

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JACK REYNOLDS, Individually and On Behalf of All Others Similarly Situated,	:	Civil Action No.
	:	
Plaintiff,	:	CLASS ACTION COMPLAINT FOR
	:	VIOLATIONS OF FEDERAL SECURITIES
	:	LAWS
vs.	:	
	:	JURY TRIAL DEMANDED
REPSOL YPF, S.A., ANTONIO BRUFAU NIUBO AND LUIS MAÑAS ANTÓN,	:	
	:	
Defendants.	:	

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Plaintiff has alleged the following based upon the investigation of plaintiff's counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings by Repsol YPF, S.A. ("Repsol" or the "Company"), as well as regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a federal class action on behalf of purchasers of the American Depository Receipts ("ADRs") of Repsol between July 28, 2005 and January 27, 2006, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

### **JURISDICTION AND VENUE**

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

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 21 of the Exchange Act [15 U.S.C. §78aa].

4. Venue is proper in this District pursuant to Section 21 of the Exchange Act, and 28 U.S.C. §1391(b), as and many of the acts and practices complained of herein occurred in substantial part in this District.

5. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

## **PARTIES**

6. Plaintiff Jack Reynolds, as set forth in the accompanying certification, incorporated by reference herein, purchased the ADRs of Repsol during the Class Period and has been damaged thereby.

7. Defendant Repsol engages in the exploration, development, and production of crude oil and natural gas primarily in Spain and Argentina. Repsol is incorporated in Spain and maintains its principal place of business at Paseo De La Castellana 278-280, Madrid, Spain E-28046.

8. (a) Defendant Antonio Brufau Niubo (“Niubo”), at all relevant times, served as the Company’s Executive Chairman and Chief Executive Officer (“CEO”).

(b) Defendant Luis Mañas Antón (“Antón”), at all relevant times, served as the Company’s Chief Financial Officer (“CFO”).

(c) Defendants Niubo and Antón are collectively referred to herein as the “Individual Defendants.”

9. Because of the Individual Defendants’ positions with the Company, they had access to the adverse undisclosed information about its business, operations, products, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company’s operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

10. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company’s public filings, press releases and other publications as alleged herein are the collective actions of the

narrowly defined group of defendants identified above. Each of the above officers of Repsol, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. Said defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

11. As officers and controlling persons of a publicly-held company whose ADRs were, and are, registered with the SEC pursuant to the Exchange Act, and were, and are, traded on the New York Stock Exchange (the “NYSE”) and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate promptly, accurate and truthful information with respect to the Company’s financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company’s publicly-traded ADRs would be based upon truthful and accurate information. The Individual Defendants’ misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

12. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of

their Board membership and/or executive and managerial positions with Repsol, each of the Individual Defendants had access to the adverse undisclosed information about Repsol's business prospects and financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about Repsol and its business issued or adopted by the Company materially false and misleading.

13. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

14. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Repsol ADRs by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Repsol's business, operations, management and the intrinsic value of Repsol ADRs; and (ii) caused plaintiff and other members of the Class to purchase Repsol ADRs at artificially inflated prices.

#### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

15. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired the ADRs of Repsol during the Class Period and who were damaged thereby. Excluded

from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

16. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Repsol ADRs were actively traded on the NYSE. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Repsol or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

17. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

18. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

19. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by defendants' acts as alleged herein;

(b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Repsol; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

20. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

### **SUBSTANTIVE ALLEGATIONS**

21. Repsol describes itself as “an integrated international oil and gas company, operating in more than 28 countries and the leader in Spain and Argentina. It is one of the ten major private oil companies in the world and the largest private energy company in Latin America in terms of assets.”

22. Throughout the Class Period, Repsol issued numerous false and materially misleading statements highlighting its proven reserves. Reserves are the estimates of oil and natural gas a company has in the ground and expects to eventually pump and sell. Reserves serve as a crucial metric for oil-company investors trying to gauge a company's growth prospects. These statements were materially false and misleading because defendants failed to disclose and/or misrepresented the following adverse facts, among others: (a) that the Company was materially overstating its proven reserves. The Company has now admitted that it will downgrade its proven reserves by 25% and take an asset impairment charge of approximately EUR50 million; (b) that the Company was experiencing increasing political pressure in Bolivia which will have an adverse effect on the Company's operations; (c) that the Company was experiencing difficulties in its production of gas in Bolivia; (d) that contracts with the Company's existing customers would likely not be extended due to complications in extracting gas from certain fields in Argentina; and (e) as a result of the

foregoing, defendants lacked a reasonable basis for their positive statements about the Company and its business prospects.

