SOAH DOCKET NO. 457-06-0464
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02-11-16L, 02-12-03L, 02-11-17L and 05-09-04L

TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY, Petitioner,	§	BEFORE THE STATE OFFICE
vs.	§	
THOMAS BAUER, CARL BASS, PATRICIA GRUTZMACHER, JAMES BROWN, JR., JENNIFER STEVENSON, DEREK CLAYBROOK and ANDREW SCHULEMAN, Respondents.	§	OF
	§	ADMINISTRATIVE HEARINGS

PETITIONER'S AMENDED COMPLAINT

TO: Thomas Bauer
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Katy, TX 77450

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I.

In accordance with section 901.508 of the Public Accountancy Act, Texas Occupations Code (the "Act"); sections 2001.051 and 2001.052 of the Administrative Procedure Act, Texas Government Code; and Chapter 155 of Title 1 of the Texas Administrative Code, the Texas State Board of Public Accountancy ("TSBPA" or "Board") brings the following complaint. It is anticipated that a hearing will be set pursuant to a scheduling order to be issued by the hearing officer. Notice pursuant to section 901.509 of the Act will be given at that time.

II.

The purpose of the hearing will be to determine if Respondents committed violations of the Act and Board Rules as set forth in this Complaint. Should a violation be established, the Board will determine whether Respondents' certificates should be revoked (or whether other appropriate disciplinary sanctions should be imposed) and whether administrative costs and administrative penalties should be assessed against each of the Respondents.

III.

At the hearing Respondents may appear by counsel, produce evidence and witnesses on their behalf, cross-examine witnesses, and examine such evidence as may be produced against them. On application to the Board, Respondents are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on their behalf.

IV.

IF YOU FAIL TO ATTEND THE HEARING, THE FACTUAL ALLEGATIONS CONTAINED IN THE COMPLAINT AND ANY AMENDMENTS TO THE COMPLAINT WILL BE DEEMED AS TRUE, AND THE RELIEF SOUGHT IN THE COMPLAINT AND ANY AMENDMENTS TO THE COMPLAINT MAY BE GRANTED BY DEFAULT AND A DEFAULT JUDGMENT ENTERED AGAINST YOU, WHICH MAY INCLUDE ANY OR ALL OF THE REQUESTED SANCTIONS, INCLUDING THE REVOCATION OF YOUR CERTIFICATE OR REGISTRATION.

V.

Pursuant to sections 2001.052(a)(3) and 2001.052(a)(4) of the Administrative Procedure Act and section 901.508 of the Public Accountancy Act ("Act"), the following allegations are made:

A. Jurisdiction

1. TSBPA files this complaint under the Texas Occupations Code, sections 901.501-02, 901.504, 901.508-09; the Texas Government Code, sections 2001.051, *et seq.;* Chapter 519 of Title 22 of the Texas Administrative Code; and Chapter 155 of Title 1 of the Texas Administrative Code.

B. Parties

1. The Texas State Board of Public Accountancy is the Texas state agency charged with the licensing and regulation of certified public accountants ("CPAs") and other individuals involved in the profession of accounting.

2. Respondent Thomas Bauer ("Bauer") is an individual CPA who holds certificate number 019224 issued by the Board. He may be served with a copy of this complaint at the address set out above.

3. Respondent Carl Edward Bass ("Bass") is an individual CPA who holds certificate number 030450 issued by the Board. He may be served with a copy of this complaint at the address set out above.

4. Respondent Patricia Sue Grutzmacher ("Grutzmacher") is an individual CPA who holds certificate number 080821 issued by the Board. She may be served with a copy of this complaint at the address set out above.

5. Respondent James J. Brown, Jr. ("Brown") is an individual CPA who holds certificate number 068657 issued by the Board. He may be served with a copy of this complaint at the address set out above.

6. Respondent Jennifer Stevenson ("Stevenson") is an individual CPA who holds certificate number 071052 issued by the Board. She may be served with a copy of this complaint at the address set out above.

7. Respondent Derek Boyd Claybrook ("Claybrook") is an individual CPA who holds certificate number 075738 issued by the Board. He may be served with a copy of this complaint at the address set out above.

8. Andrew Michael Schuleman is an individual CPA who holds certificate number 068011 issued by the Board. He may be served with a copy of this complaint at the address set out above.

C. Facts: ENRON, Andersen and Admitted Accounting Errors Involving JEDI andCHEWCO.

Financial collapse of ENRON.

1. Enron Corporation ("ENRON"), headquartered in Houston, Texas, was one of the nation's largest natural gas and electric power marketers.

2. Arthur Andersen L.L.P. ("Andersen") audited the consolidated financial statements of ENRON from 1985, when ENRON was formed by the merger of Houston Natural Gas and InterNorth Pipeline, until January 17, 2002 when ENRON fired Andersen.

3. When auditing ENRON from 1997-2000 Andersen opined that ENRON's financial statements for those years presented fairly, in all material respects, the financial position of the corporation and subsidiaries and the results of operations, cash flows and changes in shareholders equity in conformity with GAAP.

4. On November 8, 2001, in a Form 8-K filed with the Securities Exchange Commission ("SEC"), ENRON announced it would restate its financial statements dating back to 1997 due to various accounting errors. Among the accounting errors ENRON and Andersen had identified was that the financial statements of the entities Joint Energy Development Investment L.P. ("JEDI") and Chewco L.P. ("CHEWCO") should have been included in ENRON's consolidated financial statements from 1997 through the first quarter of 2001. ENRON announced that it would consolidate CHEWCO and JEDI retroactive to 1997. This resulted in a reduction in ENRON's reported net income and an increase in its reported debt.

5. On November 19, 2001, ENRON filed its quarterly report on Form 10-Q with the SEC, which provided additional information about the restatement. The consolidation

hadthe following effect, according to ENRON: reduction of net income in the amounts of $28 million (1997), $133 million (1998), $153 million (1999), and $91 million (2000); and debt increased in the amounts of $711 million (1997), $561 million (1998), $685 million (1999),and $628 million (2000).

6. On December 2, 2001, ENRON and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code.

ENRON and "Special Purpose Entities."

7. During the late 1990s, ENRON grew rapidly and moved into areas it believed fit its basic business plan: buy or develop an asset, such as a pipeline or power plant, and then expand it by building a wholesale or retail business around the asset. During the period from 1996 to 1998, approximately sixty percent (60%) of ENRON's earnings were generated from businesses in which the company was not engaged ten years earlier, and some thirty percent (30%) to forty percent (40%) were generated from businesses in which it was not engaged five years earlier.

8. Much of this growth involved large initial capital investments that were not expected to generate significant earnings or cash flow in the short tern. While ENRON believed these investments would be beneficial over a period of time, they had an immediate negative impact on ENRON's balance sheet. The company already had a substantial debt load. Funding the new investments by issuing additional debt was unattractive because cash flow in the early years would be insufficient to service that debt and would place pressure on ENRON's credit ratings. Maintaining ENRON's credit ratings at investment grade was vital to the operation of its energy trading business. Alternatively, funding the investments by issuing additional equity was also unattractive because the earnings in the early years

would be insufficient to avoid "dilution"—that is, reducing earnings per share.

9. One perceived solution to this problem was to find outside investors willing to enter into arrangements that would enable ENRON to retain those risks it believed it could manage effectively, and the related rewards. These joint investments typically were structured as separate entities to which ENRON and other investors contributed assets or other consideration. These entities could borrow directly from outside lenders, although in many cases a guaranty or other form of credit support was required from ENRON.

10. ENRON's treatment of these entities for financial statement purposes was subject to accounting rules that determine whether the entity should be consolidated in its entirety (including all of its assets and liabilities) into ENRON's balance sheet.

11. ENRON management preferred "off-balance-sheet" treatment of an entity because it would enable ENRON to present more attractive ratios to Wall Street analysts and rating agencies. ENRON engaged in numerous transactions structured in ways that resulted in off-balance sheet treatment. Some were joint ventures. Others were structured as a vehicle known as a "special purpose entity" or "special purpose vehicle" (referred to as an "SPE" below). Some involved both.

12. SPEs, for example, may be used in synthetic lease transactions, which involve the sale to an SPE of an asset (such as real estate) and lease back of that asset. These lease transactions were used to finance the acquisition of an asset while keeping the corresponding debt off of the acquiring company's balance sheet. SPEs later came to be used in other non-leasing transactions, largely to obtain similar accounting results. The Financial Accounting Standards Board ("FASB") Emerging Issues Task Force ("EITF") issued several

consensus opinions to clarify the relevant principles. By the late 1990s, several generally recognized consolidation principles had been established.

