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ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

OSCAR S. WYATT, JR., on behalf of himself and all others similarly situated,	Civil Action No. H-02-2717
Plaintiffs,	Judge Lynn N. Hughes
- versus -	SECOND CONSOLIDATED CLASS ACTION COMPLAINT
EL PASO CORPORATION, et al,	
Defendants.	

Lead Plaintiff Oscar S. Wyatt, Jr. alleges the following upon personal knowledge as to his own actions, and upon information and belief as to all other matters.

GENERAL ALLEGATIONS

1. This is a Class Action on behalf of persons who purchased or acquired the securities of El Paso Corporation ("El Paso" or the "Company") between February 22, 2000 and February 17, 2004 (the "Class Period").

2. During the Class Period, El Paso and its top executives inflated the prices of El Paso securities by making materially false and misleading SEC filings and statements which: (1) exaggerated gross revenues by at least $800 million due to phony "round trip" trading; (2) inflated revenues and earnings by misuse of "mark to market" accounting; (3) hid more than $1 billion of liabilities and another $1 billion of guarantees associated with off-balance sheet companies controlled by El Paso; (4) falsely attributed El Paso's success to legitimate business practices when, in fact, El Paso manipulated the California energy market; and (5) overstated the

Company's proved oil and natural gas reserves by more than 40%, thereby causing a material overstatement of its income.

3. This action arises under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the "Securities Act"), and Sections 10(b) and 20(a) and of the Securities Exchange Act of 1934 (the "Exchange Act"). This Court has subject-matter jurisdiction over this action and venue is proper pursuant to Section 22 of the Securities Act and Section 27 of the Exchange Act.

4. Lead Plaintiff Oscar Wyatt, Named Plaintiffs Jacksonville Police & Fire Pension Fund and Oklahoma Firefighters Pension and Retirement System, and the Plaintiffs identified in Exhibit A purchased or acquired El Paso securities during the Class Period.

5. Defendant El Paso is a Delaware corporation headquartered in Houston.

6. During the Class Period:

(a) Defendant Wise was the Chairman of the Board, President, and CEO of El Paso from January 1990 to March 12, 2003, and signed El Paso's 1999, 2000 and 2001 Forms 10-K, the Registration Statements filed with the SEC referred to in ¶ 108 below, and certified that the 2001 Form 10-K, and the 1Q, 2Q and 3Q 2002 Forms 10-Q, and 1Q 2002 Form 10-Q/A did not contain any untrue or misleading statements;

(b) Defendant H. Brent Austin ("Austin") was the CFO of El Paso from April 1992 to September 2002, its President and COO from September 2002 until May 13, 2003, and signed El Paso's 1999, 2000, 2001 and 2002 Forms 10-K; its 1Q, 2Q, 3Q, 2000 Forms 10-Q; 1Q, 2Q, 2001 Forms 10-Q; and 1Q, 2Q, 2002 Forms 10-Q; and certified that the 2001 Form 10-K, and the 1Q and 2Q 2002 Forms 10-Q and 1Q 2002 Form 10-Q/A did not contain any untrue or misleading statements;

(c) Defendant Ralph Eads ("Eads") was an Executive Vice President of El Paso and President of its Merchant Energy Group from July 1999 to December 2002;

(d) Rodney D. Erskine ("Erskine") was President of El Paso Production from January 2001 until November 14, 2003, provided the proved reserve information included in El Paso's 2001 and 2002 Forms 10-K, and made presentations at meetings with analysts regarding proved reserves;

(e) Ronald L. Kuehn, Jr. ("Kuehn") served as Non-executive Chairman of the Board from October 1999 through December 2000, Lead Director from September 2002 through March 2003, Chief Executive Officer from March 2003 until July 2003, and Chairman since March 2003. Kuehn signed El Paso's 1999, 2000, 2001 and 2002 Forms 10-K, and 1Q 2003 Form 10-Q, and certified that the 2002 Form 10-K and 1Q 2003 Form 10-Q did not contain any untrue or misleading statements;

(f) D. Dwight Scott ("Scott") has been the Executive Vice President and Chief Financial Officer of El Paso since October 2002, signed El Paso's 2002 Form 10-K, 3Q 2002 Form 10-Q, and 1Q, 2Q, and 3Q 2003 Forms 10-Q, and certified that the 2002 Form 10-K and the 3Q 2002 and 1Q 2003 Forms 10-Q did not contain any untrue or misleading statements. Defendants Wise, Eads, Austin, Erskine, Kuehn, and Scott are referred to herein as the "Individual Defendants."

7. Defendant Credit Suisse First Boston ("CSFB") was an underwriter with respect to certain note offerings of El Paso during the Class Period.

8. Defendant PricewaterhouseCoopers ("PWC") served as El Paso's independent auditor during the Class Period, and contemporaneously served as auditor for off-balance sheet entities controlled by El Paso.

SUBSTANTIVE ALLEGATIONS

I. El Paso's Reported Revenues Were Inflated Due to "Round Trip" Trading and False Reporting of Trading Data

9. Analysts and investors consider high trading volumes to be an indicator of the strength of energy companies such as El Paso. Indeed, El Paso touted its purported "substantially higher transaction volumes" throughout the Class Period. El Paso failed to disclose, however, that at least $800 million of its reported revenues between September 2001 and May 2002 were phony "wash" or "round trip" trades that had no economic substance.

10. "Wash" or "round trip" trades involve buying and selling close in time the same amount of a commodity, such as electricity, at the same price. Such trades artificially boost a company's revenues by the amount of the transaction despite the existence of the offsetting purchase.

11. El Paso's peers – including Reliant and Duke Energy – have acknowledged engaging in wash trading. El Paso, however, has steadfastly, but falsely, maintained that it did not enter into such trades for the purposes of artificially inflating volumes or revenue or manipulating prices.

12. For example, on May 31, 2002, El Paso issued a press release entitled "El Paso Corporation Responds to FERC, Denies it Engaged in 'Round Trip" Trading Transactions." The press release referred to an affidavit that allegedly "confirmed" that El Paso "did not engage in any such practices."

13. El Paso also issued press denials on June 5, June 7, July 12 and July 17, 2002.

14. Those denials were false and misleading. El Paso did in fact engage in wash trading. This information is corroborated by El Paso's own documents. For instance, an El Paso trading sheet dated January 11, 2002 reflects the following round trip trades:

[RAMP] #	B/S [Buy/Sell]	For date	MW [Megawatts]	$	Hub	Comp	Broker
15910	B	Jun	50	35.75	PJM	Reliant	ICE
15909	S	Jun	50	35.75	PJM	Reliant	ICE
15914	B	Jun	50	35.75	PJM	Reliant	ICE
15915	S	Jun	50	35.75	PJM	Reliant	ICE
15918	B	Jun	50	35.75	PJM	Reliant	ICE
15917	S	Jun	50	35.75	PJM	Reliant	ICE
15939	B	Jun	50	35.75	PJM	Aemc	ICE
15940	S	Jun	50	35.75	PJM	Aemc	ICE

15. Thus, on January 11, 2002 alone, El Paso entered into at least four wash trades for 50 megawatts of energy for June 2002 delivery in the PJM (Pennsylvania, New Jersey, Maryland) market. *Three of those trades were with Reliant, who, in May 2002, publicly admitted that it engaged in round trip trading.* That the trades were wash trades is evident by the exact same terms on the buys and sells, the same parties, and that the trade confirmation (or RAMP) numbers are consecutive, indicating that the trades took place in rapid succession.

