasure, and the various disguised loans RBC structured, funded, and executed for Enron.

23. Around September 20, 2000, RBC's Risk Management group received a document regarding Enron, leading one RBC banker to write to his supervisor, a vice president in risk management:

"The implications of that document for Enron are absolutely enormous. If Bob [Bob Hall, senior vice president of Risk Management group, and Piazza's supervisor ("Hall")] read it he'd cut the [credit] limit [of Enron] in half[.]... *If the existing off balance sheet obligations are generally stated as \$6.2B ... I suggest the asset base of the company is spurious, and that there are other obligations hidden in these vehicles[.]... [T]he deal itself is a concoction that whilst it may 'compensate a valued employee' also benefits Enron, and the equity base of the vehicles is likely inflated by partnership management fees (earned or expected?) treated as equity[.]... Its [sic] hard to believe this stuff, because it implies the '10 top tier banks' are aware of whats [sic] going on.*"

24. RBC also knew Enron was being pressured by the rating agencies to reduce its debt and increase its cash flow. A September 22, 2000 e-mail from an RBC senior banker to another states:

“The rating agencies have been pressing Enron *vis-à-vis* low level of cash flow generation to total debt for the rating class. I think John [Aitken] is referring to the transparency of the financial statements (the integrity of the accounting principals [*sic*] behind the financial statements).”

25. Also in September 2000, RBC knew Enron CFO Andrew Fastow controlled LJM2 and further knew the enormous profits NatWest received from “equity” trades with Enron and LJM1. Although RBC had concerns about Fastow’s conflict of interest with LJM2, it still loaned LJM2 \$10 million to secure additional business from Enron.

26. ENA’s Examiner concluded:

By early October, 2000 RBC knew that (i) there had been issues between Enron and its auditors for some time; (ii) Enron’s auditors wanted to maintain the appearance that they were adhering to appropriate accounting conventions; and (iii) Enron was a major global user of off-balance-sheet financing. There are also indications that RBC believed Enron’s auditor’s were not closely examining Enron’s activities and that the US\$800 million JEDI I refinancing RBC was looking to become involved in would not involve true equity. RBC also thought Enron would be looking to RBC “to support them over their year end.”

27. But RBC was nonetheless motivated to continue the financial statement manipulations for which Enron paid, for as stated by RBC’s bankers, ““We are acting (marketing) as if we are a Tier 1 bank and [Enron is] starting to treat us like one.””

28. At this time, RBC’s Risk Management group was so concerned about Enron’s liquidity, focus on maximizing assets and minimizing debt on Enron’s balance sheet, that RBC planned to reduce its exposure to Enron by syndicating or underwriting more transactions, and also structured, funded and executed more deceptive transactions to keep Enron afloat. Meanwhile, the fees RBC earned from its conduct in these transactions continued to escalate. Despite this knowledge, on November 7, 2000, RBC’s Risk Management group approved participation in the fraudulent Hawaii 125-0 transaction. Soon after Enron filed its 2001 10-K, RBC reduced Enron’s credit limit from \$750 million (Canadian) to \$500 million (Canadian).

C. RBC's Conduct in Fraudulent Transactions During the Class Period

1. Alberta Prepay

29. The Alberta Prepay was RBC's first Enron transaction after hiring the NatWest bankers. In August 2000, the Province of Alberta auctioned a number of 20-year Power Purchase Arrangements ("PPAs"). Enron Canada was one of the successful bidders, and Enron sought to finance the \$294.8 million (Canadian) purchase. Internal correspondence from August 24, 2000 reads: "Through our new structured finance group in London we have been given the opportunity to bid on a [*sic*] *off balance sheet structure to finance Enron Canada's purchase of one of the Alberta PPA (C\$295MM)*." The Alberta Prepay closed on September 29, 2000, just days before the end of the financial reporting period.