13. To begin, "Where is a presumption that consolidated statements are more meaningful than separate statements and that they are usually necessary for a fair presentation when one of the companies in the group directly or indirectly has a controlling financial interest in the other companies . . . ." FASB, Accounting Research Bulletin No. 51, Consolidated Financial Statements (1959). Ordinarily, the holder of a majority voting interest in an entity is deemed to have a controlling financial interest and should consolidate that entity. FASB, Statement No. 94, Consolidation of All Majority-Owned Subsidiaries (1987). There is also a presumption that the general partner of a limited partnership has a controlling financial interest and should consolidate the entity unless the limited partner(s) has rights thatindicate the general partner does not have control. AICPA, Statement of Position 78-9, Accounting for Investments in Real Estate Ventures (1978). The accounting literature relating to SPEs provide an exception to the consolidation by a majority voting interest holder if certain criteria are met.

14. SPEs (other than Qualified SPEs, which neither JEDI nor CHEWCO are) must be consolidated unless, among other things, the following conditions are met. EITF Issue 90-15 (1991) and Topic D-14 (1990). *First,* an independent owner or owners of the SPE must make a substantive capital investment in the SPE, and that investment must have substantive risks and rewards of ownership during the entire term of the transaction. Where there is only a nominal outside capital investment, or where the initial investment is withdrawn early, then the SPE should be consolidated. The SEC staff has taken the position that three percent (3%) of total capital is the *minimum* acceptable investment, but that the appropriate level for any

particular SPE depends on various facts and circumstances. Distributions reducing the equity below the minimum require the independent owner to make an additional investment. Investments are not at risk if supported by a letter of credit or other form of guaranty on the initial investment or a guaranteed return. *Second,* the sponsor must not exercise control over the SPE.

Formation of CHEWCO

15. In 1993, ENRON created JEDI through a joint venture investment partnership with the California Public Employees' Retirement System ("CALPERS"). ENRON's wholly owned subsidiary, Enron Capital Management L.P. ("ECMLP"), was the general partner of JEDI and contributed $250 million in ENRON stock. ENRON controlled ECMLP through another wholly owned subsidiary, Enron Capital & Trade Resources Corp. ("ECT"). (For purposes of clarity, ENRON will be referred to below as the general partner of JEDI.) CALPERS was the limited partner and contributed $250 million in cash.

16. During the time that CALPERS was JEDI's limited partner, ENRON did not consolidate JEDI into its financial statements.

17. Arthur Andersen audited JEDI from its creation in 1993 through at least 1999. In March 2001, ENRON bought out JEDI's limited partner and consolidated JEDI into its financial statements.

18. In 1997, ENRON wanted to form a $1 billion partnership with CALPERS called "JEDI II." CALPERS would not invest simultaneously in both JEDI and JEDI II. ENRON ultimately reached agreement with CALPERS to redeem its JEDI limited partnership interest for $383 million.

19. In order to maintain JEDI as an unconsolidated entity, ENRON needed to find a new limited partner. Andrew S. Fastow, ENRON's Executive Vice President and Chief Financial Officer initially proposed that he act as the manager of, and an investor in, a new entity called "Chewco Investments"—named after the Star Wars character "Chewbacca."

20. Both ENRON's in-house counsel and its longstanding outside counsel, Vinson & Elkins, subsequently advised Fastow that his participation in Chewco would require (1) disclosure in ENRON's proxy statement, and (2) approval from the Chairman of the Board and CEO under ENRON's code of Conduct of Business Affairs.

21. As a result, Michael Kopper, an ENRON employee who reported to Fastow, was substituted as the proposed manager of CHEWCO. At a minimum, Kopper's role in CHEWCO required approval by the Chairman of the Board and CEO, Kenneth Lay ("Lay"),under ENRON's code of Conduct of Business Affairs.

22. The proposed CHEWCO transaction was presented to the Board's Executive Committee on November 5, 1997, at a meeting held by telephone conference call. Jeff Skilling, ENRON's COO, presented the background of JEDI, and Fastow explained that CHEWCO would purchase CALPERS' interest in JEDI. Fastow falsely described CHEWCOas an SPE not affiliated with either ENRON or CALPERS. Fastow also explained the permanent financing arrangement for CHEWCO, which involved (1) a $250 million subordinated loan to CHEWCO from a bank (ENRON would guarantee the loan); (2) a $132 million advance to CHEWCO from JEDI under a revolving credit agreement; and (3) $11 million in "equity" contributed by CHEWCO. The Committee voted to approve ENRON's guaranty of initial bridge loans and the subsequent subordinated loan. These approvals were briefly reported by the Committee to the Board on December 9, 1997.

23. ENRON's code of Conduct of Business Affairs required Kopper to obtain approval for his participation in CHEWCO from Lay. However, Lay's approval was not obtained. Nor was the Board informed of Kopper's planned role in CHEWCO, even thoughthe minutes disclose Kopper was on the Executive Committee's November 5, 1997, conference call when the CHEWCO loan guaranty was discussed.

24. In order to close the transaction promptly, so that JEDI's debt would remain "off-balance-sheet", Chewco was formed as a Delaware limited liability company ("Chewco L.L.C.") on very short notice, in early November 1997, to buy CALPERS' interest in JEDI from JEDI for $ 383 million.[1] As of November 1997, Kopper had complete authority over Chewco L.L.C. Again, under accounting rules applicable in 1997, Chewco L.L.C. (and, in turn, JEDI) could receive off-balance-sheet treatment only if Chewco L.L.C. had independent third-party investors who contributed and had at risk at least three percent of its initial capital (to be maintained over the life of the SPE); *and* it was independently controlled. If either of these requirements were not met, Chewco L.L.C. would have to be consolidated. This was significant because ENRON believed that if Chewco L.L.C. were to be consolidated, then JEDI would also have to be consolidated. Neither test for non-consolidation was met by Chewco L.L.C.

25. Initially, Chewco L.L.C. financed the purchase of the interest in JEDI with two sets of bridge loans, each totaling $191.5 million, which were one-hundred percent (100%)

[1] JEDI simultaneously redeemed CALPER's interest in JEDI and sold that interest to Chewco, L.L.C.

guaranteed by ENRON. One set of bridge loans was provided by Chase Manhattan Bank ("Chase") and the other by Barclays Bank ("Barclays"). Because Chewco L.L.C.'s investments were completely financed through ENRON-guaranteed bridge loans, Chewco L.L.C. did not have any independent at-risk equity. Therefore, as of November 1997, it did not qualify for off-balance-sheet treatment, and JEDI did not qualify for off-balance-sheet treatment either.

26. ENRON planned to replace the bridge financing before year end with another structure that would qualify Chewco as an SPE with sufficient outside equity. As submitted to the Executive Committee of ENRON's Board of Directors, the bridge financing would be replaced with permanent financing consisting of: a $132 million loan from JEDI; a $250 million loan from a financial institution guaranteed by ENRON; and a three percent equity interest by independent investors.

27. On December 16, 1997, Chewco L.L.C. was converted to CHEWCO L.P. Subsequently, on December 30, 1997, CHEWCO refinanced the bridge loans with a loan of$240 million from Barclays which was guaranteed by ENRON; the $132 million revolving loan from JEDI (the "JEDI Revolver"); and $11.49 million that purportedly represented capital contributions (equity) of partners of CHEWCO. Because $11.49 million equals three percent of CHEWCO's $383 million capital contribution to JEDI, and the interest in JEDI constitutes all of CHEWCO's assets, CHEWCO was required to have and maintain the entire $11.49 million as an independent equity investment at risk in order to qualify for off-balance-sheet treatment.

CHEWCO never had three percent of equity at risk.

28. In reality, CHEWCO never had the required three percent independent at risk equity investment. The three percent independent equity investment in CHEWCO purportedly came from an $11,375,100 investment by its ninety-nine percent (99%) owner and limited partner, Big River L.L.C. and a $114,900 investment by its one percent (1%) owner and general partner, SONR #1 L.L.C., the combined investment of $11.49 million being exactly three percent of CHEWCO's $383 million in initial capital.