16. Wash trades are also evident on an internal El Paso trading sheet dated January 17, 2002:

[RAMP] #	B/S [Buy/Sell]	for date	MW [Megawatts]	$	Hub	Comp	Broker
17989	S	Q4	50	25.35	PJM	Detm	ICE
17991	B	Q4	50	25.35	PJM	Detm	ICE
17993	S	Q4	50	25.35	PJM	Detm	ICE
17998	B	Q4	50	25.35	PJM	Detm	ICE

17. The foregoing trade sheet reflects *two round trip trades with Duke Energy, another energy trading company that publicly admitted in May 2002 that it engaged in wash trades.* Again, the parties and the terms of the buys and sells are identical and the RAMP numbers are nearly consecutive.

18. The six wash trades set forth above alone generated over $10 million of revenue. Other third parties have indicated additional wash trades with El Paso. For example, as part of a Federal Energy Regulatory Commission ("FERC") investigation, a representative of Williams Energy Marketing and Trading Company ("Williams") submitted an affidavit that reflected round trip trades with El Paso on March 1, July 12, October 8, and November 30, 2001; these appear to add tens of millions of dollars of revenues. In all, El Paso's total wash trades between September 2001 and May 2002 equaled between $800 million and $1.1 billion.

19. El Paso management blatantly encouraged its traders to engage in wash trading. Indeed, Tim Bourn, the Senior Managing Director in charge of trading at El Paso, with Eads' knowledge, directed the offering of bonuses to El Paso traders who showed a high volume of trading on the Intercontinental Exchange ("ICE"). Specifically, in the fall of 2001, El Paso offered a $10,000 additional bonus to the trader with the highest volume of trades on ICE at the end of a given month. The $10,000 bonus was material to the traders and created a strong inducement for them to enter into trades that had no economic substance.

20. El Paso had at least two reasons to encourage its traders to engage in round trip trading: (a) each wash trade increased revenues and trading volume, allowing El Paso to report significant revenue growth; and (b) it increased El Paso's equity position on ICE.

21. El Paso and five other companies are equity partners in ICE (formed in 2000). The ICE partnership agreement provided for modifications in each partner's share of equity depending on the volume of trading that partner conducts over ICE. Increasing El Paso's equity stake in ICE carried with it a huge potential payoff -- at the time of ICE's conception, the plan was to take ICE public in the fall of 2002 through an IPO. The partners with the biggest equity stake in ICE stood to reap the most money through the IPO.

22. In addition to the false denials described above, the Company's earnings releases for 3Q 01 (dated October 24, 2001), 4Q 01 (January 31, 2002), 1Q 02 (May 2, 2002), 2Q 02 (July 30, 2002), and the 3Q 01 10-Q (filed November 9, 2001), 2001 10-K (March 15, 2002), 1Q 02 10-Q (May 10, 2002) and 2Q 02 10-Q (August 14, 2002) were also false since they collectively overstated revenues by between $800 million and $1.1 billion.

23. The overstated revenues derived from the wash trades inflated the value of El Paso's securities. Thus, on June 8, 2002, following the Company's June 7, 2002 announcement that it received an informal inquiry from the SEC regarding round trip trades, El Paso's stock dropped $1.28 per share, or 6%. When El Paso disclosed that it received a subpoena from the U.S. Attorney's office in Houston on July 12, 2002 seeking information relating to round trip trades, its shares fell another 5.9% in late trading.

24. In a related manipulative practice, on November 13, 2002, El Paso admitted reporting false natural gas trading volume and price information to Inside FERC Gas Market Report ("*Inside FERC*"), a trade publication. This information was submitted by the Company to affect *Inside FERC's* reported index prices, and to thereby affect the market price of natural gas. On December 2, 2002, El Paso VP Todd Geiger was indicted for reporting this false trading information in order to inflate El Paso's trading revenues and volume (which amounted to hundreds of millions of dollars in revenues during the Class Period). Following news of the indictment, El Paso's stock price dropped 8%, closing at $7.546 on December 3, 2002. On December 11, 2003, Geiger pleaded guilty to reporting false trades to Inside FERC, and agreed to cooperate with ongoing investigations. On March 26, 2003 the Commodity Futures Trading Commission issued a consent order imposing a $20 million fine on El Paso for, among other things, reporting false natural gas prices and values, including the reporting of non-existent

trades and the non-reporting of trades, in an attempt to manipulate the natural gas market between at least June 2000 and November 2001.

II. El Paso's Reported Results Were Inflated By Improper Mark To Market Earnings

A. Background

25. In 1999, Eads joined El Paso's Merchant Energy division and expanded its business plan to acquire old electricity-generating plants that had contracts to provide public utilities with electricity under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). PURPA required public utilities to lock in long-term contracts with power plants at fixed prices; however, by 1999, the price of purchasing electricity on the open market was significantly less.

26. Eads, El Paso, and DLJ (later acquired by CSFB) devised a scheme whereby El Paso, or an El Paso-related entity, would acquire a power plant with a PURPA contract, and then restructure the contract with the utility so they could use electricity they purchased on the open market (generally at a much lower price) to satisfy the obligations to supply the utility with electricity.

27. El Paso took the position that the restructured contract was a "derivative" and should therefore be valued on a "mark to market" basis. As a result, rather than book revenues and earnings over the term of the entire contract (i.e., over 15 - 20 years), El Paso would record in one quarter as revenue the present value of the net cash flows it expected to earn over the life of the restructured contract. Most of El Paso's PURPA restructurings were conducted through its unconsolidated affiliate, Chaparral.

B. El Paso Improperly Valued Its Long-Term Contracts, Thereby Inflating The Company's Mark To Market Earnings

28. To calculate mark to market earnings upon the restructuring of a PURPA contract, it is necessary to estimate the present value of future net cash flows expected under the

restructured contract. This requires a determination of the expected future profits under the restructured contracts using estimated future market conditions. According to El Paso's 1Q 02 10-Q/A, future power prices are derived from a "forward pricing curve" which takes into account "a combination of *actual prices* observed in the applicable market, *price quotes from brokers* and extrapolation models that rely *on actively quoted prices* and historical information."

29. As noted above, El Paso reported false gas trading prices to a trade publication which impacted the price of natural gas indexes. Since electricity trading contracts are pegged to gas indexes, false reporting of gas prices also fraudulently affects the price of electricity. As a result, the electricity prices relied upon by El Paso to arrive at mark to market earnings for its PURPA contracts were artificially inflated and thereby inflated El Paso's mark to market earnings during the Class Period.

30. Moreover, throughout the Class Period, El Paso included in its estimates of future cash flows amounts beyond ten years. Those estimates were completely fabricated because, during the Class Period, *there was no active liquid market for gas and power beyond ten years and therefore no actual prices, price quotes from brokers, or actively quoted prices for El Paso to rely upon*. Thus, El Paso's reported earnings for 2000 and 2001 were artificially inflated, as were its earnings releases for 3Q 00 (dated November 8, 2000), Fiscal Year 2000 (January 29, 2001), 1Q 01 (April 25, 2001), 2Q 01 (July 25, 2001), 3Q 01 (October 24, 2001), 4Q and Fiscal Year 2001 (January 31, 2002) and its 3Q 00 10-Q (filed November 9, 2000), 2000 10-K (March 22, 2001), 1Q 01 10-Q (May 14, 2001), 2Q 01 10-Q (August 10, 2001), 3Q 01 10-Q (November 9, 2001) and 2001 10-K (March 15, 2002).

31. El Paso's reliance on improper mark to market accounting artificially inflated the value of the Company's securities. Indeed, when the market learned on June 3, 2002, that El

Paso may have improperly used mark to market accounting, it drove the price of El Paso's stock down almost $3.87 per share, or 15%. Discussing the stock drop, a June 4, 2002 analyst report of Gerard Klauer Mattison & Co. noted concerns about El Paso "management credibility, or lack thereof" and that "one of the gravest concerns as it applies to the sector overall is mark-to-market accounting fraud and, particularly, the ability of companies to inflate earnings and cash flow by applying higher values to illiquid transactions, thereby recording significant gains."