### **Pre-Class Period Statements**

23. Prior to the Class Period, on March 1, 2005, the Company filed its Form 6-K with the SEC which announced its financial results for 2004. The Company reported net income of EUR1,950 million and operating income of EUR4,547 million. The Form 6-K was signed by Defendant Antón. The 6-K stated, in pertinent part, as follows:

#### **EXTRAORDINARY PROVISIONS AND WRITE-OFFS, RESERVES' AUDIT AND DEBT REDUCTION**

The sound performance posted by Repsol YPF's industrial activities made it possible to undertake a rigorous program[] of provisions and write-offs – and accounted for as extraordinary items - to the amount of EUR682 million, practically all of which (EUR667 million) was booked in fourth quarter 2004.

The breakdown of these EUR682 million is as follows: EUR422 million were set aside for possible tax contingencies (mainly in Spain and Argentina); EUR89 for asset depreciation, primarily related to Repsol YPF service stations in Brazil (EUR35 million) and in Peru (EUR10 million); EUR140 million for contingencies relating to contracts, mainly that signed with Petrobras (EUR56 million) and with OCP (Oleoducto de Crudos Pesados) in Ecuador (EUR89 million); and EUR20 million for the liquidation of the mercantile contract with the company's former chairman.

**At year-end 2004, the independent consulting firms, De Golyer & McNaughton and Gaffney, Cline and Associates, concluded an audit on 100% of booked reserves started three years before .**

As a result of this audit, and in compliance with the most strict Securities and Exchange Commission (SEC) standards, under the caption “revisions of previous estimates”, **proved reserves were revised downward by 4.1%, to 4,926 million barrels of oil equivalent (boe)**. This downward adjustment corresponds to the gas fields in Ramos and Loma La Lata, and Trinidad & Tobago, as well as the Albacora Leste oil field.

#### **Materially False and Misleading Statements Made During the Class Period**

24. The Class Period begins on July 28, 2005. On July 29, Repsol filed its Form 6-K with the SEC which contained the July 28, 2005 press release and announced its financial results for

the first half of 2005. For the first half of 2005, the Company reported net income of EUR1,650 million, income from operations of EUR2,923 million and cash flow of EUR3,022 million. The Form 6-K was signed by defendant Antón. The press release stated, in pertinent part, as follows:

#### BUSINESS AREAS

Exploration & Production: income from operations up 7%

At EUR1,374 million, income from exploration & production operations in first half 2005 was 7.1% higher than the EUR1,283 million posted in the same half a year earlier.

This growth was mainly driven by the increase in crude oil reference prices and gas realisation prices in Trinidad & Tobago and Argentina. Gas production and sales growth in Bolivia, Trinidad & Tobago, and Venezuela also contributed.

The Repsol YPF liquids realisation price averaged \$33.26 (EUR27.13) per barrel versus \$28.88 (EUR23.56) per barrel in first half 2004. The average price of gas in the quarter was \$1.46 per thousand standard cubic feet (tscf), 23.7% up year-on-year, versus the \$1.18 per tscf registered in 2004, shored up by higher average gas prices in Argentina and an increase in sales' volume in Trinidad & Tobago.

**The company's average oil and gas production for the six months rose 0.3% year-on-year, to 1,155,800 boepd. Gas showed a production increase of 6.9%, to 613,800 boepd (3,447 Mscf/d), with enhanced production mostly from Bolivia, Trinidad & Tobago, and Venezuela.**

First half 2005 investments in the exploration & production business area were EUR555 million. Investment in development represented 73% of total investment, and was spent mainly in Argentina (67%), Venezuela (7%), Trinidad & Tobago (7.3%), Bolivia (5.2%), Ecuador (3.4%), and Libya (2,1%). [Emphasis added.]

\* \* \*

25. On August 9, 2005, the Company filed its Form 6-K with the SEC announcing its financial results for the second quarter of 2005. The Form 6-K was signed by defendant Antón. The 6-K stated, in pertinent part, as follows:

#### SECOND QUARTER 2005 HIGHLIGHTS

- Net income in the quarter was Eu805 million. Excluding non-recurring items, adjusted net income was 17% higher year-on-year in euros and 23% in dollars. These figures were the result of sustained high oil prices and refining margins coupled with a less [favorable] environment for marketing, LPG and petrochemicals.

- Income from operations in second quarter 2005 was Eu1,440 million. Excluding non-recurring items, adjusted operating income was Eu1,428 million, 22% higher (28% in dollar terms). Net cash flow generated in the quarter reached Eu1,513 million and earnings per share were Eu0.66.