29. A substantial portion of this $11.49 million investment in CHEWCO was funded under "Funding Agreements" dated December 30, 1997 with Barclays. Barclays advanced $331,015 to Little River L.L.C., the sole member and manager of Big River L.L.C.The Funding Agreement required a reserve of at least $195,000 to secure that obligation. Barclays also advanced $11,033,847 to Big River L.L.C., CHEWCO's limited partner. That Funding Agreement also required a reserve of at least $6,386,200 to secure the obligation.

30. JEDI itself agreed to and made distributions to CHEWCO to fund these reserve accounts on December 30, 1997. The establishment and funding of these reserve accounts meant that not all of the three percent equity investment was at risk. Therefore, for this and other reasons, CHEWCO failed to qualify for off-balance-sheet treatment.

ENRON controlled JEDI, and through its employee Kopper, CHEWCO.

ENRON controlled CHEWCO through its employee Kopper.

31. Moreover, ENRON controlled CHEWCO through its employee, Kopper, who reported to Fastow.

32. At the time of the November 1997 closing in which Chewco L.L.C. purchased

CALPERS' interest in JEDI, Kopper was the sole ultimate owner of Chewco L.L.C. In December, 1997, Chewco L.L.0 was converted into a limited partnership with SONR #1 asits general partner and Big River L.L.C. as its limited partner. Kopper and William D. Dodson ("Dodson") were the ultimate owners of SONR # 1 and Kopper had full power to takewhatever actions were available to SONR #1 as general partner of CHEWCO. Big River's sole member was Little River L.L.C., a Delaware limited liability company, which was indirectly owned by Kopper until he assigned his interest, or a portion of his interest, to Dodson. Big River could remove SONR #1 as the general partner only for breach of CHEWCO's partnership agreement or other actions causing SONR #1 to become legally liable to CHEWCO.

33. On December 30, 1997 Kopper and Dodson invested $125,128 as equity in CHEWCO ($114,900 in its general partner SONR #1 and $10,238 in its limited partner Big River). But on January 8, 1998, CHEWCO borrowed under the JEDI Revolver, and paid a management fee to SONR #1, in the amount of $141,438. Thus Kopper and Dodson more than recovered their total investment in just one week.

34. Because ENRON controlled CHEWCO through its employee Kopper, ENRON controlled JEDI.

ENRON controlled JEDI under the partnership agreement.

35. Independent of ENRON's control of CHEWCO through Kopper, ENRON controlled JEDI under the partnership agreement. The JEDI partnership agreement was amended and restated as of December 19, 1997. Under the amended agreement, CHEWCOdid not have joint control of JEDI. CHEWCO had no actual or operational control.

CHEWCO's approval was required only with respect to JEDI investments that were not "qualified investments" (defined as all existing investments and follow-on investments thatrelated to existing investments). CHEWCO's consent was also required with respect to certain other technical items such as adjustments to the partners' capital accounts. CHEWCO could remove ENRON as the general partner of JEDI only if ENRON breached a material obligation of the JEDI partnership agreement or engaged in gross negligence, willful misconduct, fraud or criminal activity, i.e., removal rights were only with cause. In addition,JEDI was to be dissolved if the general partner was removed. ENRON was the only party with control over JEDI.

ENRON revenue recognition in 1997 and 1998.

36. Beginning in December 1997, ENRON took steps to recognize revenue arising from the JEDI partnership (in which CHEWCO was ENRON's limited partner) that would not have occurred if CHEWCO had been an unrelated third party. These included, but were notlimited to, fees paid to ENRON by JEDI that had as their principal purpose accelerating ENRON's ability to recognize revenue.

37. These changes in the JEDI partnership agreement in December 1997 and subsequent events that occurred in 1998 also demonstrate ENRON's control of both CHEWCO and JEDI.

38. When CHEWCO was admitted to the partnership, ENRON (1) increased the management fees paid by JEDI to ENRON as the general partner from one-half percent (0.5%) of total invested capital of both partners ($500 million in 1996) to the greater of twoand one-half percent (2.5%) of the amount invested by CHEWCO (which was the $383 million purchase price less the $16.6 million distribution) or $2 million; and (2) changed

thesharing ratios in its favor.

39. ENRON also changed the JEDI partnership agreement at least three times in 1998. First, ENRON changed the management fees back to one-half percent (0.5%) and called the additional two percent (2%) (per year) a "required payment." ENRON took the position that this two percent (2%) was earned and was not contingent upon providing additional services. ENRON recognized a $28 million gain, which represented the discounted net present value of the "required payment" through June 2003, and immediately recognized $25.7 million in income ($28 million net of a reserve).

40. Next, ENRON amended the JEDI partnership agreement to add a Special Limited Partner. The Special Limited Partner was owned by ENRON. It was created to hold the "upside" to ENRON above CHEWCO's cap of an eleven point one-five percent (11.15%)Internal Rate of Return. ENRON used this "upside," sometimes referred to as the "super-promote," along with the change in sharing ratios, to recognize $44.6 million in revenue recorded by ECT in December 1997.

41. Last, in late 1998, ENRON restructured CHEWCO's financing by moving debt from CHEWCO to JEDI. By repaying the unsecured Barclays note, the ENRON's guarantee was canceled. This removed a large contingent liability from ENRON's footnote disclosures. ENRON's repayment of $243 million of CHEWCO's capital increased ENRON's total return. While removing debt from CHEWCO, it reduced CHEWCO's overall return by decreasingthe amount of its capital.

D. Claims for Disciplinary Action

1. TSBPA hereby incorporates paragraphs A.1, B.1-8, C. 1-41.

GAAS, GAAP and Board rules of professional conduct.

2. Generally Accepted Auditing Standards ("GAAS") specify measures of audit quality and the objectives to be achieved in an audit. The standards concern themselves with the auditor's professional qualities and judgments exercised in the audit and preparation of the audit report. GAAS consists of ten standards, which are further defined or interpreted in the Statements on Auditing Standards ("SASs"). SASs are issued by the Auditing Standards Board, the senior technical body of the American Institute of Certified Public Accountants, which during all relevant times described in this complaint was designated to issue pronouncements on auditing matters. SASs are codified and referred to below by "AU"sections. See also Board Rules of Professional Conduct § 501.22 ("Auditing Standards"). Generally accepted accounting principles ("GAAP") is a technical term that encompasses the conventions, rules and procedures necessary to define accepted accounting practices at a particular time. GAAP provides a standard by which to measure financial presentations. *See* also Board Rules of Professional Conduct § 501.23 ("Accounting Principles").

3. The Board may revoke, suspend, refuse to renew, place on probation, or reprimand a license holder, if it finds sufficient cause, as defined by the Public Accountancy Act in effect in 1997. The Board may do so on any of the following grounds: (1) a violation of a rule of professional conduct adopted by the Board, (2) conduct indicating a lack of fitness to serve the public as a professional accountant, or (3) a violation of professional standards or rules adopted by the Board. The Board, in Board Rules of Professional Conduct §§ 501.22, 501.23 and 501.24, has adopted GAAS, GAAP and other professional standards

and rules.[2]

JEDI/CHEWCO and the 1997 and 1998 ECT Audits.

4. The auditors, identified in paragraphs B.2 through 7 above (the "ECT Auditors"), who were partners or employees of Andersen, participated in the audit of the ECT component of ENRON's consolidated financial statements for the year ending December 31, 1997 ("ECT Audit"). ECT is an indirect wholly owned subsidiary of ENRON through which ENRON managed its general partnership interest in JEDI. The ECT Auditors were responsible for auditing those aspects of ENRON's financial statements regarding ETC. As part of the responsibility for auditing ECT, the ECT Auditors were responsible for performing the audit procedures to determine whether CHEWCO and JEDI were required to be consolidated into ENRON's financial statement.

5. The work of the ECT Auditors was a part of and incorporated in the audit of ENRON's 1997 financial statements. Andersen relied on the audit procedures performed by the ECT Auditors when it issued its report on the ENRON 1997 financial statements. ENRON's financial statements for the year ending December 31, 1997 did not consolidate either JEDI or CHEWCO. GAAP required both CHEWCO and JEDI to be consolidated.

6. Andersen issued an unqualified opinion on ENRON's 1997 consolidated financial statements. The auditors report, which was dated February 23, 1998, stated that ENRON's financial statements presented, in all material respects, the financial position of ENRON and its subsidiaries as of December 31, 1997, the results of their operations, changes in partner's capital and cash flows for the year then ended in conformity with generally

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[2] Cities above refer to the 1997 version of the Board's Rules of Professional Conduct. These sections are currently located in 22 Tex. Admin. Code §§ 501.60, 501.61 and 501.62.

accepted accounting principles. The auditors report also stated that they had conducted the audit in accordance with generally accepted auditing standards. Andersen issued a report stating the same conclusions for the ENRON consolidated financial statements for the year ending December 31,1998. The ENRON consolidated financial statements as of December 31, 1997 and as of December 31, 1998 did not comply with GAAP in that JEDI and CHEWCO were required to be consolidated into the financial statements of ENRON.

