

1 KAREN MATTESON (Cal. Bar No. 102103)

E-mail: matttesonk@sec.gov

2 KELLY BOWERS (Cal. Bar No. 164007)

E-mail: bowersk@sec.gov

3 ALKA N. PATEL (Cal. Bar No. 175505)

E-mail: patelal@sec.gov

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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIF.

4 \*\*:

5 Attorneys for Plaintiff  
6 Securities and Exchange Commission  
7 Rosalind Tyson, Acting Regional Director  
8 Andrew Petillon, Associate Regional Director  
9 5670 Wilshire Boulevard, 11th Floor  
10 Los Angeles, California 90036  
11 Telephone: (323) 965-3998  
12 Facsimile: (323) 965-3908

11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 SECURITIES AND EXCHANGE  
14 COMMISSION,

15 Plaintiff,

16 vs.

17 THOMAS J. SAIZ, and CALDERON,  
18 JAHAM & OSBORN, an accountancy  
19 corporation,

20 Defendants.

Case No.

COMPLAINT FOR  
VIOLATIONS OF THE  
FEDERAL SECURITIES  
LAWS

07 CV 2308 L JMA

21 Plaintiff Securities and Exchange Commission ("Commission") alleges as  
22 follows:

23 JURISDICTION AND VENUE

24 1. This Court has jurisdiction over this action pursuant to Sections 20(b),  
25 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C.  
26 §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of  
27 the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78(u)(d)(1),  
28 78u(d)(3)(A), 78u(e) & 78aa. Defendants have, directly or indirectly, made use of

1 the means or instrumentalities of interstate commerce, of the mails, or of the  
2 facilities of a national securities exchange in connection with the transactions, acts,  
3 practices and courses of business alleged in this Complaint.

4 2. Venue is proper in this district pursuant to Section 22(a) of the  
5 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.  
6 § 78aa, because certain of the transactions, acts, practices and courses of conduct  
7 constituting violations of the federal securities laws occurred within this district,  
8 and the Defendants reside and/or are located in this district.

9 **SUMMARY**

10 3. This case involves false and misleading statements by Defendants  
11 Thomas J. Saiz, a certified public accountant, and his accountancy corporation,  
12 Calderon, Jaham & Osborn in connection with municipal securities offerings by  
13 the City of San Diego (the "City"). Defendants were the independent auditor for  
14 the City for fiscal years ended June 30, 2001 and 2002. In that capacity,  
15 Defendants drafted the footnote disclosures to the City's financial statements;  
16 issued unqualified audit reports for these fiscal years stating that the City's  
17 financial statements were presented in conformity with generally accepted  
18 accounting principles ("GAAP") and that the audits were performed in accordance  
19 with generally accepted auditing standards ("GAAS"); and consented to the City  
20 including the audit reports in the offering documents for its five 2002 and 2003  
21 municipal securities offerings that raised approximately \$261 million from  
22 investors. Defendants violated the antifraud provisions of the Securities Act and  
23 Exchange Act because:

24 (a) their footnote disclosures to the financial statements, which  
25 were included in the City's offering documents, contained materially false and  
26 misleading statements regarding the City's funding of its pension and retiree health  
27 care obligations; and

28 (b) their audit reports were false and misleading because the City's

1 pension and retiree health care obligations were not presented in conformity with  
2 GAAP and Defendants' audits of those obligations were not performed in  
3 accordance with GAAS.

4 **DEFENDANTS**

5 4. Thomas J. Saiz ("Saiz") is a resident of El Cajon, California. He is a  
6 certified public accountant licensed with the State of California since 1992. He  
7 joined Calderon, Jaham & Osborn in 1989, became a shareholder in 1996, and  
8 became its sole shareholder in 2000.

9 5. Calderon, Jaham & Osborn ("CJO"), an accountancy corporation, is  
10 an active California corporation with a registered office in La Mesa, California. It  
11 is licensed with the California Board of Accountancy. During 2001 and 2002, CJO  
12 had approximately 30 employees.

13 **RELATED PARTIES**

14 6. The City of San Diego, California, is a California municipal  
15 corporation with all municipal powers authorized by the California Constitution  
16 and laws, including the power to issue debt. The City is the seventh most populous  
17 city in the country, with approximately 1.3 million residents. CJO performed  
18 annual audits of the City financial statements for fiscal years ended June 30, 2001  
19 and 2002. For these years, respectively, the City had total revenues of \$1.2 billion  
20 and \$2 billion and total assets of \$15 billion and \$10 billion.

