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## U.S. Securities and Exchange Commission

### UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Litigation Release No. 20522 / April 7, 2008

SECURITIES AND EXCHANGE COMMISSION v. MICHAEL T. UBERUAGA, ET AL., Civil Action No. 08 CV 0621 DMS (LSP) (S.D. Cal.) (filed April 7, 2008)

#### SEC CHARGES FIVE FORMER SAN DIEGO CITY OFFICIALS WITH FRAUD IN CONNECTION WITH CITY MUNICIPAL SECURITIES OFFERINGS

#### **Commission Seeks Permanent Injunctions and Penalties against Former City Manager, Auditor & Comptroller, Deputy City Manager for Finance, Assistant Auditor & Comptroller, and City Treasurer**

The Securities and Exchange Commission today charged Michael T. Uberuaga, the former San Diego City Manager, Edward P. Ryan, the former Auditor & Comptroller, Patricia Frazier, the former Deputy City Manager for Finance, Teresa A. Webster, the former Assistant Auditor & Comptroller, and Mary E. Vattimo, the former City Treasurer, with fraud in connection with the City's false and misleading financial statements in five 2002 and 2003 bond offerings.

According to the SEC's complaint, these five former officials knew that the city had been intentionally under-funding its pension obligations so that it could increase pension benefits but defer the costs. They were aware that the city would face severe difficulty funding its future pension and retiree health care obligations unless new revenues were obtained, pension and health care benefits were reduced, or city services were cut. They specifically knew that the city's unfunded liability to its pension plan was projected to dramatically increase, growing from \$284 million at the beginning of fiscal year 2002 to an estimated \$2 billion by 2009, and that the city's liability for retiree health care was another estimated \$1.1 billion. The SEC's complaint alleges that the officials violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 thereunder by failing to disclose these and other material facts to rating agencies or to investors in bond offering documents and continuing disclosures. The complaint seeks a final judgment permanently enjoining the officials from further violations of the securities laws and ordering them to pay civil penalties.

The Commission's complaint, filed in federal district court in San Diego, alleges the following. Uberuaga signed the closing letter for one of the bond offerings, falsely certifying that it was accurate and did not contain any misleading statements. Ryan signed letters falsely representing that the city's audited financial statements included in the securities offerings were accurate. Frazier regularly reviewed and revised the false and misleading

disclosure documents, and signed the closing letter for two of the five bond offerings. She falsely certified that the disclosures were accurate and did not contain any misleading statements. Additionally, she reviewed and made presentations to the rating agencies. Webster reviewed the city's financial statements that contained some of the false and misleading disclosures, and Vattimo participated in drafting the city's false and misleading disclosures. Additionally, Vattimo and Webster both knew that in 2003, the rating agencies had concerns about the city's growing pension obligations and that those obligations could negatively affect the city's credit rating. Nevertheless, they withheld material facts from the rating agencies.

The Commission previously entered an order sanctioning the City of San Diego for committing securities fraud by failing to disclose to the investing public important information about its pension and retiree health care obligations in the sale of its municipal bonds in 2002 and 2003. To settle the action, the city agreed to cease and desist from future securities fraud violations and to retain an independent consultant for three years to foster compliance with its disclosure obligations under the federal securities laws.

The Commission also previously filed a settled civil injunctive action against the outside auditors for the City of San Diego and its pension system, Thomas J. Saiz and Calderon, Jaham & Osborn, an accountancy corporation, for violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Saiz and Calderon, Jaham & Osborn consented to the entry of a final judgment permanently enjoining them from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and ordering Saiz to pay a civil penalty of \$15,000.

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