30. Due to pressure on Enron from the rating agencies to reduce debt and increase cash flow, Enron transacted the fraudulent Alberta Prepay. In essence, RBC paid \$147 million (Canadian) to Enron Canada up front and Enron North America was obligated to pay quarterly interest and principal on that amount. The floating cash flow circled from Enron Canada to RBC to Chase to Enron North America. In effect, the Alberta Prepay transaction was merely a disguised loan from RBC to Enron.

31. The commodity swaps in the Alberta Prepay served no purpose other than to conceal the true nature of the financing. Neither Enron Canada nor RBC were interested in purchasing any gas. The gas swap confirmations, which refer to notional quantities of gas and either a fixed gas price or a floating gas price, do not refer to the other swap confirmations related to the Alberta Prepay and thus the reader of one swap confirmation would not realize it was related to the other Alberta swap confirmations. Enron disguised financing as trading activities by documenting the financing as a circle of gas swaps involving RBC and Chase (and Toronto Dominion in the mirror transaction).

32. RBC submitted a transaction request for Alberta in August 2000. The Alberta proposal included (a) an SPE borrower; (b) a financing involving a gas prepay; (c) two swaps designed to repay RBC principal, interest and other costs; and (d) an Enron guarantee ensuring repayment of these amounts. The combined effect of the prepay, the swaps and the financing structure was “to permit Enron Canada *to treat the financing as a commercial sales contract and not as debt on its balance sheet.*” According to the initial transaction request:

“[The SPE] will be established as a qualifying [SPE] (under FASB 125), *i.e.*, 3% equity/97% debt. The 3% is funded by the syndicate and to qualify, as “equity” has to be the last dollars out at Maturity. [The SPE] will be the borrower of C\$294.8MM equity/debt that will be syndicated”

The transaction request stated further: “Enron have completed similar transactions in the past and achieved off balance sheet treatment.” RBC acknowledged, “[t]his is *purely a financial structure.*”

33. After Enron rejected the first structure, RBC proposed a second bogus transaction that differed from the first by including a second SPE (BF Equity) interposed between the qualifying SPE (Bow River) and RBC. According to the second transaction request:

BF [Equity] will serve as a pass through entity and is required by Enron to meet the requirements for off balance sheet treatment. FASB requirements to achieve off-balance sheet treatment dictate that RBC cannot be both the direct lender to finance the PPA, and act as the [swap] counterparty.... Accordingly, BF was introduced to the structure as the lender of funds to Bow River ... to remove RBC from being the direct lender in the transaction.

The financing in this proposed structure was also *full recourse against Enron.*

34. Since RBC retained most of the economic benefits, as BF Equity was to serve merely as a sham, pass-through entity, Enron believed its accountants would look through BF Equity to RBC. Yet RBC refused to consider involving another bank because it did not want to share the lucrative fee: “[i]t is obviously fairly late in the day to effect this, and it is unlikely another bank would be prepared to take Bow River counterparty risk, without fully understanding (and

presumably sharing in the economics of) the transaction.” RBC instead proposed a strawman, an RBC lawyer who would contribute some equity to the transaction and become a purported part owner of Bow River. The lawyer would borrow the money from RBC on a full-recourse basis, but with an option to place the ownership interest with RBC. This put option was designed to eliminate the risk to the lawyer in a manner Enron’s auditors could not discover. In addition, RBC knew only 97% of the commodity risk of the transaction could be hedged. To protect the Bank completely, RBC bankers suggested: “*We deal with this issue by hedging the remaining 3% at the top of the structure and Enron isn’t “interested” in knowing about that transaction.*”

35. The final contrivance, dated September 27, 2000, involved four swaps providing for *two circular* streams of payment among RBC and JP Morgan Chase, *all guaranteed by Enron*. RBC was to fund 50% of the total purchase price of \$294.8 million (Canadian) and Toronto Dominion Bank was to fund the other 50%. “Under Swap 1 RBC will pay up-front C\$147.4MM to Enron Canada, and will in return receive *quarterly payments equivalent to floating interest and at maturity C\$ Floating Gas Price which will be principal and interest (“C\$ Floating Gas”).*” To hedge the floating payments received under Swap 1, RBC entered into a Swap 2 with JP Morgan Chase. Under Swap 2:

“(a) RBC will pay to Chase C\$ Floating Gas each quarter and at maturity; and (b) *Chase will pay to RBC C\$ Fixed Gas (i.e. interest and principal).*”

36. The fixed gas payments were set to *pay RBC interest and principal on the amounts paid to Enron Canada under Swap 1*. RBC wrote: “Simultaneously, Chase will hedge its position under Swap 2 by entering into Swap 3 with a separately capitalized counterparty [ENA]. Under Swap 3: (a) Chase will pay to [ENA] C\$ Floating Gas each quarter and at maturity; (b) [ENA] *will pay to Chase C\$ Fixed Gas (i.e. interest and principal).*”

37. Swap 4, an interest rate swap, obligated Enron Canada to pay RBC the amount for the floating interest payments. The September 27, 2000 transaction request acknowledges, “RBC

hedges the C\$ Fixed Gas by way of a separate interest rate swap (Swap 4) with Enron Canada to get fixed flows back to floating to service debt.... This floating rate stream of payments is used to pay the quarterly funding costs of RBC in respect of the initial advance under Swap 1.”

38. Just days before the transaction closed on September 26, 2000, an RBC banker wrote of Alberta:

“We will have the right to terminate any of the Swaps at our option. The reason for this is that Enron will have the ability to terminate Swap 1 (in order to, say, refinance the financing) and as soon as there is one termination we obviously have to unwind the whole thing. However, *we cannot in the documentation state this linkage or we run afoul of the Auditors. Ergo, we each have voluntary termination rights under our Swaps. Basically, Enron is trusting us not to terminate early and obviously that would be a significant relationship call if we would.*”

39. The Alberta prepay materially distorted Enron’s financial statements. Enron understated its debt and overstated its cash flow from operating activities by reporting its obligations as price risk management instead of debt.

2. Cerberus Transaction

40. As a reward for its participation in the fraudulent Alberta Prepay “and the “progress” on LJM2,” RBC was “invited to co-lead a monetization of Enron’s shareholding in Enron Oil and Gas [(“EOG”)],” the Cerberus transaction.

41. On October 6, 2000, RBC’s Darby described Enron’s objective for the Cerberus transaction:

“The [EOG] shares are the source of repayment of a mandatorily exchangeable bond issued last year by Enron as part of their exit from EOG. The bond matures in June 2002. It is shown as debt in the balance sheet and the EOG shares as a financial asset. They now desire to ‘sell’ the shares for value (\$350m), enabling them to generate cash to pay down other debt. The shares will be hedged via a total return swap which will effectively leave us with Enron corporate exposure at maturity (June 2002).”

42. In a transaction request dated November 6, 2000, another RBC banker wrote:

“Enron wishes to *obtain off balance sheet funding secured on the EOG shares until the shares are required to redeem its outstanding convertible bond on 31 July 2002.* The structure which we are proposing *enables Enron Corp. to raise short*

term funds against the 'security' of the EOG shares without Enron being obliged to lose control of the EOG Shares.

* * *

The terms and conditions will reflect the fact that *we are making available off balance sheet funding to Enron, on a 'secured basis' for a relatively short period of 18 to 20 months....* As stated previously the existence of a negative pledge in other Enron loan agreements means that security cannot be taken over the EOG shares but by the mechanism Lenders will take actual ownership of the 'B' (preferred) interest in the entity which owns the EOG shares and thereby gain direct access to the shares' value."