32. Further, in the first quarter of 2002, El Paso falsely represented it was no longer including gains more than 10 years out when, in fact, it did so based upon a fabricated trade.

33. On May 22, 2002, the Company reported in its 1Q 02 earnings release that its earnings were $383 million. In a statement at a May 2, 2002 analyst conference call and in its 1Q 02 10-Q (filed May 19, 2002), El Paso falsely represented that, while its previous financial statements included gains from periods beyond 10 years, its first quarter 2002 earnings did not.

34. El Paso filed its 1Q 02 10-Q/A on August 8, 2002, which disclosed that despite El Paso's earlier representations, the mark-to-market earnings initially reported in the 1Q 02 earnings release and the 1Q 02 10-Q *did, in fact, include gains for periods beyond ten years*. The 1Q 02 10-Q/A further included a significant change, shown in italics below, from its original 10Q filing:

> we do not recognize gains from the fair value of trading or non-trading positions beyond ten years *unless there is clearly demonstrated liquidity in a specific market.* (Emphasis added).

35. The 1Q 02 10-Q/A also reported for the first time that *$228 million in estimated future earnings attributable to contract years beyond ten years were included in the Company's estimated fair value of its PURPA restructuring contracts for the quarter (primarily from the restructuring of the Eagle Point facility in New Jersey);* this contributed at least $90 million of earnings to that quarter.

36. Moreover, the Company's 1Q 02 earnings release, 1Q 02 10-Q, and the 1 Q 02 10-Q/A were also false because they failed to disclose that the gains beyond ten years that were included in these documents were completely fabricated.

37. In order to meet analysts' expectations of 2002 first quarter earnings, El Paso officers, including Mark Sickafoose, Tim Bourn and Eads, agreed that El Paso, in violation of its own policies, would recognize revenues on the Eagle Point PURPA restructuring contract for periods beyond 10 years.

38. When PWC learned of this, it informed El Paso that it would have to restate its first quarter 2002 financial statements. This would have had serious legal and financial consequences for the Company because in June 2002 it completed public offerings which raised more than $3 billion from the sale of securities, and the offering documents used to sell those securities incorporated by reference the 1Q 02 10-Q.

39. PWC told El Paso that the Company could only recognize gains for periods beyond ten years, if: (i) it filed an amendment to the 1Q 02 10-Q disclosing that the Company would not recognize revenues beyond ten years unless there was demonstrated liquidity and (ii) it in fact demonstrated the liquidity for the period in the specific market (2011 - 2015) that the PURPA contract applied to.

40. In an effort to demonstrate liquidity, El Paso invited PWC to El Paso's trading floor on August 2, 2002 to watch El Paso trader Steve Delicandro and others attempt to make an energy trade for the relevant 2011 to 2015 time period. After El Paso's traders failed to do so by the end of the day, PWC gave El Paso until the end of the day on August 5 to execute such a trade.

41. On August 5, 2002, when his efforts continued to be unsuccessful, Delicandro, with the knowledge of Sickafoose, Bourn and Eads, called Morgan Stanley on a non-recorded cell phone to secretly arrange to make the trade. The use of a cell phone to make trades on the trading floor is a violation of El Paso's own policies.

42. Morgan Stanley already had a significant financial interest in the Eagle Point restructuring deal as underwriter, lender, and purchaser of derivatives related to the transaction. Hence, Morgan Stanley entered into a swap trade with El Paso whereby Morgan Stanley would buy from El Paso energy for the 2006 to 2010 time period, in return for El Paso purchasing from Morgan Stanley energy for the 2011 to 2015 time period. As structured, the trade produced an immediate loss to the Company of approximately $900,000 in order to falsely report $90 million of earnings in the first quarter.

43. After obtaining Morgan Stanley's surreptitious agreement to conduct the trade, Delicandro, in the presence of PWC, Sickafoose, and Bourn, called a broker and completed the prearranged trade with Morgan Stanley. With that single phony trade on August 5, 2002 (which, was for the minimum amount of gas (50 mw) recognized in the power trading business), PWC accepted that there was "clearly demonstrated liquidity in a specific market" as of March 2002. PWC then permitted El Paso to file the 1Q 02 10-Q/A three days later, which disclosed that the Company had booked gains beyond 10 years, rather than forcing El Paso to restate its first quarter financial statements.

44. Because the August 5 trade was fabricated and could not have "clearly demonstrated liquidity" at the time El Paso originally booked the gains on March 29, 2002, the Company's first quarter 2002 results as reported in the 1Q 02 earnings release, 1Q 02 10-Q and 1Q 02 10-Q/A were inflated by $90 million, rendering those statements false and misleading.

45. As a result of the inclusion of improper mark-to-market earnings in El Paso's financial statements during the Class Period, the certifications signed by Defendants Wise and Austin on August 14, 2002 in which they each attested to the fact that the 2001 10-K, 1Q 02 10-Q and 1Q 02 10-Q/A did not "contain[] an untrue statement of a material fact," or "omit[] to state a material fact necessary to make the statements in the . . . report, in light of the circumstances under which they were made, not misleading," were also false and misleading.

46. On October 7, 2003, it was reported that the SEC had opened a formal investigation regarding El Paso's accounting treatment of certain PURPA contracts, focusing on the Eagle Point PURPA restructuring contract.

III. El Paso Misled Investors By Conducting Transactions Off-Balance Sheet

A. El Paso Materially Understated Its Debt in 2000 and 2001

47. By the end of 2000, El Paso's debt had risen to $5.6 billion. This posed a serious problem for El Paso because it jeopardized its credit rating, and its ability to raise the large amounts of cash needed to buy the power plants to effectuate its PURPA contract restructuring plans. Without the acceleration of multiple years of revenues provided by these restructuring activities, El Paso would not have been able to achieve the impressive Enron-like earnings growth it claimed throughout much of the Class Period, which supported the Company's stock price.

48. With the help of Eads and DLJ, El Paso devised a scheme whereby it raised several billion dollars without recording that debt on its balance sheet. Instead of raising funds and making acquisitions in its own name, beginning in 1999 El Paso, in concert with DLJ, created a "financing structure" known as Electron through an off-balance sheet entity called Chaparral. Chaparral is a "shell" company with no employees of its own. It was ostensibly funded 20% by El Paso and 80% by DLJ (later CSFB). At the end of 2000, Chaparral had $545

million in long-term debt on its balance sheet, which rose to more than $1.8 billion by December 31, 2001. None of that debt was reflected on El Paso's balance sheet.

49. El Paso claimed Chaparral was an unconsolidated off-balance sheet entity, thereby keeping Chaparral's debt off the Company's balance sheet. However, El Paso exercised control over Chaparral. Therefore, El Paso was required under GAAP -- and its own stated accounting policies -- to consolidate Chaparral's financial statements with its own.

50. As noted above, Chaparral had only two investors: DLJ and El Paso. DLJ held its interest in Chaparral through an entity called Limestone Electron Trust ("Limestone"). Limestone's audited financial statements for the years ended December 31, 2000 and 2001 state unequivocally that it does "not control the operating and financial policies of Chaparral." Therefore Limestone did not consolidate Chaparral's financial statements with its own. Since Limestone was not exercising control over Chaparral, El Paso had to be.

51. Indeed, a wholly-owned subsidiary of El Paso performed all of Chaparral's duties through a management agreement with Chaparral. In return, El Paso received an annual management fee. Thus, since Chaparral had no employees, the *only* entity making decisions on behalf of Chaparral was El Paso (through its wholly-owned subsidiary).

