

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

-----X

UNITED STATES OF AMERICA

COOPERATION AGREEMENT

Cr. No.

- against -

DAVID DUNCAN,

Defendant.

-----X

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the Department of Justice, by the Enron Task Force (the "Department") and David Duncan (the "defendant") agree to the following:

1. The defendant will waive indictment and plead guilty in the Southern District of Texas to an information charging him with obstruction of justice, in violation of 18 U.S.C. § 1512(b), which carries the following statutory penalties.

- a. Maximum term of imprisonment: ten years (18 U.S.C. § 1512).
- b. Minimum term of imprisonment: zero years (18 U.S.C. § 1512).
- c. Maximum supervised release term: three years, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced to up to two years without credit for pre-release imprisonment or time previously served on post-release supervision (18 U.S.C. §§ 3583 (b), (e)).
- d. Maximum fine: \$250,000 (18 U.S.C. § 3571(b)(3)).
- e. Restitution: As provided by statute (18 U.S.C. § 3663 & A).
- f. \$100 special assessment (18 U.S.C. § 3013).

2. The defendant's sentence is governed by the United States Sentencing Guidelines. The Department will advise the Court and the Probation Department of information relevant to sentencing, including all criminal activity engaged in by the defendant, and such information may be used by the Court in determining the defendant's sentence. Based on information known to it now, the Department will not oppose a downward adjustment of three levels for acceptance of responsibility under U.S.S.G. § 3E1.1.

3. The defendant will provide truthful, complete and accurate information and will cooperate fully with the Department. This cooperation will include, but is not limited to, the following:

a. The defendant agrees to be fully debriefed and to attend all meetings at which his presence is requested by the Department, concerning his participation in and knowledge of all criminal activities.

b. The defendant agrees to furnish to the Department all documents and other material that may be relevant to the investigation and that are in the defendant's possession or control.

c. The defendant agrees not to reveal his cooperation, or any information derived therefrom to any third party without prior consent of the Department, and to instruct his attorneys to do the same.

d. The defendant agrees to testify at any proceeding in the Southern District of Texas, or elsewhere as requested by the Department.

e. The defendant consents to adjournments of his sentence as requested by the Department and agrees that his obligations under this agreement continue until the Department determines that his cooperation is concluded.

f. The defendant agrees to cooperate fully with the Internal Revenue Service in the ascertainment, computation and payment of his correct federal income tax liability.

g. The defendant agrees not to receive remuneration for any dissemination, directly or indirectly, by him of information concerning his work at Arthur Andersen LLP, including but not limited to books, articles, speeches, and interviews, but not including professional services performed by him in the course of any full-time employment.

4. The Department agrees that:

a. Except as provided in paragraphs 1, 8, and 9, no criminal charges will be brought against the defendant for his heretofore disclosed participation in criminal activity; and

b. No statements made by the defendant during the course of this cooperation will be used against him except as provided in paragraphs 2, 8, and 9.

5. The defendant agrees that the Department may meet with and debrief him without the presence of counsel, unless the defendant specifically requests counsel's presence at such debriefings and meetings. Upon request of the defendant, the Department will endeavor to provide advance notice to counsel of the place and time of meetings and debriefings, it being understood that the Department's ability to provide such notice will vary according to time constraints and other circumstances. The Department may accommodate requests to alter the time and place of such debriefings. It is understood, however, that any cancellations or reschedulings of debriefings or meetings requested by the defendant that hinder the Department's ability to prepare adequately for trials, hearings or other proceedings may adversely affect the defendant's ability to provide substantial assistance. Matters occurring at any meeting or debriefing may be considered by the Department in determining whether the defendant has provided substantial assistance or otherwise complied with this agreement and may be considered by the Court in imposing sentence regardless of whether counsel was present at the meeting or debriefing.

6. If the Department determines that the defendant has cooperated fully, provided substantial assistance to law enforcement authorities and otherwise complied with the terms of this agreement, the Department will file a motion pursuant to U.S.S.G. § 5K1.1 and 18 U.S.C. § 3553(e) with the sentencing Court setting forth the nature and extent of his cooperation. Such a motion will permit the Court, in its discretion, to impose a sentence below the applicable Sentencing Guidelines range and also below any applicable mandatory minimum sentence. In this connection, it is understood that a good faith determination by the Department as to whether the defendant has cooperated fully and provided substantial assistance and has otherwise complied with the terms of this agreement, and the Department's good faith assessment of the value, truthfulness, completeness and accuracy of the cooperation, shall be binding upon him. The defendant agrees that, in making this determination, the Department may consider facts known to it at this time. The Department will not recommend to the Court a specific sentence to be imposed. Further, the Department cannot and does not make a promise or representation as to what sentence will be imposed by the Court.

7. The defendant agrees that with respect to all charges referred to in paragraphs 1 and 4(a) he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law. The defendant waives any right to additional disclosure from the government in connection with the guilty plea.

8. The defendant must at all times give complete, truthful, and accurate information and testimony, and must not commit, or attempt to commit, any further crimes. Should it be judged by the Department that the defendant has failed to cooperate fully, has intentionally given false, misleading or incomplete information or

testimony, has committed or attempted to commit any further crimes, or has otherwise violated any provision of this agreement, the defendant will not be released from his plea of guilty but the Department will be released from its obligations under this agreement, including (a) not to oppose a downward adjustment of three levels for acceptance of responsibility described in paragraph 2 above, and (b) to file the motion described in paragraph 6 above. Moreover, the Department may withdraw the motion described in paragraph 6 above, if such motion has been filed prior to sentencing. The defendant will also be subject to prosecution for any federal criminal violation of which the Department has knowledge, including, but not limited to, the criminal activity described in paragraph 4.

9. Any prosecution resulting from the defendant's failure to comply with the terms of this agreement may be premised upon: (a) any statements made by the defendant to the Department or to other law enforcement agents on or after January 14, 2002; (b) any testimony given by him before any grand jury or other tribunal, whether before or after the date this agreement is signed by the defendant; and (c) any leads derived from such statements or testimony. Prosecutions that are not time-barred by the applicable statutes of limitation on the date this agreement is signed may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statutes of limitation between the signing of this agreement and the commencement of any such prosecutions. Furthermore, the defendant waives all claims under the United States Constitution, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal statute or rule, that statements made by him on or after January 14, 2002, or any leads derived therefrom, should be suppressed.

10. This agreement does not bind any federal, state, or local prosecuting authority other than the Department, and does not prohibit the Department from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving the defendant.

11. No promises, agreements or conditions have been entered into other than those set forth in this agreement, and none will be entered into unless memorialized in writing and signed by all parties. This agreement supersedes any prior promises, agreements or conditions between the parties. To become effective, this agreement must be signed by all signatories listed below.

Dated: Brooklyn, New York

April 6, 2002

Respectfully submitted,

ENRON TASK FORCE

LESLIE CALDWELL
Director

By:

ANDREW WEISSMANN
Special Attorney
Enron Task Force

Agreed and consented to:

Defendant David Duncan

Approved by:

Counsel to Defendant
Samuel Seymour, Esq.