43. Another RBC banker described Cerberus as follows:

"The EOG shares will be transferred to the ownership of an effectively bankruptcy remote vehicle Aeneas LLC ["Aeneas"] which will issue 'A' shares (legal controlling interest but little economic value) to Enron Asset Holdings ("EAH"), and 'B' shares (non-voting but substantially all of the economic value). The 'B' shares are subscribed for by Psyche LLC ["Psyche"] which will then on sell the 'B' shares to Heracles Share Trust ["Heracles"]. Heracles will be a trust owned by a Delaware registered entity, Wilmington Trust and the equity certificate of the trust may be assigned to Gen Re if it is a part of the structure. Heracles funds itself by way of a loan from [RBC] and will hold the 'B' interest on behalf of the lenders. *EAH will enter into a total return swap ... with Heracles via which Enron receives dividends and any upside on the EOG shares and Enron pays LIBOR plus margin in return as well as any downside on EOG. LIBOR plus margin is sufficient for Heracles to service the underlying loan to Heracles. The obligations of EAH under the [total return swap] will be unconditionally guaranteed by Enron Corp.*"

As ENA's Examiner concluded, "the total return swap effectively constituted a promise by EAH to pay Heracles the amounts Heracles owed Royal Bank, to the extent the proceeds from the EOG shares actually received by Heracles were insufficient to cover amounts owed on the loan." Furthermore, "[t]his arrangement was equivalent to a secured guarantee of the Heracles loan."

44. Around November 15, 2000, RBC prepared a revised transaction request which described substantially the same structure, but added:

"*The purpose of the swap is to protect against a downward move in the EOG share price and provide a mechanism to return any increase in the EOG share price back to Enron.* Obligations of EAH under the Total Return Swap are guaranteed by Enron Corp.

Under the swap Heracles pays EAH the distributions (Available Funds) it receives from Aeneas. EAH pays interest on each payment date and, at maturity, the

aggregate principal balance due to Lenders. The swap is a net swap, *i.e.* there is a single payment made between the parties.”

45. An RBC memorandum even admits the Cerberus transaction ““is a **19 month secured ‘loan’ to Enron,**”” with RBC seeking to eliminate the Enron risk in the transaction by interposing an equity swap counterparty between Enron and RBC. An internal RBC e-mail, dated November 8, 2000, describes a put option agreement and assignment, one of the deal documents associated with Cerberus as ““**a mechanism designed more to give Enron the right accounting treatment.**””

46. Through Cerberus, RBC raised short-term funds for Enron. In October 2000, one RBC banker acknowledged, ““Enron wish [sic] to monetize the value of the shares [in EOG] in the intervening period, in an off-balance sheet manner. The structure which we are proposing enables Enron to raise short term funds against the “security” of the EOG shares.””

47. Enron’s bankruptcy Examiner found the Cerberus transaction appeared to be, “from both an economic and risk allocation perspective, a loan to Enron rather than a sale of assets. Accordingly, [this] transaction[] is susceptible to recharacterization as a loan.” As recognized by both Enron’s and ENA’s bankruptcy Examiners:

“If the Cerberus Transaction were accounted for in the manner which the [Enron Corp.] Examiner has determined would have been proper, the EOG [shares] would have remained on Enron’s balance sheet as an asset and Enron’s liability under the Original Cerberus Total Return Swap (equal to approximately \$517.5 million) would have been recorded as debt. Cash flow from operating activities for **the year 2000 would have been reduced by approximately \$517.5 million and cash flow from financing activities increased correspondingly.**”

3. Hawaii 125-0 Transaction

48. In November 2000, RBC participated in the financing of the deceptive Hawaii 125-0 transactions. RBC engaged in the Hawaii 125-0 contrivance to position itself for further deals:

“We would not do this deal in isolation but have 5 other deals in the pipeline with Enron where we can earn substantial fees. For example, EOG could earn us C\$6m and JEDI should provide C\$6.5m in fees The presence of a Total Return Swap makes this [an] Enron corporate credit risk and so the underlying assets in which the vehicle is investing and any changes in the mix of investments is not important.”

49. Hawaii 125-0 involved the creation of two special purpose trusts used to unload or hide nonperforming assets from Enron's balance sheet. RBC's October 27, 2000 transaction request for Hawaii 125-0 acknowledges this:

“Project Hawaii was created to serve as a warehouse vehicle for Enron allowing Enron to better time asset sales to third parties and to aggregate assets, achieving a critical mass for later refinancing into a longer-term off-balance sheet vehicle.