52. Furthermore, notwithstanding El Paso's 20% equity interest in Chaparral, El Paso could gain far greater than 20% of Chaparral's earnings. Indeed, in return for its 80% investment, Limestone (i.e., DLJ) merely received a "priority return" (which could be less than 80%) and its share of losses was limited to a maximum of $150 million. All remaining profits and losses went to El Paso.

53. Because it actually controlled Chaparral, El Paso should have consolidated Chaparral's financial statements, thereby including Chaparral's debt on El Paso's balance sheet.

Indeed, El Paso represented in its 2000 and 2001 10-K that it consolidates entities it controls. By failing to properly consolidate Chaparral, El Paso understated its debt in 2000 and 2001 by $545 million and $1.823 billion, respectively. As a result, El Paso's 2000 10-K and 2001 10-K, as well as all of El Paso's 2001 Forms 10-Q were materially false and misleading. Also misleading was Defendant Eads' statement in a December 11, 2001 *Bloomberg* article in which he stated that "moving the debt off strengthens our balance sheet" since it failed to disclose that the debt was removed in violation of GAAP.

54. PWC issued an unqualified audit opinion on El Paso's 2000 and 2001 financial statements in which it represented that it conducted its audits "in accordance with auditing standards generally accepted in the United States of America," and that, in its opinion, El Paso's financial statements "present fairly, in all material respects, the financial position of El Paso Corporation and its subsidiaries at December 31, 2001 and 2000 and the results of their operations . . . in conformity with [GAAP]."

55. PWC's audit opinion was false and misleading. El Paso's financial statements omitted $545 million in debt in 2000 and $1.8 billion in debt in 2001 as a result of the Company's failure to consolidate Chaparral's financial statements. PWC knew that, under GAAP, consolidation is required when a company exercises control over another company. PWC also knew that El Paso *actually* controlled Chaparral. Indeed, in addition to auditing El Paso, PWC was also the auditor for Chaparral and Limestone, and issued unqualified audit reports that represented that their financial statements were presented fairly. Thus, PWC had specific knowledge that Limestone (i.e., DLJ/CSFB) acknowledged that it did not control Chaparral and was therefore not consolidating Chaparral's financial statements with its own.

Therefore under GAAP, PWC should have required El Paso to consolidate Chaparral's financial statements and include Chaparral's debt on its balance sheet.

56. The failure to properly account for the Chaparral debt on balance sheet led to the artificial inflation of El Paso's securities. Indeed, following a July 23, 2002 *New York Times* article describing how El Paso was depending more than ever on off-balance sheet partnerships to keep its debt off its books, the Company's shares dropped as much as $3.10 or over 23%.

B. El Paso Failed To Disclose Material Performance Guarantees

57. El Paso failed to disclose other contingent liabilities. Specifically, in connection with the restructuring of the PURPA contracts, Chaparral established special purpose entities ("SPEs") so that it appeared that these entities would have the contractual obligation to provide the utility with power. However, neither Chaparral nor the SPE performed any of the necessary services under the PURPA contract. The actual operations of the SPE were conducted by El Paso affiliates through a management agreement between the SPE and the affiliate. After the contract was restructured, the SPE then "monetized" the future estimated earnings under the restructured contract by selling bonds to investors that were backed by the payments the utility was obligated to pay the SPE over the life of the restructured contract.

58. However, El Paso failed to disclose a key fact to investors -- *it ultimately retained all of the risks and obligations of fulfilling the duties under the PURPA contracts as if it had done the deals in its own name*, including being liable pursuant to performance guarantees and liquidated damages provisions.

59. For example, in March 2000, Chaparral created an SPE called Cedar Brakes I, L.L.C. ("Cedar Brakes I"), which was formed to acquire the Newark Bay Cogeneration Partnership, a power plant that provided electricity pursuant to a PURPA contract to Public

Service Electric & Gas Company ("PSE&G"). Cedar Brakes I obtained PSE&G's agreement to restructure the contract in March 2000; it then entered into an agreement with El Paso Merchant Energy, L.P. ("EPM"), an affiliate of El Paso, whereby EPM agreed to supply Cedar Brakes I with the electricity that it was under contract to provide to PSE&G.

60. However, El Paso failed to disclose to investors that it had entered into a "Performance Guaranty" with Cedar Brakes I, whereby it unconditionally guaranteed to Cedar Brakes I "the punctual performance and payments of all of EPM's obligations under the Power Services Agreement. . . ." Thus, although Cedar Brakes I was ostensibly the entity that had to supply PSE&G with electricity, it was ultimately El Paso's obligation to supply that electricity or to cover the liquidated damages that EPM would have been obligated to pay. This "liquidated damages" provision required El Paso to pay an amount equal to the principal and interest on the bonds issued. El Paso's total obligations pursuant to such guarantees was more than $1 billion.

61. El Paso's failure to disclose its potential liabilities under the guarantees violated GAAP. Specifically, SFAS No. 5, *Accounting for Contingencies*, requires disclosure of the nature and amount of certain types of loss contingencies such as a guarantee.

62. In sum, El Paso's 10-Ks and 10-Qs beginning with the 3Q 00 10-Q, through the 2Q 02 10-Q, were materially false and misleading in that they failed to disclose the Company's contingent liabilities of more than $1 billion resulting from the performance guarantees.

IV. El Paso Manipulated The California Energy Market

A. Background

63. From at least November 2000 through March 31, 2001, El Paso unlawfully reduced the flow of natural gas through its main pipeline into Southern California, leaving unused more than 20 percent of the pipeline's capacity. This caused the price of natural gas in California to soar, boosting El Paso's reported earnings growth during 2001. Meanwhile, El

Paso falsely attributed its rising profits during this time to other factors, and repeatedly denied manipulating California's energy markets.

64. In February 2000, El Paso put 1.2 billion cubic feet of capacity up for sale. On February 14, 2000, executives at El Paso made a presentation to Wise as El Paso Merchant, an affiliate of El Paso, was preparing to bid for the 1.2 billion cubic feet. During this meeting, Wise was advised that El Paso Merchant's bid would provide El Paso with "the ability to influence the physical market to the benefit of the financial/hedge position," and that storage was needed *"to help manipulate physical spreads …."* (The "physical spread," or "basis spread," is the difference between the price of gas in the producing region and the price of gas in the delivery region (i.e., California).) Wise approved El Paso Merchant's bid.

65. Similarly, on April 14, 2000, El Paso Merchant President Greg Jenkins sent a memo to Wise concerning El Paso Pipeline's contract with its affiliate, El Paso Merchant, stating: "We will make money two ways: 1) increase the load factor 2) widen the basis spread."

66. The El Paso Merchant/El Paso Pipeline contract raised concerns of anti-competitive behavior at the Public Utilities Commission of the State of California ("CPUC"). The CPUC filed a complaint on April 4, 2000 which alleged, among other things, that the transportation contracts between El Paso Pipeline and El Paso Merchant raised issues of "affiliate abuse."

67. The soaring energy prices in California during the second half of 2000 and early 2001 were caused in part by El Paso's constraint of the flow of gas to California, thereby creating an artificial scarcity. The resulting high prices and increased basis spread directly benefited El Paso's reported financial results because it enabled El Paso Merchant to sell gas into

California at an enormous markup, and allowed the Company's pipeline segment to renew capacity at maximum allowable rates for a protracted period of time.

B. The FERC Proceedings

68. The findings of the FERC Chief Administrative Law Judge ("ALJ") confirm that El Paso secretly withheld natural gas to manipulate the California energy markets.

69. On October 9, 2001, the ALJ found that El Paso and El Paso Merchant were guilty of "blatant collusion" in violation of 18 C.F.R., Part 161 (2001). At that time, the ALJ found insufficient evidence of market manipulation.