JEDI/CHEWCO and the 1997 and 1998 JEDI Audit.

7. In addition, Respondents Bass, Schuleman, Brown, Stevenson and Claybrook (the "JEDI Auditors") also audited or participated in the audit of the financial statements of JEDI for the year ending December 31, 1997 (the "1997 JEDI Audit").

8. The engagement letter for the JEDI Audit was signed March 9, 1998. Andersen issued an unqualified opinion on JEDI's 1997 consolidated financial statements on April 30,1998. The auditors' report, which was dated April 29, 1998, stated that the JEDI financial statements presented, in all material respects, the financial position of JEDI and its subsidiaries as of December 31, 1997 and the results of their operations, changes in partner's capital and cash flows for the year then ended in conformity with generally accepted accounting principles. The auditors' report also stated that they had conducted the audit in accordance with generally accepted auditing standards.

9. Andersen issued the 1997 JEDI audit report almost two months after Andersen signed the audit report for ENRON's 1997 financial statements. Andersen also issued a report stating the same conclusions for JEDI's financial statements for the year ending December 31,1998 (the "1998 JEDI Audit").

10. On November 8, 2001, in a Form 8-K filed with the SEC, ENRON announced that, among other restatements, it would consolidate CHEWCO and JEDI into its financial statements retroactive to 1997. The Form 8-K stated that Enron and its auditors had determined from information made available from further review of the related party transactions that these entities should have been consolidated pursuant to GAAP. Thus, ENRON admitted that it and Andersen had determined that the failure to consolidate CHEWCO and JEDI in 1997 through the first quarter of 2001 was an accounting error in violation of GAAP.

Grounds for disciplinary action against individual Respondents.

11. TSBPA hereby incorporates paragraphs A.1, B.1-8, C. 1-41, and D. 1-10 as if fully set out herein.

Thomas Bauer

12. Bauer was the Andersen engagement partner for the ECT audit. Bauer had those responsibilities and obligations set out in the Andersen Audit Objectives and Procedures(the "AOP"), as well as in GAAS and the Board's Rules.

13. Bauer knew that CHEWCO would be structured as an SPE, that an ENRON employee would have an interest in CHEWCO, and that ENRON was considering guaranteeing a loan which would finance a substantial portion of the CHEWCO transaction. He also knew CHEWCO would have to meet two tests in order to qualify for off-balance-sheet treatment: it had to have at least three percent (3%) of its capital at risk and attributable to entities independent of ENRON, and neither ENRON nor a related party of ENRON, suchas an employee, could control CHEWCO.

14. Bauer performed certain procedures he characterized as audit procedures regarding the CHEWCO transaction, including reviewing documents relating to the CHEWCO transaction.

15. The appropriate audit steps, properly performed by Bauer or under his direction and/or review, would have revealed that CHEWCO did not have the required three percent (3%) independent equity exclusive of employee involvement. They would also have revealed that Kopper controlled CHEWCO's general partner, and that, consequently, ENRON controlled CHEWCO through its employee Kopper. Those audit steps would also have revealed that ENRON controlled JEDI because CHEWCO did not have joint control over JEDI. Bauer failed to conduct the appropriate audit procedures to test management's assertion that JEDI qualified for off-balance-sheet treatment. He should have obtained, or made sure those under his direction obtained, sufficient evidential matter, and applied auditing procedures to form a conclusion concerning the validity of management's assertions about the structure and financing of the CHEWCO transaction.

16. Moreover, the ECT Auditors relied on the ENRON engagement team for the assessment of audit risks. The ENRON engagement team had identified audit risk factors relating to related party transactions, form over substance transactions, and highly risky or speculative transactions. Other fraud risk factors identified ENRON management's use of unusually aggressive accounting practices and significant compensation contingent upon achieving unduly aggressive targets for financial results. Such heightened risk factors as those identified by the ENRON engagement team required the ECT Auditors to conduct additional audit procedures. Despite these risk factors, Bauer failed to respond by applying appropriate auditing procedures to the CHEWCO transaction. Bauer, through the exercise

ofheightened professional skepticism, should have enhanced the audit procedures. The enhanced audit procedures should have resulted in more reliable evidential matter and corroboration of management's explanations or representations.

17. As a result of actions and/or omissions described in paragraphs D. 11-16, Bauer violated AU 316 (Consideration of Fraud in a Financial Statement Audit), AU 334 (Related Parties), AU 326 (Evidential Matter), AU 311 (Planning and Supervision), AU 410/411 (Adherence to Generally Accepted Accounting Principles/The Meaning of Present Fairly in Conformity with Generally Accepted Accounting Principles in the Independent Auditor's Report), AU 431 (Adequacy of Disclosure in Financial Statements) and AU 230 (Due Professional Care in the Performance of Work).[3]

18. Bauer reviewed the JEDI Revolver (the revolving loan agreement between JEDI and CHEWCO). In doing so, Bauer should have been concerned about the three percent (3%) independent equity requirement, as Section 7.02 of the JEDI Revolver shows that CHEWCO'stotal capital contributions were $11.49 million, or exactly three percent (3%) of the $383 million initially invested by CHEWCO in JEDI. This meant that there was no allowance forthe investment by Kopper, a member of ENRON's management. Bauer knew an ENRON employee, Kopper, would have an interest in CHEWCO. Thus, he knew or should have known that these facts indicated that management's assertions regarding compliance with the requirement of three (3%) independent equity exclusive of employee involvement were untrue.

[3] The title of each AU is provided the first time it is cited. A complete list of the Aus cited in this Complaint is provided in the Attached Appendix A.

19. Bauer also should have been concerned that the ENRON Executive Committee was told that CHEWCO was unaffiliated with ENRON, and was not told of Kopper's ownership interest in CHEWCO. Bauer reviewed the minutes of the Executive Committee meeting where the CHEWCO transaction was discussed. Bauer also knew or should have known that, at a minimum under the ENRON code of Conduct of Business Affairs, an employee could have an ownership interest in CHEWCO only if such interest had been disclosed to and waived by the Chairman of the Board and CEO Kenneth Lay. Bauer should have evaluated whether the transaction required specific approval of Kopper's role in CHEWCO from the board of directors and/or the Chairman/CEO. Bauer should also have considered this apparent breakdown in ENRON's internal controls and how it would affect his audit approach and procedures.

20. As a result of actions and/or omissions described in paragraphs D. 18-19, Bauer violated AU 316, AU 334, AU 230 and AU 319/325 (Consideration of Internal Control in a Financial Statement Audit/Communication of Internal Control Related Matters Noted in an Audit).

21. Bauer failed to document, or cause the documentation of, the audit issues or the audit steps performed in the workpapers. The ECT Audit workpapers do not include any documentation relating to audit steps to determine whether the non-consolidation of CHEWCO was appropriate. Accordingly, Bauer violated AU 339 (Working Papers) and AU230.

22. Bauer should also have addressed whether various features of the new partnership agreement for JEDI, after the admission of CHEWCO as a limited partner, indicated that ENRON, as the general partner, controlled JEDI and CHEWCO. Because

GAAP presumes that a general partner controls a partnership, Bauer should have reviewedthe partnership agreement and evaluated the rights of CHEWCO, in order to determine whether ENRON controlled JEDI.

23. Moreover, when it admitted CHEWCO as a limited partner in JEDI, ENRON changed the provisions of the partnership agreement in ways that steered additional economic benefits to ENRON. Bauer should have addressed whether these changes demonstrated ENRON's control of JEDI and through Kopper, CHEWCO.

24. Bauer should not have relied on ENRON's management representation letter when he knew that ENRON failed to disclose Kopper's interest in CHEWCO in its financial statements, and that ENRON management had misrepresented Kopper's role to the Executive Committee. Bauer knew or should have known that Kopper's ownership of an interest in CHEWCO was a related party transaction that would require disclosure. Bauer also should not have relied on the ENRON management representation letter when he knew that ENRON had failed to provide all the records and documents relating to the CHEWCO transaction.