* * *

Hawaii is a structure that allows Enron to effectively sell (under FASB 125), assets without losing control until a legitimate third party buyer can be located.

* * *

Assets financed under the Facilities will be in one of the following three categories: i) ‘Danno Assets’ representing cash flows relating to contractual obligations of third parties owed to an Enron-related entity; ii) ‘Governor Assets’, representing cash flows from operating assets owned by an Enron-related entity; and iii) ‘McGarret Assets’, representing equity interests in Enron subsidiaries, affiliates and third parties.

* * *

With respect to all assets sold to the [Hawaii] Trust, Enron will certify the asset type, that the asset satisfies the pre-qualification parameters, that the asset value has been reasonably calculated and that an appropriate valuation methodology was employed.

* * *

For purchased interests there will be a put mechanism or a demand note to the seller in order to assure the capability to receive timely interest and principal payments as well as providing a cushion for interest rate movements. (Should Enron or its affiliate fail to perform under the [total return swap] (described below) the put/demand note will require a full principle [*sic*] and interest payment in favor of the 97% debt tranche (banks).) At the time of each advance under each facility, the Borrower will enter into a Total Return Swap ... confirmation with Enron. The [total return swap] will exchange the future payments received from the asset being purchased for quarterly payments equal to periodic interest payments and, at maturity, principal. ***The [total return swap] provides the lenders assurance of payment similar to an Enron guaranty.*** The [total return swap] is documented using standard ISDA documentation. The [Hawaii I Trust] and the [Hawaii II Trust] will be linked through several mechanisms.”

Enron's bankruptcy Examiner identified Hawaii as one of the categories of transactions for which Enron did not report debt on its December 31, 2000 financial statements and for which it improperly reported the proceeds of a loan as operating cash flow.

50. Because Enron retained the risks and benefits of the Hawaii 125-0 transaction through total return swaps, from both an economic and risk-allocation perspective, the Hawaii transaction was a loan. Enron's bankruptcy Examiner concluded:

“If the Hawaii Transaction were accounted for in the manner that the Examiner has determined to be proper, the assets in the Hawaii transactions would have remained on Enron's balance sheet as assets and *Enron's liability under the Hawaii Total Return Swaps (equal to approximately \$436.5 million as of the Petition Date) would have been recorded as debt and the approximately \$273.7 million gain would not have been recognized.*”

51. Enron recognized *approximately \$448.2 million of proceeds* from several Hawaii (McGarret) transactions and cash flow from operating activities and an aggregate of approximately \$75.1 million of proceeds from the transactions as cash flow from investing activities. Because the Hawaii transactions should have been treated as loans, these proceeds should have been included in cash flow from financing activities, not operations.

4. Other Bogus FAS 140 Transactions

52. In August 2001, RBC pursued a FAS 140 transaction with Enron involving Enron Energy Services. RBC understood that its purported investment in the transaction had to be at risk in order for the transaction to be properly accounted for as a sale of assets. In an e-mail an RBC banker stated ““this is not a risk that banks are seeking to take,”” and RBC ““*would obtain informal comfort [from Enron] on our ability to get full and timely repayment under the equity certificates.... We have invested in similar transactions while at Greenwich NatWest and have obtained full and timely repayment.*”” Thus, RBC disguised the fact that it was not acting as a true equity investor but rather was loaning Enron money in a transaction improperly reported as a sale of assets under FAS 140.

53. According to RBC banker Darby:

“As a team we have aggitated [*sic*] hard with Enron to see an equity opportunity since if they are structured properly and the relationship handled correctly they can become an extremely lucrative source of business opportunity. ***The equity itself can pay attractive returns (with the knowledge that there is an ‘understanding’ with Enron re being taken out [of the transaction and recovering the equity].***”

54. Darby confirmed:

“We [NatWest] were shown LJM because we had done the two deals above and Fastow knew that (a) we were sophisticated and entrepreneurial enough to understand the deal – and why it was so important for Enron (b) a lot of trust was needed on both sides (c) we had an appetite for a sensible equity investment. We invested US\$8.5m and six months later through a series of equity derivatives, walked away with some US\$34m – a profit of US\$25.5m.”