70. However, on September 23, 2002, the ALJ, on remand, issued a second decision regarding the CPUC claim against El Paso. In this decision, it ruled that "El Paso Pipeline *withheld extremely large amounts* of capacity that could have flowed to its California delivery points in violation of its certificate obligation and in violation of its 10-year settlement agreement. *This act by El Paso Pipeline substantially tightened the supply of natural gas at the California border significantly broadening the basis differential.*" (Emphasis supplied). In response to the ALJ's decision, El Paso's stock dropped $4.13 per share, over 35%.

71. On November 13, 2003, FERC accepted a settlement that requires El Paso to pay $1.7 billion to settle claims that it manipulated California's (and four other states') natural gas markets; the magnitude of that settlement undercuts the Company's contention that it did not manipulate those markets. On December 5, 2003, a San Diego state court judge approved the settlement with respect to California.

C. False and Misleading Statements Regarding El Paso's Manipulation of the California Market

72. El Paso repeatedly and falsely denied inflating high energy prices in California. For example, on February 23, 2001, El Paso issued a press release stating, in part, "[i]t is not

possible for any significant holder of capacity on the El Paso Natural Gas Pipeline to cause a significant increase in California gas prices by refusing to use that capacity." Similarly, on August 1, 2001, El Paso issued a false press release titled "Recent Industry Filings Confirm El Paso's Position That Sudden Increases in Demand – Not Market Manipulation – Caused Higher Natural Gas Prices in California."

73. El Paso's 10-Qs for each quarter of 2001, as well as in its 2001 10-K, included the following materially misleading statement covering up the Company's market manipulation:

> During the latter half of 2000 and continuing into 2001, California experienced sharp increases in natural gas prices and wholesale power prices due to energy shortages resulting from a combination of unusually warm summer weather followed by high winter demand, low gas storage levels, lower hydroelectric power conditions, maintenance downtime of significant generation facilities, and price caps that discouraged power movement from other nearby states into California.

V. El Paso Overstated Its Proved Reserves Thereby Inflating Its Earnings

A. Background

74. Proved reserves are what a company reasonably expects to extract from the ground, given available technology and existing economic conditions. Analysts and investors consider proved reserves a critical metric of a company's future profit potential.

75. Shortly after the completion of the Coastal Corporation ("Coastal") acquisition in 2001, Erskine established a Reservoir Engineering Group (the "Reservoir Group") at the Company's Houston headquarters, which was responsible for establishing El Paso's proved oil and gas reserves.

76. As head of the Reservoir Group, Erskine was the official at the Company responsible for the oil and natural gas reserve information, and provided that information for inclusion in the Company's annual reports, offering and financing documents. A former

financial analyst for El Paso from 2001 until April 2004 confirmed that Erskine was responsible for establishing El Paso's oil and gas reserves: "Erskine signed the documents that I took to investors attesting to the reserve estimates." According to the former vice president of finance, Erskine's responsibilities were twofold: "to keep the flow of oil and gas production coming out of the ground to meet the Company's targeted goals and to find new resources to be tapped in the future, including the reserves still in the ground." In addition, Erskine continuously advised officers of the Company (including certain of the Individual Defendants) of proved reserve information; specifically, Erskine attended weekly meetings every Monday afternoon at corporate headquarters to report on the Company's oil and gas production to among others, Defendants Wise, Eads and Kuehn.

77. El Paso uses a "full cost method," for recording costs associated with the exploration and development of oil and gas, whereby all related productive and nonproductive costs incurred are capitalized. The Company amortizes these costs over the life of its proved reserves based upon a "depletion rate," which is based upon, *inter alia,* the reported amount of these reserves. Therefore, an overstatement of proved reserves results in understated amortization expenses, which in turn cause an overstatement of operating income and earnings.

78. In addition, under Generally Accepted Accounting Principles ("GAAP"), the "full cost method" requires El Paso to perform a quarterly impairment test of its exploration and production costs, referred to as a "ceiling test." The "ceiling test" calculation requires the Company to write down, on a quarterly basis, its capitalized costs regarding proved reserves to the extent they exceed the present value of future net revenues to be derived from those reserves. Thus, an overstatement of reserves will understate the amount of ceiling test charges, thereby overstating operating income and earnings.

B. El Paso Discloses its Staggering Overstatement of Proved Reserves

79. El Paso began disclosing the truth of its massive overstatement of proved reserves on February 2, 2004. On that date, the Company filed a Form 8-K which stated that the Company expected "a material negative revision to our proved reserve estimates;" no quantification of the write-down was then disclosed. In response, the Company's stock price dropped from $8.50 to $8.21 or 3.5%.

80. Then, on February 17, 2004, the Company announced that total proved oil and gas reserves for the Company, and its wholly owned subsidiaries, El Paso CGP Company ("El Paso CGP") and El Paso Production Holding Company ("El Paso PHC") were overstated by a staggering *41%,* or 3.64 trillion cubic feet of gas equivalent ("Tcfe") as of December 31, 2003. In particular, proved reserves were overstated by 1.824 Tcfe at the Company, 865 million cubic feet of gas equivalent ("MMcfe") at El Paso PHC and 951 MMcfe at El Paso CGP. The Company also disclosed that as a result of the reserve revision, its depletion rate increased to $3.04 per MMcfe in the fourth quarter of 2003 and $2.68 per MMcfe in the first quarter of 2004 and that it would take a pre-tax ceiling test charge of $1 billion in the fourth quarter of 2003. In response, El Paso's common stock fell nearly 18% from a closing price of $8.81 on February 17, 2004 to close at $7.26 on February 8, 2004, on heavy trading volume of over 57 million shares.

81. On March 10, 2004, the Company announced that based on its internal review and the independent review of its Audit Committee, it would restate previously reported financial results for El Paso, and its wholly owned subsidiaries, El Paso CGP and El Paso PHC. The Company warned investors not to rely upon its previously filed reports.

82. Two months later, on May 3, 2004, El Paso commented on the results of the independent review of its Audit Committee concerning the inflated reserves. The review by the

Company's independent counsel, Haynes and Boone, LLP, concluded that "during the period from the beginning of 1999 through the end of 2003, certain employees used *aggressive and, at times, unsupportable methods* to book proven reserves." (emphasis added). The review also found that "certain employees provided proved reserve estimates that they knew or should have known were incorrect at the time they were reported." Although the May 3, 2004, press release maintained that "current" senior management was not involved, no such assurance was given for "former" senior management such as Erskine, Austin or Wise. The Company also disclosed that it would restate *five* years of earnings and may need to increase its write-downs beyond the $1 billion it previously disclosed.

83. Admitting to its prior lack of internal controls, in the May 3, 2004 announcement the Company also announced that it would implement changes that would "ensure the integrity of the Company's reserve booking process" and avoid similar problems in the future, including creation of an internal committee to routinely review reserves; a centralized reserve reporting system; new documentation procedures; and improved training.

84. On June 16, 2004, the Company announced that it would delay filing its 2003 Form 10-K (which will include more information regarding its restatement) until August 15, 2004.

85. As a result of its overstated proved oil and gas reserves, the Company is the subject of a formal SEC investigation and is the subject of an investigation by the U.S. Attorneys' Office in Houston.

C. **False and Misleading Statements Due to the Reserve Overstatement**

86. During the Class Period, the Company reported Total Proved Reserves of 1,453,259 MMcfe; 1,735,304 MMcfe; 6,675,168 MMcfe; and 5,232,464 MMcfe in its respective

annual reports filed on Form 10-K. *See* 1999 Form 10-K (filed February 22, 2000); 2000 Form 10-K (filed March 22, 2001); 2001 Form 10-K (filed March 15, 2002); 2002 Form 10-K (filed March 31, 2003).