- **Production in the quarter reached 1,179,700 boepd, similar to the 1,179,100 boepd recorded a year earlier. Gas production rose 5.7% year-on-year, mainly in Bolivia, Trinidad & Tobago, and Venezuela.**

- High refining margins continued to reflect the wide differentials between light and heavy crude oil and the high spreads in medium distillates, as well as gasoline this quarter.

- **On 16 June last, Moody's upgraded Repsol YPF's rating to Baa1 from Baa2.**

- On 5 July 2005, as approved at the company's last Annual General Shareholders Meeting held on 31 May 2005, Repsol YPF paid a gross complementary dividend of Eu0.25 per share against the 2004 financial year.

- On 31 May, Repsol YPF's chairman, Antonio Brufau, presented the 2005/2009 Strategic Plan to analysts, shareholders, institutional investors, and employees. This plan outlines the Company's main lines of action for the mentioned period and is based on four key factors: growth in the upstream and LNG areas, strong cash generation in the downstream and ABB units, transformation of the asset portfolio, and cost savings, all of which will contribute to ensuring sustained dividend growth for shareholders, with a 20% higher dividend in 2006. [Emphasis added.]

26. On November 9, 2005, the Company filed its Form 6-K with the SEC announcing its financial results for the third quarter of 2005. The Company reported net income for the first three quarters of 2005 of EUR2,584 million, income from operations of EUR4,500 million, and cash flow of EUR4,811 million. The Form 6-K was signed by defendant Antón. The 6-K stated, in pertinent part, as follows:

#### BUSINESS AREAS

Exploration & Production: income from operations up 12.8%

At EUR2,251 million, cumulative income from exploration & production operations in the first nine months of 2005 was 12.8% higher than the EUR1,996 million posted in the same period a year earlier. This growth was mainly driven by the increase in crude oil reference prices and gas realisation prices in Trinidad & Tobago and Argentina.

The Repsol YPF liquids realisation price averaged \$36.27 (EUR28.74) per barrel versus \$29.88 (EUR24.41) per barrel in the first three quarters 2004. The average price of gas was \$1.47 per thousand standard cubic feet (tscf), 21.4% up on the \$1.20 per tscf registered in 2004, shored up by higher average gas prices in Trinidad & Tobago and Argentina, and a larger sales volume in Trinidad & Tobago.

The company's average oil and gas production for the nine months fell slightly year-on-year, to 1,156,300 boepd. This drop was mainly the result of strikes in Argentina, scheduled shutdowns in Trinidad & Tobago, and the maturity of the Argentine fields.

Gas showed a production increase of 3.5%, to 619,200 boepd (3,473 Mscf/d), with enhanced production mostly from Bolivia, Trinidad & Tobago, and Venezuela.

January-September investments in the exploration & production business area were EUR931 million. Investment in development represented 76.2% of total investment, and was spent mainly in Argentina (66.9%), Venezuela (7.3%), Trinidad & Tobago (8.7%), Bolivia (4.3%), Ecuador (3.5%), and Libya (1.6%).

27. The statements referenced above in ¶¶24-26 were each materially false and misleading when made because defendants failed to disclose and/or misrepresented the following adverse facts, which were known to defendants, or recklessly disregarded by them, at all relevant times:

(a) that the Company was materially overstating its proven reserves. The Company has now admitted that it will downgrade its proven reserves by 25% and take an asset impairment charge of approximately EUR50 million;

(b) that the Company was experiencing increasing political pressure in Bolivia, which will have an adverse effect on the Company's operations;

(c) that the Company was experiencing difficulties in its production of gas in Bolivia;

(d) that contracts with the Company's existing customers would likely not be extended due to complications in extracting gas from certain fields in Argentina; and

(e) as a result of the foregoing, defendants lacked a reasonable basis for their positive statements about the Company and its business prospects.

### **The Truth is Disclosed**

28. Then, on January 26, 2006, the Company filed its Form 6-K with the SEC in which it announced that it was cutting its oil and gas reserves estimate by 25 percent due mostly to problems that it had experienced in Bolivia and Argentina. The 6-K was signed by defendant Antón. The 6-K stated, in pertinent part, as follows:

#### **Repsol YPF Announces 25% Reserves Reduction**

**Repsol YPF today announced expected downward revisions in its proved reserves of 1,254 million BOE. These revisions relate primarily to natural gas reserves. The majority are located in Bolivia (52%) and Argentina (41%), along with smaller amounts in Venezuela and elsewhere .**

The revisions were mainly driven by changes in the applicable legal framework in Bolivia, due to the new Hydrocarbon Law and greater knowledge of certain fields in that country and Argentina.