25. As a result of the actions and/or omissions described in paragraphs D. 22-24, Bauer violated AU 230, AU 334, AU 316 and AU 311.

26. Bauer should have insisted he or his delegate be allowed to review the CHEWCO documents, and considered how he would address the apparent scope limitation on his audit procedures when he was refused access. Bauer failed to be professionally skeptical when told that ENRON did not have access to CHEWCO's documents. Having reviewed the JEDI Revolver and the partnership agreement, Bauer should have understood that those documents granted ENRON and JEDI access to CHEWCO's books and records.

Bauer should have considered whether a disclaimer of opinion was called for due to the inability to obtain sufficient competent evidential matter regarding the CHEWCO transaction. Accordingly, Bauer violated AU 316, AU 230 and AU 508/410 (Reports on Audited Financial Statements/Adherence to Generally Accepted Accounting Principles).

27. Bauer failed to take exception to ECT's recording of the $44.6 million in earnings from the "super-promote" and change in sharing ratios in December 1997 and should have considered the resulting implications to the non-consolidation of JEDI and CHEWCO as well as ECT's internal controls. *(See* paragraph C. 40 above for a discussion of the "super-promote" and change in sharing rations.) Accordingly, Bauer violated AU 312 (Audit Risk and Materiality in Conducting an Audit) , AU 316, AU 319/325, AU 334, AU 311, AU 339,AU 230 and AU 410/411.

28. Bauer was also the engagement partner for the 1998 ECT Audit. Bauer had those responsibilities and obligations set out in the AOP, in GAAS and in the Board's Rulesfor that audit as well.

29. Bauer failed to take exception to and/or adequately consider ECT's recording of the $25.7 million in earnings in the first quarter of 1998 and he failed to respond to the implications of re-characterizing these earnings as a "required fee." Bauer knew or should have known that the management fees were a related party transaction and should be evaluated with respect to form over substance issues; that ENRON's explanations regarding the fees were not sufficient; and that ECT's accounting treatment for the management fee was incorrect. Accordingly, Bauer violated AU 312, AU 316, AU 319/325, AU 334, AU 311, AU339, AU 230 and AU 410/411.

30. Bauer failed to take exception to ENRON's non-consolidation of JEDI and CHEWCO in 1998 and failed to reconsider non-consolidation in 1997 as well as the recording of the "super-promote" in 1997. During 1998, the JEDI partnership agreement was amended three times. In March, the management fee provision was changed to re-characterize a portion of the management fee as a "required payment." ECT recorded $25.7 million in earnings in the first quarter of 1998 as a result of this change. In June 1998, the JEDI partnership agreement was amended to admit the Special Limited Partner ("SLP") because Andersen believed it necessary to recognize the "super-promote" income. But this change in the partnership agreement did not occur until six months after the income from the "super-promote" was recognized. The partnership agreement was amended again in December 1998 when JEDI was restructured. The December 1998 amendment reduced the management fees due to ENRON for 1998 but increased the management fees in future years. It also allowed for a special distribution to CHEWCO of $243 million, which was used to pay off CHEWCO subordinated loan from Barclays Bank. Bauer failed to consider the implication of these amendments. Bauer knew or should have know that these 1998 amendments demonstrated that ENRON controlled JEDI and, through Kopper, CHEWCO. Accordingly, Bauer violated AU 312, AU 316, AU 319/325, AU 334, AU 311, AU 339, AU 230 and AU 410/411.

Patricia Grutzmacher

31. Grutzmacher was an engagement manager for the 1997 ECT Audit. Grutzmacher had those responsibilities and obligations set out in the AOP, in GAAS and in the Board's Rules. TSBPA incorporates paragraphs D.11-30 as if fully set out herein. In addition, TSBPA shows the following.

32. Grutzmacher performed certain procedures regarding whether CHEWCO qualified for off-balance-sheet treatment. The appropriate audit steps, properly performed, would have revealed that CHEWCO did not have the required three (3%) independent equity exclusive of employee involvement. They would also have revealed that Kopper controlled CHEWCO's general partner, and that, consequently, ENRON controlled CHEWCO through its employee Kopper. Those audit steps would also have revealed that ENRON controlled JEDI because CHEWCO did not have joint control over JEDI.

33. Moreover, the ECT Auditors relied on the ENRON engagement team for the assessment of audit risks. The ENRON engagement team had identified audit risk factors relating to related party transactions, form over substance transactions, and highly risky or speculative transactions. Other fraud risk factors identified ENRON management's use of unusually aggressive accounting practices and significant compensation contingent upon achieving unduly aggressive targets for financial results. Such heightened risk factors as those identified by the ENRON engagement team required the ECT Auditors to conduct additional audit procedures. Despite these risk factors, Grutzmacher failed to respond by applying appropriate auditing procedures to the CHEWCO transaction. Grutzmacher, through the exercise of heightened professional skepticism, should have enhanced the audit procedures. The enhanced audit procedures should have resulted in more reliable evidential matter and corroboration of management's explanations or representations.

34. As a result of acts and/or omissions described in paragraphs D. 31-33, Grutzmacher violated AU 316, AU 334, AU 326, AU 311, AU 230, AU 410/41 land 431.

35. Grutzmacher also should have been concerned that the Executive Committee was told that CHEWCO was unaffiliated with ENRON, and was not told of Kopper's

ownership interest in CHEWCO. Grutzmacher knew or should have known that, at a minimum under the ENRON code of Conduct of Business Affairs, an employee could have an ownership interest in CHEWCO only if such interest had been disclosed to and waived by the Chairman of the Board and CEO Kenneth Lay. Grutzmacher should have evaluated whether the transaction required specific approval of Kopper's role in CHEWCO from the board of directors and/or the Chairman/CEO. Grutzmacher should also have considered this apparent breakdown in ENRON's internal controls and how they would affect the audit approach and procedures. Accordingly, Grutzmacher violated AU 316, AU 334, AU 230, AU319 and AU 325.

36. Grutzmacher failed to document the audit issues or the audit steps performed in the workpapers. The ECT Audit workpapers do not include any documentation relating to audit steps to determine whether the non-consolidation of CHEWCO was appropriate. Accordingly, Grutzmacher violated AU 339 and AU 230.

37. Grutzmacher should have addressed whether various features of the new partnership agreement for JEDI, after the admission of CHEWCO as a limited partner, indicated that ENRON, as the general partner, controlled JEDI and CHEWCO. Because GAAP presumes that a general partner controls a limited partnership, she should have reviewed the partnership agreement and evaluated the rights of CHEWCO, in order to determine whether ENRON controlled JEDI.

38. Moreover, when it admitted CHEWCO as a limited partner in JEDI, ENRON changed the provisions of the partnership agreement in ways that steered additional economic benefits to ENRON. Grutzmacher should have addressed whether these changes demonstrated ENRON's control of JEDI and through Kopper, CHEWCO.

39. As a result of actions and/or omissions described in paragraphs D. 37-38, Grutzmacher violated AU 230, AU 334, AU 316 and AU 311.

40. Grutzmacher should not have relied on the ENRON's management representation letter, when she knew that ENRON failed to disclose Kopper's interest in CHEWCO in its financial statements, and when she knew or should have known that ENRON management misrepresented Kopper's role to the Executive Committee. Grutzmacher knew or should have known that Kopper's ownership of an interest in CHEWCO was a related party transaction that would require disclosure. Grutzmacher also should not have relied on the ENRON management representation letter when she knew ENRON had failed to provide all the records and documents relating to the CHEWCO transaction.

41. Grutzmacher should have insisted she be allowed to review the CHEWCO documents, and considered how she would address the apparent scope limitation on her audit procedures when she or a member of her team was refused access. She failed to be professionally skeptical when told that ENRON did not have access to CHEWCO's transaction documents. Grutzmacher knew or should have known that the JEDI Revolver and partnership agreement granted ENRON and JEDI access to CHEWCO's books and records. Grutzmacher should have considered whether a disclaimer of opinion was called for due tothe inability to obtain sufficient competent evidential matter regarding the CHEWCO transaction.

42. As a result of actions and/or omissions described in paragraphs D. 40-41, Grutzmacher violated AU 316, AU 230, AU 334 and AU 508/410.

43. Grutzmacher failed to take exception to ECT's recording of the $44.6 million in earnings from the "super-promote" and change in sharing ratios in December 1997 and should have considered the resulting implications to the non-consolidation of JEDI and CHEWCO as well as ECT's internal controls. Accordingly, Grutzmacher violated AU 312,AU 316, AU 319/325, AU 334, AU 311, AU 339 and AU 230.