87. In its 1999, 2000, 2001, and 2002 Forms 10-K, El Paso reported ceiling test charges of $352 million, $0, $135 million, and $269 million, respectively. The Company also reported ceiling test charges in various quarterly 2000, 2001, 2002, and 2003 Forms 10-Q filings. Although the Company has indicated that it will be restating its financial statements from 1999 to 2003, due to the Company's announced delay in filing its 2003 Form 10-K, it is impossible to presently identify all the false ceiling test charges in the Company's SEC filings. Accordingly, Plaintiffs intend to supplement this complaint following the Company's filing of its 2003 Form 10-K, including information on the restatements, which filing is currently due on August 15, 2004.

88. In its 2002 Form 10-K, the Company stated that, "For the first quarter of 2003, we expect our domestic unit of production depletion rate to be approximately $1.59 per Mcfe." In its 2Q and 3Q 2003 Forms 10-Q, and its 3Q 2002 Form 10-Q, the Company stated that it expected that its domestic unit of production depletion rate would be approximately $1.76 per Mcfe, $1.84 per Mcfe, $1.84 per Mcfe, for the respective subsequent quarters. Plaintiffs may also supplement this allegation at the time El Paso files its 2003 Form 10-K.

89. Additionally, Eads and Erskine made several statements concerning the Company's reserves and depletion rates during earnings conference calls:

- Eads stated "Q1 was an excellent quarter in terms of reserves" noting that "Our portfolio continues to be low risk, our value at risk is $18 million now, and we added $61 million of reserves . . . the emerging new trend for the Company is [its] opportunity set in the deep gulf on the shelf." (Q1 2002 Conf. Call, May 2, 2002).

- Erskine was reported by *Bloomberg* on June 6, 2003, as stating that despite the

Company's planned sale of 1 trillion cubic feet of reserves in 2003, the Company would spend $1.35 billion to replace reserves and "bring the reserves back up to about 5 trillion cubic feet."

90. Erskine further stated on February 5, 2003, during the Company's 4Q 2002 earnings call:

- "Over the past several years we have added significant reserves in this trend with current proof ultimate recovery from our fields of over 3.3 tcf. In addition, we have over a TCF of probable reserves and have identified exploratory projects that will expose us to an additional TCF in cash. We currently have 15 rigs running in this area and have sufficient inventory to maintain at least a 10 rig activity level for the next several years."
- ". . . our Gulf of Mexico deep shelf program [] continues to exceed our expectations. Since the Coastal merger we have achieved a 67 percent success ratio with our average successful well [] 33 bcf reserves and producing at an initial potential of 42 Mcf a day and 2700 barrels [] per day."
- ". . . you can see we began the year in 2002 with 6.6 tcf of proved reserves. We added over a tcf and a half of new reserves through the drillbit and our ranch acquisition."

91. The statements identified in ¶¶ 86 through 90 above were each materially false and misleading when made because El Paso and the Individual Defendants knowingly or recklessly: (a) overstated the Company's proved oil and gas reserves by 3.64 Tcfe, or 41%; (b) understated ceiling test charges thereby overstating operating income and earnings, (c) understated the Company's depletion rates thereby overstating operating income and earnings, and (d) violated the Company's internal critical accounting policies, GAAP and SEC rules by improperly accounting for its proved reserves. Specifically, the Company's financial statements violated SEC Rule 4-10(a) of Regulation S-X (defining "proved reserves"); SFAS 69 (prescribing disclosure requirements regarding proved reserves); SFAC No. 1, ¶34 (financial reporting should provide information that is useful and comprehensible); SFAC No. 2, ¶¶58-59 (financial reporting should be reliable); and SFAC No. 2, ¶132 (materiality of misstatement).

CLASS ACTION ALLEGATIONS

92. Plaintiffs bring this action as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a Class of persons and entities who purchased or acquired the securities of El Paso (including common stock, options, and notes) between February 22, 2000 and February 17, 2004. Excluded from the Class are the Defendants and their affiliates.

93. Joinder of all class members is impracticable.

94. 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.

95. Plaintiffs will fairly and adequately represent the interests of the members of the Class. Plaintiffs have retained competent counsel experienced in class and securities litigation and intend to prosecute this action vigorously. Plaintiffs are members of the Class and do not have interests antagonistic to, or in conflict with, the other members of the Class.

96. Plaintiffs' claims are typical of the claims of the members of the Class. A class action is superior to other methods for the efficient adjudication of this controversy.

COUNT I

Violations of Section 11 of the Securities Act Against Defendants El Paso, Wise, Austin, Kuehn, CSFB and PWC

97. Plaintiffs reallege each allegation set forth above, except to the extent that such allegations sound in fraud. This claim is not based on and does not sound in fraud.

98. This Count is brought pursuant to Section 11 of the Securities Act on behalf of those members of the Class who purchased or otherwise acquired securities pursuant to or traceable to the Registration Statements and Prospectuses identified below.

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The El Paso/Coastal Merger

99. On February 24, 2000, El Paso filed with the SEC a Form S-4 Registration Statement in connection with the merger of El Paso and Coastal. El Paso filed an Amended S-4 Registration Statement on March 16, 2000 (the "Merger Registration Statement") which included an amended Joint Proxy Statement/Prospectus (the "Proxy/Prospectus").

100. On May 5, 2000, the shareholders of El Paso and Coastal voted to approve the merger. The merger was completed on January 29, 2001.

101. In Section 5.2 of the Agreement and Plan of Merger (the "Merger Agreement"), attached to the Proxy/Prospectus, El Paso falsely represented that between the date of the Agreement and the effective date of the merger, it would not "increase the compensation payable or to become payable to any of its officers, directors or employees . . . or grant any stock options or other equity related awards." The Proxy/Prospectus failed to disclose that during that time, El Paso and the Individual Defendants had an understanding that Defendants Wise, Austin and Eads would receive more than $12 million dollars in cash payments and stock option grants upon consummation of the merger.

102. The materiality of the non-disclosure regarding these payments is highlighted by the fact that pages 62 and 80 of the Proxy/Prospectus specify payments to be made to, and the interests of, *Coastal* directors in connection with the merger.

103. Simultaneous with the consummation of the merger, El Paso's Board formally approved the "retention payments" that had been previously agreed to, including $7.0 million to Wise, and $1.75 million to Austin and Eads. The Board then also awarded 1,062,250 El Paso stock options to those officers.

104. The Proxy/Prospectus also was false in stating that both El Paso and Coastal "have attractive prospects for the future." That was not true with respect to El Paso which needed the Coastal merger to survive.

105. Prior to the merger, El Paso was burdened with a heavy debt load, much of which was collateralized by El Paso assets. El Paso could no longer support its debt load with its assets. In addition, El Paso's plans to achieve growth by engaging in off-balance sheet financing required it to have sufficient assets to collateralize its obligations under those transactions. Thus, El Paso had to complete the Coastal merger so that it could acquire valuable assets it could then pledge to support its ever-growing debt.

106. For instance, in early 2000, at the same time that El Paso was seeking to merge with Coastal, El Paso was in the process of forming a series of off-balance sheet entities referred to as Clydesdale. El Paso determined, but did not disclose, that its upcoming merger with Coastal would provide the assets necessary to back up the Clydesdale deal. After the merger, El Paso pledged the Colorado Interstate Gas transmission system -- which it had acquired from Coastal -- to support Clydesdale's pre-existing debt.

107. The Proxy/Prospectus also incorporated by reference El Paso's 1999 Form 10-K, which was false and misleading for the reasons described in ¶¶ 86-87 and 91, above.