**The revisions are currently expected to result in an asset impairment charge of less than €50 million.** Repsol YPF anticipates 2005 earnings to be consistent with results for the first three quarters.

Repsol YPF management has taken a number of steps in the past year to enhance reserves booking procedures, including the creation of an independent Reserves Control Group separated from the business units.

The Audit Committee was assigned last April the oversight responsibility for reserves control, with the Reserves Control Group reporting directly to the Audit Committee.

An independent review into the circumstances of the revisions is being conducted by the Audit Committee.

#### **I. ESTIMATED PROVED RESERVES REVISION**

**In connection with the determination of its worldwide proved oil and gas reserves (as defined by the SEC) at December 31, 2005, Repsol YPF expects to make downward revisions of 1,254 million barrels of oil equivalent (BOE) against its previous estimates. This amount represents 25 % of total proved reserves at December 31, 2004.**

The revisions were made as the result of work conducted by teams which included the company's Reserves Control Group as well as internal and external professionals, under the supervision of the Audit Committee of the Board of Directors. The Audit Committee assumed last April the responsibility for the independent supervision of reserves. This revision confirms the company's firm commitment to rigor and independence for its internal control mechanisms.

**The largest part of these revisions (52%), 659 million BOE, corresponds to adjustments made for Bolivia, which has been especially affected by uncertainties generated regarding the application of that country's new Hydrocarbon Law; 509 million BOE (41%) as a result of revisions in Argentina; and 86 million of BOE for the rest of the world.**

The revisions announced today reflect the company's best estimate; however, final proved reserve amounts may be subject to revision in the event of further legal, commercial or operating developments. Final proved reserve amounts at December 31, 2005 will also reflect additional ordinary course adjustments for production, improved recovery, acquisitions, discoveries and extensions. The company currently expects that the determination of these adjustments will be completed by the end of February and will not give rise to material additional adjustments.

\* \* \*

## II. REASONS BEHIND THE ESTIMATED RESERVES REVISION

**The bulk of the revisions are attributable to two main factors:**

**Changes in the laws to which company operations are subject in the jurisdictions in which it operates.** These changes have affected investment decisions and will require modifications in the contractual arrangements between company operations and the governments in these jurisdictions. In particular, in Bolivia, the introduction of the new Hydrocarbon Law has rendered future production at certain fields and several development projects no longer commercially viable. In Venezuela, negotiations are ongoing to transform existing commercial arrangements into new joint ventures with PDVSA, which will have an impact on the company's working interests. Field performance and other data, yielding a deeper understanding of the affected reservoirs.

**An additional factor relates to the Argentine Concession.** Proved reserves expected to be produced based on contract extensions contemplated in the Argentine Concession have been eliminated because renewal of the concession is not reasonable certain.

\* \* \* \*

## III. ACCOUNTING CONSEQUENCES

**Under IFRS (IAS 36), the downward revision in proved reserves requires that we test the affected production assets for impairment, which is determined on the basis of discounted expected net cash flows. An initial estimate of the aggregate impairment charge for the specific assets affected by the revisions as of December 31, 2005 is less than €50 million.**

29. Upon this shocking news, on January 26, 2006, shares of Repsol ADRs closed at \$27.99 per share, a decline of \$2.12 per share, or over 7%. On January 27, 2006, shares of Repsol ADRs continued to decline, falling another \$1.34 per share, or approximately 5%, as the market continued to absorb the truth about the Company.

30. The market for Repsol ADRs was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Repsol ADRs traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Repsol ADRs relying upon the integrity of the market price of Repsol ADRs and market information relating to Repsol, and have been damaged thereby.

31. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Repsol ADRs, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading.

32. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Repsol business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Repsol and its business, prospects and operations, thus causing the Company's ADRs to be

overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing the Company's ADRs at artificially inflated prices, thus causing the damages complained of herein.

### **LOSS CAUSATION/ECONOMIC LOSS**

33. During the Class Period, as detailed herein, defendants engaged in a scheme to deceive the market, and a course of conduct that artificially inflated Repsol's ADR price and operated as a fraud or deceit on Class Period purchasers of Repsol's ADRs by misrepresenting, among other things, the Company's stated proven reserves. When defendants' prior misrepresentations and fraudulent conduct came to be revealed and was apparent to investors, the value of Repsol ADRs declined precipitously, evidence that the prior artificial inflation in the price of Repsol's ADRs was eradicated. As a result of their purchases of Repsol ADRs during the Class Period, plaintiff and other members of the Class suffered economic losses, i.e. damages under the federal securities laws.