44. Grutzmacher was also an engagement manager for the 1998 ECT Audit. She had those responsibilities and obligations set out in the AOP, in GAAS and in the Board's Rules.

45. Grutzmacher failed to take exception to ECT's recording of the $25.7 million in earnings in the first quarter of 1998 and she failed to respond to the implications of re-characterizing these earnings as a "required fee." Grutzmacher knew or should have known that the management fees were a related party transaction and should be evaluated in respect to form over substance issues; that ENRON's explanations regarding the fees were not sufficient; and that ECT's accounting treatment for the management fee was incorrect. Accordingly, Grutzmacher violated AU 312, AU 316, AU 319/325, AU 334, AU 311, AU 339and AU 230.

46. Grutzmacher failed to take exception to ENRON's non-consolidation of JEDI and CHEWCO in 1998 and reconsider non-consolidation of both in 1997 as well as the recording of the "super-promote" in 1997. During 1998, the JEDI partnership agreement was amended three times. In March, the management fee provision was changed to re-characterize a portion of the management fee as a "required payment." ECT recorded $25.7million in earnings in the first quarter of 1998 as a result of this change. In June 1998, the JEDI partnership agreement was amended to admit the SLP because Andersen believed

it necessary to recognize the "super-promote" income. But this change in the partnership agreement did not occur until six months after the income from the "super-promote" was recognized. The partnership agreement was amended again in December 1998 when JEDIwas restructured. The December 1998 amendment reduced the management fees due to Enron for 1998 but increased the management fees in future years. It also allowed for a special distribution to CHEWCO of $243 million, which was used to pay off CHEWCO's subordinated loan from Barclays Bank. Grutzmacher failed to consider the implication of these amendments. She knew or should have know that these 1998 amendments demonstrated that ENRON controlled JEDI and, through Kopper, CHEWCO. Accordingly, Grutzmacher violated AU 312, AU 316, AU 319/325, AU 334, AU 311, AU 339 and AU 230.

47. Grutzmacher was also an engagement manager for the 1998 JEDI Audit. Grutzmacher had those responsibilities and obligations set out in the AOP, in GAAS and in the Board's Rules. Grutzmacher failed to adequately perform, or cause the performance of, auditing procedures regarding the changes to the JEDI partnership agreement in 1998, including the management fees, the admission of the SLP, and the restructuring of JEDI. She knew or should have known that these 1998 changes demonstrated that ENRON controlled JEDI and, through Kopper, CHEWCO. Accordingly Grutzmacher violated AU 230, AU 311,AU 316 and AU 334.

Andrew Schuleman

48. TSBPA incorporates paragraphs A.1, B.1-8, C. 1-41, and D. 1-47 as if expressly set out herein.

49. Schuleman was an engagement senior for the 1998 ECT Audit, and he also

worked on the 1997 JEDI Audit. Schuleman had those responsibilities and obligations set outin the AOP, in GAAS and in the Board's Rules.

50. Schuleman failed to consider the implications of his knowledge of the changes to the JEDI management fees on the disclosures in the 1997 JEDI financial statements. Accordingly, Schuleman violated AU 230, AU 316 and AU 334.

51. Schuleman was also an engagement manager for the 1998 JEDI Audit. Schuleman had those responsibilities and obligations set out in the AOP, in GAAS and in the Board's Rules.

52. Schuleman failed to adequately perform, or cause the performance of, auditing procedures regarding the changes to the JEDI partnership agreement in 1998, including the re-characterization of management fees, the admission of the SLP, and the restructuring of JEDI. He knew or should have known that these 1998 changes demonstrated that ENRON controlled JEDI and, through Kopper, CHEWCO. As a result Schuleman violated AU 316,AU 334, AU 311 and AU 230.

53. Schuleman was also a senior on the 1998 ECT Audit and in September 1998 he became a manager on that Audit. Schuleman had those responsibilities and obligations set out in the AOP, in GAAS and in the Board's Rules.

54. Schuleman failed to take exception to ECT's recording of the $25.7 million in earnings in the first quarter of 1998 and he failed to respond to the implications of re-characterizing these earnings as a "required fee." Accordingly, Schuleman violated AU 230,AU 311, AU 312, AU 316, AU 334, 319/325 and AU 339.

55. Schuleman also failed to take exception to ENRON's non-consolidation of JEDI and CHEWCO in 1998, and reconsider non-consolidation of both in 1997 as well as

the recording of the super promote in 1997. Accordingly, Schuleman violated AU 230, AU 311,AU 316, AU 334, 319/325 and AU 339.

Carl Bass

56. TSBPA incorporates paragraphs A.1, B.1-8, C. 1-41, and D. 1-55 as if expressly set out herein. In addition, TSBPA shows the following.

57. Bass was the engagement partner for the 1997 and 1998 JEDI Audit. Bass had those responsibilities and obligations set out in the AOP, in GAAS and in the Board's Rules.

58. Bass failed to adequately perform, or cause the performance of, auditing procedures regarding the buyout of CALPERS' interest in JEDI and CHEWCO's purchase of an equity interest. These were related party transactions that Bass and his engagement team needed to fully understand. Further, because Bass knew or should have known that CHEWCO was an SPE sponsored by ENRON and that ENRON's management was involved in CHEWCO, he should have known that JEDI's financial statements needed to fully disclose the nature of any related party relationships, including whether a member of ENRON's management controlled CHEWCO.

59. Moreover, the JEDI Auditors had identified audit risk factors specific to JEDI relating to form over substance transactions and highly risky or speculative transactions, such as year-end transactions. Other fraud risk factors relating to management's motivation and opportunities were identified in the ENRON engagement team's Fraud Risk Practice Aid, on which the JEDI engagement team relied. Bass failed to respond to these risks as they related to CHEWCO's purchase of an ownership in JEDI.

60. Bass knew or should have known that Kopper was involved in the management of Chewco. Because Kopper was an employee of Enron, his involvement

indicated a related party relationship that needed to be fully understood by the audit team and disclosed by JEDI.

61. Bass knew or should have known that the work performed by the ECT Auditors and the JEDI Auditors was insufficient to develop an understanding of the CHEWCO transactions. Bass should have assessed whether audit steps had been omitted in connection with the ECT Audit or whether there had been a subsequent discovery of facts existing at the date of the ECT Audit clearance and the ENRON audit report.

62. Bass failed to obtain sufficient competent evidential matter to understand the substance of the relationships between CHEWCO, ENRON and JEDI.

63. As a result of the actions and/or omissions described in paragraphs D.56-62, Bass violated AU 230, AU 311, AU 316, AU 326, AU 334, AU 410/411, AU 431 and AU 390/561 (Consideration of Omitted Procedures After the Report Date/Subsequent Discovery of Facts Existing at the Date of the Auditor's Report).

64. Bass should have taken exception to the manner in which JEDI accounted for the JEDI Revolver in which JEDI refinanced the purchase of CHEWCO's equity interest in JEDI. The incorrect assessment of the proper treatment of JEDI's loan to CHEWCO resulted in a material misstatement, as JEDI reported the loan as an asset instead of as contra-equity.

65. Further, because the JEDI Revolver involved a related party, the risk factors the engagement team had identified relating to form over substance transactions were present. Also, since the purpose of the JEDI Revolver was to finance CHEWCO, an SPE sponsored by ENRON and with ENRON management (Kopper) as an investor, factors indicating highly risky transactions were present. Bass failed to respond to these risk factors, as well as other fraud risk factors raised by the ENRON engagement team, in

performing, or causing the performance of, audit procedures with respect to the related party loan to CHEWCO.

66. As a result of the actions and/or omissions described in paragraphs D. 64-65,Bass violated AU 230, AU 311, AU 316, AU 326, AU 334, AU 410/411 and AU 431.

67. Bass should have instructed his staff to examine the changes in the amended JEDI partnership agreement and compare them to the original agreement with CALPERS and assess the accounting and disclosure implications, including related party issues, of any differences (e.g., the changes in the sharing ratios of the partners and the management fees paid to ENRON)—particularly, as they related to ENRON's control of JEDI, and through Kopper, CHEWCO. Accordingly, Bass violated AU 230, AU 311, AU 316 and AU 334.

68. Bass should have required a full explanation from Bauer of the audit steps done regarding CHEWCO during the ECT audit and raised any issues (with proper documentation) with the accounting for the transaction with Bauer. Accordingly, Bass violated AU 230, AU326, AU 316 and AU 334.