5. Bob West Treasure

55. Bob West Treasure involved Fastow’s notorious LJM2 partnership. RBC provided bridge financing to Bob West Treasure in December 1999, ***guaranteed by Enron***, to fund a \$105 million fraudulent gas prepay. A commodity swap required Enron North America to pay Bob West Treasure the amounts necessary to repay the loan to RBC in exchange for the amounts received by Bob West Treasure in a sale of the gas to an Enron affiliate.

56. Examiner Goldin has found that a fact finder could conclude RBC knew under U.S. accounting standards, an off-balance sheet financing was not supposed to include full recourse against Enron and that the Bob West Treasure loan, therefore, did not qualify for off-balance sheet treatment. RBC also knew, based on its involvement in Caribou, State Street and Brazos Office Holdings, that each of these transactions generated substantial off-balance sheet exposure for Enron, and its review of Enron’s financial condition beginning at least as early as 1996, that Enron’s exposure to the Bob West Treasure loan would be concealed from the investing public. In addition, RBC knew the Bob West Treasure commodity swap was designed to disguise that the RBC loan was fully guaranteed by Enron North America and Enron.

6. JEDI

57. RBC participated in several loans to JEDI during 2000, including a \$513.5 million loan in April 2000, for which RBC acted as managing agent, secured by Enron common stock and an Enron swap designed to provide funds to repay the principal and interest on the loan. Enron's exposure on this loan was not disclosed in its financial statements. Based on its involvement in the Caribou, State Street, Brazos Office Holdings and Bob West Treasure, and knowledge that each of these transactions generated substantial off-balance sheet exposure for Enron, RBC knew Enron's exposure to the JEDI loan would not be disclosed.

7. LJM2

58. Several of the RBC bankers who came from NatWest in August 2000 worked with the fraudulent LJM1 partnership and knew LJM1 had been highly profitable for NatWest. As related by RBC banker Darby:

"I am sure that you've heard the story before, but just to go over the old ground; We were shown [LJM1] because we had done the two deals above [at NatWest] and Fastow knew that (a) we were sophisticated and entrepreneurial [*sic*] enough to understand the deal – and why it was so important for Enron (b) a lot of Trust was needed on both sides (c) we had an appetite for a sensible equity investment.

We invested US8.5m and six months later through a series of equity derivatives, walked away with some US34m – a profit of US25.5m."

59. Around September 20, 2000, RBC's Risk Management group received a disturbing document regarding Enron:

"The implications of that document for Enron are absolutely enormous. If Bob [Bob Hall, senior vice president of RBC's Risk Management group] read it he'd cut the [credit] limit [of Enron] in half[.] ... If the existing off balance sheet obligations are generally stated as \$6.2B ... I suggest the asset base of the company is spurious, and that there are other obligations hidden in these vehicles ... the deal itself is a concoction that whilst it may '*compensate a valued employee*' also benefits Enron, and the equity base of the vehicles is likely inflated by *partnership management fees (earned or expected?)* treated as equity[.] ... *Its [sic] hard to believe this stuff, because it implies the '10 top tier banks' are aware of whats [sic] going on.*"

The reference to “partnership” appears to relate to LJM1 or LJM2 and the reference to a “valued employee” appears to relate to Fastow or his underling Michael Kopper. RBC nonetheless continued to consider entering into a transaction with LJM2. Due to RBC’s “progress” on LJM 2,” and its contribution on Alberta, RBC was “invited to co-lead a monetization of Enron’s shareholding in Enron Oil and Gas [(“EOG”),]” which would become the Cerberus transaction.