34. By misrepresenting Repsol's stated proven reserves, the defendants presented a misleading image of Repsol's business and future growth prospects. During the Class Period, defendants repeatedly emphasized the financial strength and well being of the Company. These claims caused and maintained the artificial inflation in Repsol's ADR price throughout the Class Period and until the truth about the Company was ultimately revealed to investors.

35. Defendants' false and materially misleading statements had the intended effect of causing Repsol's ADRs to trade at artificially inflated levels throughout the Class Period - reaching a Class Period high of approximately \$34 per share on September 23, 2005.

36. On January 26, 2006, defendants revealed that the Company would be downgrading its proven reserves by 25% and taking an asset impairment charge of approximately EUR50 million.

37. In response to defendants' disclosures on January 26, 2006, which indicated that the Company would be downgrading its reserves by 25% and taking an asset impairment charge of approximately EUR50 million, among other things, and as the market absorbed the true value of Repsol's ADRs, the price of Repsol's ADRs fell to \$26.65 per share – a decline of more than 21% from their Class Period high. This dramatic share price decline eradicated much of the artificial inflation from the price of Repsol's ADRs, causing real economic loss to investors who purchased these ADRs during the Class Period.

38. The decline in the price of Repsol ADRs at the end of the Class Period was a direct result of the nature and extent of defendants' fraud being revealed to investors and to the market. The timing and magnitude of the decline of Repsol ADRs negates any inference that the losses suffered by plaintiff and the other members of the Class were caused by changed market conditions, macroeconomic or industry factors or even Company-specific facts unrelated to defendants' fraudulent conduct. The economic loss, i.e. damages suffered by plaintiff and other members of the Class, is the difference between the values investors paid for their Repsol ADRs and the subsequent significant decline in the value of the Company's ADRs when defendants' prior misstatements and other fraudulent conduct were revealed.

#### **Additional Scienter Allegations**

39. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of

information reflecting the true facts regarding Repsol, participated in the fraudulent scheme alleged herein.

**Applicability Of Presumption Of Reliance:  
Fraud On The Market Doctrine**

40. At all relevant times, the market for Repsol's ADRs was an efficient market for the following reasons, among others:

(a) Repsol ADRs met the requirements for listing, and were listed and actively traded on the NYSE, a highly efficient and automated market;

(b) As a regulated issuer, Repsol filed periodic public reports with the SEC and the NYSE;

(c) Repsol regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Repsol was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

41. As a result of the foregoing, the market for Repsol ADRs promptly digested current information regarding Repsol from all publicly available sources and reflected such information in the price of Repsol ADRs. Under these circumstances, all purchasers of Repsol ADRs during the Class Period suffered similar injury through their purchase of Repsol's ADRs at artificially inflated prices and a presumption of reliance applies.

### **No Safe Harbor**

42. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as “forward-looking statements” when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Repsol who knew that those statements were false when made.

### **COUNT I**

#### **Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants**

43. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

44. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public regarding Repsol’s business, operations, management and the intrinsic value of Repsol ADRs; and (ii) cause plaintiff and other members of the Class to purchase Repsol ADRs at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

45. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's ADRs in an effort to maintain artificially high market prices for Repsol ADRs in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

46. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of Repsol as specified herein.

47. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Repsol's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Repsol and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Repsol ADRs during the Class Period.

48. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team

or had control thereof; (ii) each of these defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of and had access to other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

49. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Repsol's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its ADRs. As demonstrated by defendants' overstatements and misstatements of the Company's business, operations and earnings throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

50. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Repsol ADRs was artificially inflated during the Class Period. In ignorance of the fact that market price of Repsol

publicly-traded ADRs were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the ADRs trades, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiff and the other members of the Class acquired Repsol ADRs during the Class Period at artificially high prices and were damaged thereby.

51. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that Repsol was experiencing, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their Repsol ADRs, or, if they had acquired such ADRs during the Class Period, they would not have done so at the artificially inflated prices which they paid.

52. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

53. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's ADRs during the Class Period.

## **COUNT II**

### **Violation of Section 20(a) of the Exchange Act Against the Individual Defendants**

54. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

55. The Individual Defendants acted as controlling persons of Repsol within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

56. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

57. As set forth above, Repsol and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's ADRs during the Class Period.

**WHEREFORE**, plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;

(b) Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding plaintiff 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 TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: January 31, 2006

LERACH COUGHLIN STOIA GELLER  
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