69. Bass delegated, or permitted delegation of, significant portions of the audit planning to junior staff and failed to advise them regarding the CHEWCO transaction and the implications to the JEDI audit. Accordingly, Bass violated AU 230, AU 311and AU 316.

70. Bass should have required the engagement team to apply audit procedures to determine compliance with the terms of the JEDI Revolver agreement. He should have investigated the distributions to CHEWCO as related party transactions and discovered that they violated the JEDI Revolver agreement. Finally, he should have recognized that the distributions to CHEWCO caused CHEWCO to fail the three-percent test for off-balance sheet treatment and that this failure required the consolidation of both CHEWCO and

JEDIby ENRON. Accordingly, Bass violated AU 230, AU 311, AU 316 and AU 334.

71. Bass failed to adequately document, or cause the documentation of, the audit steps done in connection with the purchase of an equity interest in JEDI by CHEWCO. Accordingly, Bass violated AU 339 and AU 230.

72. Bass should have informed the ENRON engagement team of information concerning CHEWCO that came to the attention of the JEDI Auditors in connection with the 1997 JEDI audit, such as the fact that Chewco L.L.C. would not qualify for off-balance-sheet treatment because its initial capital contribution was entirely financed by outside banks; that distributions had been made to CHEWCO at the same time CHEWCO's capital contributions were refinanced and "independent" capital was contributed; that JEDI had made payments tothird parties for expenses related to the formation of CHEWCO, thus reducing CHEWCO's net new investment in JEDI; and that CHEWCO appeared to be controlled by Kopper, an ENRON employee. Bass had been a co-engagement partner on the 1997 ECT audit and his engagement responsibilities had included responding to complex issues. Bass should have known that the items above were significant facts that needed to be considered in the evaluation of whether CHEWCO met the qualifications for off-balance-sheet treatment. Accordingly, Bass violated AU 316 and AU 230.

73. Bass failed to adequately perform, or cause the performance of, auditing procedures regarding the changes to the JEDI partnership agreement in 1998, including the changes regarding management fees, the admission of the SLP, and the restructuring of JEDI.Accordingly, Bass violated AU 230, AU 311, AU 316 and AU 334.

74. Bass was also the co-engagement partner for the 1998 ECT Audit. Bass had those responsibilities and obligations set out in the Andersen AOP, in GAAS and in the

Board's Rules.

75. Bass should have considered that the changes in the JEDI partnership in 1998, including the changes regarding the management fees and the admission of the SLP, were indicative of ENRON's controlling JEDI and CHEWCO and needed to be addressed in connection with the audit of ETC. Accordingly, Bass violated AU 230, AU 311, AU 316, AU334 and 390/561.

James Brown

76. TSBPA incorporates paragraphs A.1, B. 1-8, C. 1-41, and D. 1-75 as if expressly set out herein.

77. Brown was the engagement manager for the 1997 JEDI Audit. Brown had those responsibilities and obligations set out in the AOP, in GAAS and in the Board's Rules and standards.

78. Brown failed to adequately perform, or cause the performance of, audit procedures regarding the buyout of CALPERS' interest in JEDI and CHEWCO's purchase of an equity interest. These were related party transactions that Brown and the engagement team needed to fully understand. Further, because Brown knew or should have known that CHEWCO was an SPE sponsored by ENRON and that ENRON's management was involved in CHEWCO, he should have known that JEDI's financial statements needed to fully disclose the nature of any related party relationships, including whether a member of ENRON's management controlled CHEWCO.

79. Further, the JEDI Auditors had identified certain audit risk factors and were relying on the ENRON engagement team's Fraud Risk Practice Aid. Brown knew or should have known that because CHEWCO was an SPE sponsored by ENRON and ENRON's

management was involved, this indicated a significant form over substance risk. Also, he knew or should have known that the timing of these transactions at years' end, as well as the presence of identified fraud risk factors relating to the use of "highly aggressive accounting policies" and "decentralized corporate decision-making," all had bearing on the adequacy ofthe team's audit procedures.

80. As a result of the actions and/or omissions described in paragraphs D. 76-79, Brown violated AU 230, AU 311, AU 316, AU 326 and AU 334.

81. Brown should have taken exception to the manner in which JEDI accounted for the loan to CHEWCO to refinance the purchase of CHEWCO's equity interest in JEDI. He knew or should have known that the primary purpose of the revolving loan to CHEWCO was to finance its purchase of an ownership interest in JEDI and that GAAP would require it to be reported as a deduction to stockholders' equity (contra-equity) and not an asset. Accordingly, Brown violated AU 230, AU 311, AU 316, AU 326 and AU 334.

82. Brown should have instructed his staff to examine the changes in the amended JEDI partnership agreement and compare them to the original agreement with CALPERS and assess the accounting and disclosure implications of any differences (e.g. the changes in the sharing ratios of the partners and the management fees paid to ENRON) – particularly, as they related to ENRON's control of JEDI, and through Kopper, CHEWCO. Accordingly, Brown violated AU 230, AU 311, AU 316 and AU 334.

83. Brown should have required a full explanation from Bass or Bauer or both of the audit steps done regarding CHEWCO during the ECT Audit and raised any issues (with proper documentation) with the accounting for the transaction with the ECT engagement partners. Brown knew or should have known that the work performed by the

ECT Auditors and the JEDI Auditors was insufficient to develop an understanding of the CHEWCO transactions. Accordingly, Brown violated AU 230, AU 316, AU 326 and AU 334.

84. Brown delegated, or permitted the delegation of, significant portions of the audit planning to junior staff and failed to advise them regarding the CHEWCO transaction and the implications to the JEDI audit. Accordingly, Brown violated AU 230, AU 311 and AU 316.

85. Brown should have assured the application of appropriate audit procedures to determine compliance with the terms of the JEDI Revolver agreement. He should have investigated the distributions to CHEWCO as related party transactions and discovered that they violated the JEDI Revolver agreement. Finally, he should have recognized that the distributions to CHEWCO caused CHEWCO to fail the three-percent test for off-balance - sheet treatment and that this failure required the consolidation of both CHEWCO and JEDIby ENRON. Accordingly, Brown violated AU 230, AU 311 and AU 316 and AU 334.

86. Brown failed to adequately document, or cause the documentation of, the audit steps done in connection with the purchase of an equity interest in JEDI by CHEWCO. Accordingly, Brown violated AU 339 and AU 230.

87. Brown knew or should have known that ENRON had failed to provide all the records and documents relating to the CHEWCO transaction. Brown should have considered how he would address the apparent scope limitation on his audit approach and/or audit procedures in the JEDI Audit when he and/or members of his team were refused access to documents relating to the CHEWCO transaction. Accordingly, Brown violated AU 316, AU230 and AU 508/410.

88. Brown was also an engagement manager for the 1997 and 1998 ECT Audits. He had those responsibilities and obligations set out in the Andersen AOP, in GAAS and inthe Board's Rules.

89. Brown failed to recognize that the recording of $54.6 million in earnings relating to CHEWCO and labeled as "Chewbaca" by ECT was a related party transaction and that it would be important to the JEDI engagement to understand the nature of both the relationship and the transactions. Accordingly, Brown violated AU 316, AU 334, AU 326,AU 311 and AU 230.

90. Brown should have informed the ECT engagement team of information concerning CHEWCO that came to the attention of the JEDI Auditors in connection with the1997 JEDI audit. Accordingly, Brown violated AU 316 and AU 230.

91. Brown should have considered how he would address the apparent scope limitation on his audit approach and/or audit procedures in the ECT Audit when he and/or members of his team were refused access to documents relating to the CHEWCO transaction. Accordingly, Brown violated AU 316, AU 230 and AU 508/410.

92. Brown should have assessed whether audit steps had been omitted in connection with the audit of ECT or whether there had been a subsequent discovery of facts existing at the date of the ECT audit clearance and the Enron audit report. Accordingly, Brown violated AU 230, AU 316 and AU 390/561.

93. Brown failed to recognize that the recording of $54.6 million in earnings relating to "Chewbaca" by ECT was a related party transaction. Accordingly, Brown violated AU 230, AU 311, AU 316, AU326andAU334.

94. Brown failed to recognize that the recording of $25.7 million of management fee revenue by ECT in 1998 was a related party transaction. Accordingly, Brown violated AU230, AU 311, AU 316, AU326 and AU334.