By mid-November 2000, RBC loaned \$10 million to LJM2 to position the Bank for other transactions with Enron and to elevate its status with Enron. The LJM2 Transaction Request states: “We also recognize that this deal is seen as *an entry ticket for more remunerative transactions which we are already seeing coming to us.*” An RBC memorandum adds:

“[T]his invitation came to us from the CFO of Enron and notwithstanding the lack of any formal link with Enron we regard participation as a ‘must’ in order to position the bank for other transactions which will undoubtedly be generated by Enron in the near future.”

Indeed, RBC received “*verbal reassurances*” the LJM2 loan would not run its full term, but instead would be repaid within two years:

“Discussions with [Enron’s] CFO on the structure and their intentions have given us reassurance on the prospects for this project and *we have been given verbal reassurances that the loan will not run for the full term and it will be repaid within the two year revolving period. Individuals with Structured Finance have previous experience with this customer and this structure and we are confident that the CFO will ensure that the loan is repaid as expected.*”

An RBC banker added: “The project gives a return on equity of 19.38%. The resulting return on equity assuming a 2-year term (for which we have verbal understanding) rises to 36.77%.”

8. Yosemite III

60. In August 2000, RBC invested at least \$50 million in the Enron Credit Linked Notes transaction related to the fraudulent Yosemite III transaction.

61. The purpose of this transaction was to disguise debt from \$475 million in prepaids by Citigroup and Delta Energy, an offshore SPE controlled by Citigroup. This transaction created the

appearance that RBC was a \$50 million equity participant, but due to RBC's total return swap with Citigroup, RBC had no economic exposure in this transaction. On or about August 14, 2001, RBC Europe Limited sold the \$50 million of notes that funded the Yosemite III sham transaction to another bank.

CLASS ACTION ALLEGATIONS

62. Plaintiff brings this action pursuant to Rule 23 of Federal Rules of Civil Procedure on behalf of all persons who acquired Enron's publicly traded securities (the "Publicly Traded Securities") during the Class Period (the "Class"), including persons who purchased Enron securities traceable to false and misleading Registration Statements, and Enron employees who purchased Enron stock individually or for their 401(k) retirement plans during the Class Period.¹ The Class includes purchasers of all securities identified herein issued by Enron and Enron-related entities during the Class Period, the value or repayment of which was dependent on the credit, financial condition or ability to pay of Enron. Excluded from the Class are the defendants herein, all defendants in *Newby v. Enron Corp.*, No. H-01-3624, in which The Regents is Lead Plaintiff, all defendants in *Washington State Investment Board v. Lay*, No. H-02-3401, all defendants in *The*

¹ The Publicly Traded Securities include Enron's publicly traded debt and equity securities as well as preferred securities issued by Enron, Enron Capital LLC 8% Cumulative Guaranteed Monthly Income Preferred Shares, Enron Capital Trust I Trust Originated Preferred Securities, Enron Capital Trust II Trust Originated Preferred Securities and Enron Capital Resources, L.P. 9% Cumulative Preferred Securities (collectively, the "Preferred Securities"), and Osprey \$1,400,000,000 8.31% Senior Secured Notes due 2003, Yosemite \$750,000,000 8.25% Series 1999-A Linked Enron Obligations due November 15, 2004, Yosemite £200,000,000 8.75% Series 2000-A Linked Enron Obligations due 2007, Enron Credit Linked Notes \$500,000,000 8% due 2005, Osprey \$750,000,000 7.797% Senior Secured Notes due 2003 and €315,000,000 6.375% Senior Secured Notes due 2003, Enron Credit Linked Notes II \$500,000,000 7.375% due 2006, Enron EuroCredit Linked Notes Trust €200,000,000 6.5% due 2006, Enron Sterling Credit Linked Notes Trust £125,000,000 7.25% due 2006, and Marlin \$475,000,000 6.31% Senior Secured Notes due 2003 and €515,000,000 6.19% Senior Secured Notes due 2003, as well as all other Enron-related "debt and equity securities issued during the Class Period.

Regents of the University of California v. Toronto-Dominion Bank, No. H-03-5528, and all defendants in *The Regents of the University of California, et al. v. Milbank Tweed, Hadley & McCloy LLP*, No. H-04-____, and members of their immediate families, any officer, director or partner of these defendants, any entity in which a defendant has a controlling interest and the heirs of any such excluded party.

63. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown at the present time, as of December 31, 2000, there were more than 750 million shares of common stock outstanding, more than 25 million shares of the Preferred Securities and billions of dollars of debt securities, owned by thousands of investors.

64. The Regents' claims are typical of the claims of the Class because The Regents and all the Class members sustained damages which arose from the defendants' unlawful conduct alleged herein.

65. The Regents is a representative party who will fully and adequately protect the interests of the Class members. The Regents has retained counsel who are experienced and competent in both class action and securities litigation. The Regents has no interest which is in conflict with those of the Class it seeks to represent.

66. A class action would be superior to all other available methods for the fair and efficient and adjudication of this controversy. The Regents knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

67. The prosecution of separate actions by individual Class members would create a risk of inconsistent and varying adjudications, which could establish incompatible standards of conduct for defendants. Questions of law and fact common to the Class predominate over any questions which may affect only individual members. Among the common questions of law and fact are:

- (a) whether defendants implemented the manipulative devices or engaged in the wrongful scheme alleged herein;
 - (b) whether the 1934 Act was violated by defendants' acts as alleged herein;
 - (c) whether defendants knowingly or recklessly engaged in deceptive or manipulative devices;
 - (d) whether the prices of the Publicly Traded Securities were artificially inflated;
- and
- (e) the extent of damage sustained by Class members and the appropriate measure of damages.

**FIRST CLAIM FOR RELIEF
For Violations of §§10(b) and 20(a)
of the 1934 Act and Rule 10b-5**

68. The Regents incorporates ¶¶1-67 by reference.

69. This Claim is brought by The Regents against Royal Bank of Canada, Royal Bank Holding Inc., Royal Bank DS Holding Inc., RBC Dominion Securities Ltd., RBC Dominion Securities, Inc., RBC Holdings (USA) Inc., and RBC Dominion Securities Corp.

70. Each of the defendants named herein participated in defendants' wrongful scheme, the implementation of the manipulative devices discussed herein, which they knew or recklessly disregarded were deceptive.

71. Defendants violated §§10(b) and/or 20(a) of the 1934 Act and Rule 10b-5 in that they:

- (a) Employed devices, schemes, and artifices to defraud; or
- (b) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon The Regents and others similarly situated in connection with their purchases of Enron securities during the Class Period.

72. Defendant Royal Bank of Canada controlled its respective subsidiaries and affiliates. Royal Bank of Canada controlled directly or indirectly, Royal Bank Holding Inc., Royal Bank DS Holding Inc., RBC Dominion Securities Ltd., RBC Dominion Securities, Inc., RBC Holdings (USA) Inc., and RBC Dominion Securities Corp.

73. The Regents and the other Class members as detailed herein have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices in connection with their purchase of Enron and Enron-related securities. The Regents and the Class members would not have purchased Enron and Enron-related securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' wrongful scheme.

PRAYER FOR RELIEF

WHEREFORE, The Regents prays for relief and judgment, including:

- A. Determining that this action is a proper class action, and certifying The Regents as class representatives under Rule 23 of the Federal Rules of Civil Procedure;
- A. Restitution of investors' monies of which they were defrauded;
- B. Awarding compensatory damages in favor of The Regents and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of their wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding The Regents and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- D. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

The Regents hereby demands a trial by jury.

DATED: January 9, 2004

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing COMPLAINT FOR VIOLATION OF THE SECURITIES LAWS document has been served by sending a copy via electronic mail to serve@ESL3624.com on this January 9, 2004.

I further certify that a copy of the foregoing COMPLAINT FOR VIOLATION OF THE SECURITIES LAWS document has been served via overnight mail on the following parties, who do not accept service by electronic mail on this January 9, 2004.

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall Street, 21st Floor
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A handwritten signature in black ink that reads "Mo Maloney". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Mo Maloney