Additional Offerings

108. El Paso completed the following public offerings during the Class Period:

Date	Offering	SEC Filings	Documents Incorporated
5/11/01	$496 million of 7% Senior Notes due 5/15/11	4/27/01 Registration Statement; 5/4/01 Prospectus; 5/11/01 Prospectus Supplement	2000 10-K; 1Q 01 10-Q
7/25/01	$688 million of 7.8% Medium Term Notes due 8/1/31	4/27/01 Registration Statement; 5/4/01 Prospectus; 7/25/01 Prospectus	2000 10-K; 1Q 01 10-Q

		Supplement	
12/24/01	$863 million of Common Stock	4/27/01 Registration Statement; 5/4/01 Prospectus; 12/24/01 Prospectus Supplement	2000 10-K; 1Q 01 10-Q; 2Q 01 10-Q; 3Q 01 10-Q
1/9/02	$1.081 billion of 7.75% Medium Term Notes due 1/15/32	4/27/01 Registration Statement; 5/4/01 Prospectus; 1/7/02 Prospectus Supplement	2000 10-K; 1Q 01 10-Q; 2Q 01 10-Q; 3Q 01 10-Q
6/21/02	$550 million of 9% Units	2/8/02 Registration Statement; 2/27/02 Prospectus; 6/21/02 Prospectus Supplement	2000 10-K; 2001 10-K; 1Q 01 10-Q; 2Q 01 10-Q; 3Q 01 10-Q; 1Q 02 10-Q
6/21/02	$870 million of Common Stock	2/8/02 Registration Statement; 2/27/02 Prospectus; 6/21/02 Prospectus Supplement	2000 10-K; 2001 10-K; 1Q 01 10-Q; 2Q 01 10-Q; 3Q 01 10-Q; 1Q 02 10-Q
1/06/04	$72 million of Common Stock (the proceeds of which were use to fund the settlement relating to the Company's manipulation of the California market)	2/8/02 Registration Statement; 2/27/02 Prospectus, 11/19/03 Prospectus Supplement; 12/23/03 Prospectus Supplement; 1/6/04 Prospectus Supplement	2000 10-K; 2001 10-K; 2002 10-K; 1Q 01 10-Q; 2Q 01 10-Q; 3Q 01 10-Q; 1Q 02 10-Q; 2Q 02 10-Q; 3Q 02 10-Q

109. The above-specified Registration Statements, Prospectuses and Prospectus Supplements contained untrue statements of material fact and omitted material facts necessary to make the statements not misleading. Specifically, as described above, the financial results incorporated by reference and referred to above overstated revenues through round trip trades and the improper use of mark-to-market accounting, and overstated operating income due to the overstatement of proved reserves. In addition, these financial results concealed El Paso's true liabilities with respect to off-balance sheet companies and their PURPA transactions. The Registration Statements and Prospectuses also failed to disclose that the increased energy prices and the Company's resulting increased profitability were due to its manipulation of the California energy market.

110. El Paso is the registrant for the securities and filed the Registration Statements and Prospectuses. El Paso, Wise, Austin and Kuehn signed the Registration Statements, were

responsible for the contents of the Registration Statements and Prospectuses, and caused their filing with the SEC.

111. CSFB (which acquired DLJ as described above), was an underwriter and seller with respect to the 9% Units and June 26, 2002 common stock offerings referred to above, and was responsible for the contents of the referred to Registration Statement and Prospectus. CSFB sold the securities issued in the offerings under a firm underwriting agreement.

112. PWC was the auditor for El Paso and consented to being named in the Registration Statements and Prospectuses as an expert who audited and certified the financial statements of El Paso. PWC failed to exercise reasonable care in conducting its 2000 and 2001 audits incorporated by reference into the Registration Statements, and in failing to detect, disclose and/or correct the material omissions and materially false statements in the financial statements that were contained in the Registration Statements and Prospectuses. Further, PwC failed to cause El Paso to correct the unsupportable methods and internal control deficiencies with respect to its estimation of proved reserves.

113. At the time the securities were purchased, neither Plaintiffs nor any member of the Class knew, or by the reasonable exercise of care could have known, of the facts concerning the inaccurate and misleading statements and omissions alleged herein.

114. In connection with the offerings and sales of the securities, defendants, used the means and instrumentalities of interstate commerce and the U.S. mails.

COUNT II

Against Defendants El Paso and CSFB
<u>For Violations of Section 12(a)(2) of the Securities Act</u>

115. Plaintiffs reallege each allegation set forth above, as if set forth fully herein, except to the extent that such allegations sound in fraud. This claim is not based on, and does not sound in fraud.

116. By means of the Registration Statements, Prospectuses and Prospectus Supplements, the defendants named in this Count offered El Paso securities for sale, pursuant to those filings.

117. CSFB solicited purchasers of the securities through their active role as lead underwriters of certain of the offerings described above.

118. The Registration Statements, Prospectuses and Prospectus Supplements contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading and failed to disclose material facts as described above.

119. Plaintiffs and members of the Class who purchased the securities of El Paso pursuant to the Registration Statements, Prospectuses and Prospectus Supplements, purchased securities from the defendants named in this Count, but did not know, nor in the exercise of reasonable diligence could they have known, of the untruths and omissions described above.

COUNT III

Against the Defendants Wise, Austin, Eads, and Kuehn
<u>For Violation of Section 15 of the Securities Act</u>

120. Plaintiffs reallege each and every allegation set forth in the paragraphs above, except to the extent that such allegations sound in fraud. This claim is not based on and does not sound in fraud.

121. The Defendants Wise, Austin, Eads, and Kuehn were control persons of the Company by virtue of their positions as senior officers of the Company. Additionally, defendant Wise was Chairman of the Board of Directors. Therefore, by reason of their positions of control over the Company, each of these Individual Defendants is liable jointly and severally with and to the same extent that El Paso is liable to Plaintiffs and the members of the Class who purchased securities on the offerings pursuant to the Registration Statements, Prospectuses and Prospectus Supplements traceable to the offerings as a result of the wrongful conduct alleged herein.

COUNT IV

Violations of Section 10(b) of the Exchange Act and Rule 10b-5
Promulgated Thereunder Against El Paso, the Individual Defendants, and PWC

122. Plaintiffs reallege each allegation contained above as if fully set forth herein.

123. 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 to misrepresent El Paso's reported financial results for 2000, 2001 and the first quarter of 2002. Further, as alleged above, Defendants materially understated El Paso's debt and other liabilities, and misrepresented El Paso's earnings during the Class Period. Defendants (except PwC) intentionally or recklessly also overstated or caused to be overstated the Company's proved reserves, thereby inflating its operating earnings and income during the Class Period.

124. The defendants named in this Count knew (or were reckless in not knowing) that their statements were false and omitted material facts necessary to make their statements, in light of the circumstances in which they were made, not misleading. Each of the Individual Defendants was a high-level executive at the Company with hands-on responsibilities during the Class Period; each had access to material non-public adverse information, directly participated in

high-level meetings and made executive decisions through which the scheme was accomplished; and each was aware of and responsible for the Company's dissemination of false and misleading information to the investing public.

125. The Individual Defendants named in this Count had powerful motives to misstate El Paso's financial results and to conceal the undisclosed business practices alleged herein. They could only maintain their positions and their enormously lucrative compensation packages by showing consistent EPS growth. Their compensation was staggering:

- From 2000 through 2002, Wise received a salary, special cash bonuses, stock options and additional compensation exceeding $37 million. This included a base compensation $1.51 million for 2001 and $1.65 million in 2002; the granting of options and restricted stock; and "loans" from El Paso for the purpose of buying a personal residence and to purchase 300,000 options that expired in 2002.
- From 2000 through 2002, Austin pocketed more than $7.7 million in salary and additional compensation.
- Under the terms of his employment agreement, Kuehn receives a monthly salary of $100,000 and is eligible to earn a bonus equal to 100% of his annual salary. When Kuehn became the permanent CEO of El Paso, in March 2003, he received cash in the amount of $700,000, 125,000 options and 50,000 shares of restricted stock.
- From 2000 through 2002, Eads -- reaped more than $10.8 million in salary and additional compensation.