Jennifer Stevenson

95. TSBPA incorporates paragraphs A.1, B. 1-8, C. 1-41, and D. 1-94 as if expressly set out herein.

96. Stevenson was the engagement senior for the 1997 JEDI Audit. Stevenson had those responsibilities and obligations set out in the AOP, in GAAS and in the Board's Rules.

97. Stevenson failed to identify and/or understand related parties and/or related party transactions. She knew or should have known that the work performed by the ECT Auditors and the JEDI Auditors was insufficient to develop an understanding of the CHEWCO transactions. Accordingly, she violated AU 230, AU 311, AU 316, AU 326 and AU 334.

98. Stevenson failed to properly supervise Claybrook in the preparation of the related party analysis. Accordingly, she violated AU 230, AU 311, AU 316, AU 326 and AU334.

99. Stevenson failed to adequately perform auditing procedures regarding deferred charges relating to CHEWCO and failed to adequately perform auditing procedures with regard to distributions to CHEWCO. Accordingly, she violated AU 230, AU 316, AU 326 and AU 334.

100. Stevenson was an engagement senior for the 1997 ECT Audit. Stevenson had those responsibilities and obligations set out in the AOP, in GAAS and in the Board's Rules.

101. Stevenson failed to consider the implications of the undisclosed related party disbursements to the ECT Audit (both the distributions on December 30, 1997 and the payments on behalf of CHEWCO and its owners recorded by JEDI as deferred charges). She should have investigated the distributions to CHEWCO as related party transactions. Accordingly, she violated AU 230, AU 334 and AU 316.

Derek Claybrook

102. Claybrook was not yet a licensed CPA when he performed work for the 1997 JEDI Audit. Claybrook performed work on the 1997 JEDI Audit as experienced staff. He also performed work on the 1998 JEDI Audit. On information and belief, he held the position of "senior" when he performed work on the 1998 JEDI Audit. Claybrook also performed work on the ECT portion of the Enron audit.

103. Claybrook indicated that he performed work that he did not in fact do. Alternatively, he indicated work had been performed without obtaining confirmation from others that this representation was correct.

104. Claybrook was assigned to analyze JEDI related-party transactions, as directed by his supervisors and Andersen's audit procedures. Claybrook knew or should have known that these procedures were the minimum required procedures to comply with GAAS. Yet Claybrook did not follow or comply with these procedures.

105. Despite the fact that Claybrook had identified related-party transactions and was aware of or should have been aware of undisclosed related-party transactions implicating CHEWCO, Claybrook did not carry out the necessary audit procedures and did not make the necessary disclosures. Alternatively, he failed to ensure necessary tasks had been completed by others, despite representations to the contrary.

106. Despite representations Claybrook made in the workpapers, he did not in fact perform or complete work mandated Andersen's audit procedures and GAAS, and/or he failed to ensure those tasks had been completed by others.

107. Claybrook knew or should have known that Kopper was an Enron employee, who was involved in, managed and/or controlled CHEWCO. Claybrook knew or should have known that related-party transactions must be disclosed because they are often not at "arms-length" and raise significant form-over-substance issues. Claybrook knew or should have known that an Enron employee's involvement, management and/or control of CHEWCO raised serious issues and necessitated additional audit procedures. The risk that Enron controlled CHEWCO through its employee Kopper and thus controlled JEDI should have been apparent to Claybrook, yet he did not perform audit procedures in response to that knowledge, and did not follow up with his supervisors regarding the issues and risks arising from Kopper's involvement. Claybrook knew CHEWCO was a related party, but concluded it was sufficient to simply identify CHEWCO without identifying Kopper.

108. Claybrook knew or should have known that important JEDI/CHEWCO related-party transactions had not been tested, even though Andersen's audit procedures mandate that auditors test known related-party transactions. He also knew or should have known that JEDI/CHEWCO related-party transactions had not been described or disclosed. Finally, Claybrook himself failed to obtain a sufficient understanding of these transactions.

109. In failing to perform work he represented he had performed, or alternatively in failing to ensure that work had been performed that he indicated had been performed, Claybrook engaged in conduct indicating a lack of fitness to serve the public as a professional accountant.

E. Violations of the Act and Board Rules

In addition to the allegations and violations set out above, Respondents' actions and omissions constitute violations of Board Rules 501.21, 501.22 and 501.23 (1997 version),[4] as well as violations of the Act, subsections 21(c)(2)(4)(11) and section 21A, Texas Revised Civil Statutes art. 41 a-1 (Vernon Supp. 1997).[5]

VI.

Pursuant to section 901.501(a)(9) of the Act, the Board has the authority to impose direct administrative costs related to disciplinary actions. The Texas Attorney General and Board Staff will present evidence of reasonable attorney's fees, expert witness fees, and other administrative costs associated with this matter at the time of hearing. The Board reserves the right to amend this statement of administrative costs at any time.

VII.

Pursuant to section 21D of the 1997 Act and section 519.8 of the Board's Rules, the undersigned makes an express request that each Respondent be fined an administrative penalty in the amount of $1,000.00 for each violation of the Act or the Board's Rules attributable to that individual. This administrative penalty is assessed at $1000 for each violation of the Board's Rules or the Act as set out in Part V.

Pursuant to section 21D(b) the 1997 Act, the amount of the administrative penalty reflects a determination by the Board of the seriousness of each Respondent's violations as

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[4] The Board Rules cited above are currently codified at sections 501.06, 501.61, 501.62 and 501.74 of Title 22 of the Texas Administrative Code.

[5] The sections cited to above are currently found at subsections 901.502(2)(6) and (11) of Chapter 901 of the Texas Occupations Code.

well as consideration of all other required factors under the Act. This Complaint represents the Board's preliminary report of this determination under section 901.553 of the Act and section 519.8 of the Board's Rules. In support of the above request, the undersigned has based this conclusion on the facts pleaded in this Complaint.

Pursuant to section 901.553 of the Act, each Respondent has a right to a hearing related to the violations listed above and the amount of penalty sought by the Board. **RESPONDENT MUST REQUEST SUCH A HEARING NO MORE THAN TWENTY DAYS AFTER RECEIPT OF THIS NOTICE OR RESPONDENT'S RIGHT TO A HEARING WILL BE WAIVED.**

VIII.

IF YOU DO NOT FILE A WRITTEN ANSWER TO THIS COMPLAINT WITH THE BOARD WITHIN 20 DAYS OF THE DATE THE COMPLAINT WAS MAILED, THE BOARD MAY REQUEST THE MATTER BE REMANDED TO THE BOARD FOR FINAL DISPOSITION AND ALL OF THE MATTERS ALLEGED IN THE COMPLAINT WILL BE DEEMED ADMITTED AS TRUE. A COPY OF ANY RESPONSE YOU FILE WITH THE BOARD SHALL ALSO BE PROVIDED TO THE STATE OFFICE OF ADMINISTRATIVE HEARINGS.

IX.

Pursuant to section 2001.052(a)(4) of the Administrative Procedure Act, this Complaint is intended to give a short and plain statement of the allegations against each Respondent. The Board reserves the right to amend this Complaint at the time of the hearing for any good cause. Respondents are hereby placed on notice that, pursuant to sections 901.501 and 901.502 of the Public Accountancy Act, the Board reserves the right to pursue

its investigation of all acts of Respondents that would subject them to the disciplinary powers of the Board. Also pursuant to sections 901.501 and 901.502 of the Act, the Board may use any and all procedural means at its disposal in this administrative hearing, including discovery, as well as its own independent procedures to investigate all conduct of Respondents that would subject them to the disciplinary powers of the Board.

X.

The Administrative Law Judge may be asked to take official notice of the Board's Rules, including the Rules of Professional Conduct; applicable law, including the Public Accountancy Act and the Administrative Procedure Act; and any prior enactments thereof.

XI.

The Board respectfully requests that the Administrative Law Judge recommend that the certificates of Bauer, Grutzmacher, Schuleman, Bass, Brown and Stevenson be revoked pursuant to section 21 of the 1997 Act; that Claybrook's examination grades be voided pursuant to section 21A of the 1997 Act; that administrative costs be assessed against each Respondent; and that an administrative penalty be assessed against each Respondent pursuant to section 21D of the 1997 Act. The Board additionally requests that the Administrative Law Judge make all appropriate findings of fact and conclusions of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Petitioner's Amended Complaint** has been served by facsimile transmission, U.S. regular or certified mail, return receipt requested, or electronic mail, as indicated below, on this 9th day of August 2006 to the following parties:

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