- From 2001 through 2002, Erskine reaped more than $1.2 million in salary, bonuses and additional compensation, which compensation was based, in part, on the amount of reported reserves. In early 2003, Erskine also entered into an agreement to, inter alia, extend his contract through 2003, for which he received a bonus of approximately $2 million.

126. The Individual Defendants stood to gain immediate personal profits by manipulating El Paso's financial statements and engaging in the undisclosed practices, alleged above, to falsely create the appearance of growth. El Paso's executive compensation program is tied directly to short-term performance metrics, particularly for hitting growth targets for EBIT (earnings before interest and taxes), EPS, cash flow from operations, and for closing large acquisitions. Accordingly, by concealing the truth, Wise, Austin and Eads reaped an additional $3.432 million, $1.14 million, and $1.4 million respectively for 2001 alone.

127. In addition to their compensation packages, the Individual Defendants were also provided with extraordinary opportunities to enter into extremely profitable risk-free investments. For example, in February 2001, Wise, Austin and Eads were permitted to buy shares in an El Paso telecommunications venture known as Photon by putting up only 20% of the purchase price, with El Paso financing the balance with only 40% recourse and the remaining 60% in non-recourse loans. After the value of the shares declined (costing El Paso $70 million), El Paso repurchased the Individual Defendants' shares at "fair value" which was determined to be 25% more than the Individual Defendants actually invested.

128. In light of the enormous financial benefits bestowed upon the Individual Defendants as executive officers, they had a strong incentive to participate in and/or condone the fraudulent recognition of $90 million of earnings in the first quarter of 2002. As detailed above,

PWC was going to force El Paso to restate its 1Q 02 10-Q because, contrary to the Company's representation, the results presented therein included gains for contract years beyond 10 years. Because a restatement at a time when El Paso was already under scrutiny for questionable accounting and business practices would have undermined Wise, Austin, Eads' ability to retain their positions, they were desperate to avoid a restatement, thereby prompting them to encourage the fabricated transaction with Morgan Stanley detailed above. These Defendants also needed to falsely report first quarter 2002 results in order to support the June 2002 securities offerings, which raised over $3 billion, thereby temporarily easing El Paso's liquidity crunch. It is unlikely that these offerings would have succeeded as planned had the Company reported first quarter 2002 results that were significantly below analysts' expectations.

129. It was also obvious to the Individual Defendants that maintaining strong proved reserves was necessary to maintain and inflate the price of El Paso's securities. The Company's inflated stock price allowed it to consummate its $17 billion merger with Coastal, which was announced on January 18, 2000 and completed on January 29, 2001. Additionally, the Company inflated its reserve numbers to artificially improve its results in the face of its increasing financial difficulties resulting from its increased debt, energy trading losses and manipulation of natural gas prices.

130. Moreover, the overstatement of proved reserves entitled the Company to engage in several significant stock and debt offerings and asset sales in an effort to pay down its debt and improve its liquidity. Thus, during the Class Period, the Company issued more than $1.8 billion in common stock and over $4 billion in debt. In May 2003, El Paso PHC closed a private placement of $1.2 billion 7.75% notes, with the proceeds used to repay intercompany loans to the Company. The Company also sold over $1.82 *billion* of its oil and gas reserves, including:

Date	Asset Sold	Sales Price
April 2002	Natural gas reserves in Texas	$525 million
November 2002	Utah natural gas properties to Westport Resources Corp.	$502 million
March 2003	Natural gas and oil reserves to Chesapeake Energy Co.	$500 million
March 2003	San Juan Basin Rosa production properties	$138 million
March 2003	Oil and gas assets in Alberta, Canada	$36.1 million
June 2003	Mid-continent assets to Regency Gas Services	$119 million

131. El Paso and the Individual Defendants were also motivated to inflate the Company's proved reserves in order to obtain a $1.2 billion two-year secured loan in March 2003 and a $3 billion revolving credit facility in April 2003. Both of those financings were collateralized by the Company's oil and gas reserves. The Company's 2002 Form 10-K confirms that the Company routinely used its oil and gas reserves as collateral for its loans. Thus, there was an incentive to overstate reserves in order to increase the Company's financing. As a result of its substantial debt, the Company was also motivated to maintain its credit ratings. The "Risk Factors" section of its 2002 Form 10-K confirmed that "the downgrades of our credit ratings to below investment grade have significantly impaired and will continue to significantly impact our liquidity." Further, a reduction in the Company's credit rating required El Paso to post additional cash or other collateral to secure its existing contractual obligations.

132. Moreover, the Company's own May 3, 2004 press release described above provides further support that Erskine, Austin and Wise, then former members of El Paso's senior management, took "aggressive," and "unsupportable methods" to book proved reserves which "they knew or should have known" were incorrect.

133. As a result of the foregoing, the market price of El Paso's securities was artificially inflated or maintained during the Class Period. In reliance on defendants' statements and/or in reliance on the integrity of the market price of El Paso's securities, Plaintiffs purchased El Paso securities at artificially inflated prices and were damaged thereby.

COUNT V

Violation of Section 20(a) of the Exchange Act
<u>Against the Individual Defendants.</u>

134. Plaintiffs reallege each allegation contained above as if fully set forth herein.

135. Each of the defendants named in this Count was a control person of El Paso by virtue of his position as a senior officer and a member of El Paso's executive management team. Additionally, Wise and Kuehn served as the Chairman of El Paso's Board. The Individual Defendants were responsible for the dissemination of information to the market, and Wise, Austin, Kuehn, and Scott signed one or more of the false and misleading SEC filings as set forth above.

136. By reason of his position of control over the Company, each defendant named in this Count is liable jointly and severally with El Paso.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief, including: (a) Certifying the action as a class action under Rule 23 of the Federal Rules of Civil Procedure; (b) Awarding a Judgment in favor of Plaintiffs and the Class and against Defendants in the amount to be proven at trial; and (c) Providing such other relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

137. Plaintiffs hereby demand a trial by jury.

Dated: July 2, 2004

Respectfully submitted,

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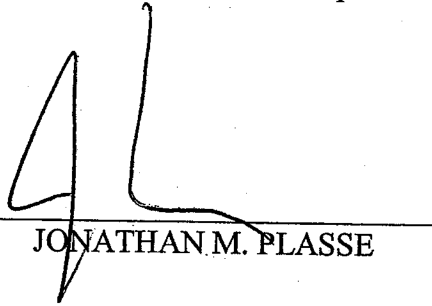
EXHIBIT A

The plaintiffs referred to in ¶ 4 of the attached complaint include: Louisiana School Employees Retirement System; The Policemen and Firemen Retirement System of the City of Detroit; General Retirement System of the City of Detroit; IRA F.B.O. Michael Conner; IRA F.B.O. Dale Conner; Lindsay Conner, PAS Management & Consulting Services, Inc.; Marvin Goldfarb; Gerard Ruskin; Renneck T. Wilson; Ross Reade; and William Jackson Frable Living Trust; Sinclair Haberman; James Felton; Patrick Hinner; Andrew Albstein; Michael Copland; David Sadek; William Sinnreich; James Thompson; Bruce S. Guard; Konrad Wottge; and Nik Wottge.

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2004, I caused the foregoing Second Consolidated Class Action Complaint to be served by Federal Express and/or U.S. Mail upon the counsel listed in the annexed Service List.



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