21 7. San Diego City Employees' Retirement System ("CERS") is a  
22 multiple-employer, defined benefit plan established by the City to provide  
23 retirement benefits to its members, i.e., City employees and their beneficiaries.  
24 CJO performed audits of CERS's financial statements for fiscal years ended June  
25 30, 2001 and 2002. For these years, CERS had net assets of \$2.5 billion.  
26 Additionally, it had, respectively, revenues of \$110 million and \$86 million in  
27 fiscal years ended June 30, 2001 and 2002.

28 ///



Fiscal Year ending	Funded Ratio	Unfunded Liability	Net Pension Obligation
6/30/00	97.3%	\$69 million	\$23.05
6/30/01	89.9%	\$284 million	\$30.98 million
6/30/02	77.3%	\$720 million	\$39.23 million
6/30/09 projected	65.6%	\$2 billion	\$446 million

11. The City conducted its own analysis in mid-2003, which yielded similar projections.

12. This fall in CERS's funded ratio and the increase in the City's unfunded liability and net pension obligation was the result of many factors, including:

(a) CERS twice agreed to permit the city to underfund its annual contributions to CERS, as further alleged below;

(b) The City used surplus earnings to pay additional pension and other non-pension benefits to on behalf of CERS's members, as further alleged below; and

(c) CERS suffered substantial investment losses in fiscal years 2001 and 2002 -- \$193.2 million in fiscal year 2001 and \$364.8 million in fiscal year 2002.

**1. CERS Agrees To Two Proposals By The City Permitting The City To Underfund Its Annual CERS Contributions**

**a. CERS Agrees To The City's Proposal In 1997 To Underfund Its Pension Obligations—"Manager's Proposal 1"**

13. In fiscal year 1996, the City agreed to increase significantly and retroactively all employees' pension benefits. Because the City could not afford to fund the cost of the benefit increases, it made them contingent on CERS's

1 agreement to the City's underfunding of its annual contribution to CERS.

2 14. In fiscal year 1997, the City and CERS entered into an agreement,  
3 referred to as Manager's Proposal 1, that allowed the City to intentionally  
4 underfund its annual liability to CERS in fiscal years 1997 through 2006. This  
5 funding method was not approved by GASB. Manager's Proposal 1 also required  
6 that if CERS's funded ratio fell below 82.3%, the City would have to increase its  
7 CERS contribution.

8 15. As part of Manager's Proposal 1, CERS, at the City's request,  
9 recorded \$39.2 million from the surplus earnings as a net pension obligation  
10 "reserve" or "NPO Reserve." The amount represented the difference between what  
11 the City would have contributed under a GASB-accepted funding rate and what the  
12 City actually contributed under Managers Proposal 1. The NPO reserve, despite its  
13 name, was not a true reserve. Therefore, the creation of this "reserve" entry had no  
14 effect on CERS's funded ratio or the City's unfunded liability to CERS.

15  
16 **b. CERS Agrees To The City's Proposal In 2002 To Extend**  
17 **The Time It Would Underfund Its Pension Obligations—**  
18 **"Manager's Proposal 2"**

19 16. In the second half of fiscal year 2002, the City agreed to again  
20 increase pension benefits for fiscal year 2003. From as early as October 2001,  
21 however, the City was aware that CERS's funded ratio would likely fall below the  
22 82.3% floor established by Manager's Proposal 1, which would require the City to  
23 increase its annual fiscal year 2004 contribution to CERS by at least \$25 million.  
24 The actuarial reports as of February 2002 also confirmed this downward trend in  
25 the funded ratio.

26 17. Concerned about likely having to pay the additional amount, the City  
27 conditioned the pension benefit increases on the City's obtaining from CERS relief  
28 from the floor of Manager's Proposal 1. In November 2002, the City and CERS

1 agreed to Manager's Proposal 2, which provided that once CERS's funded ratio  
2 fell below the 82.3% required by Manager's Proposal 1, the City would have five  
3 years to increase its CERS contributions to reach a GASB-accepted funding rate.  
4 Manager's Proposal 2 thus effectively allowed the City an additional five years to  
5 underfund its annual CERS contribution.

6 **2. The City Used Surplus Earnings For Non-Pension Purposes**

7 18. For the purpose of the annual actuarial calculations, the CERS actuary  
8 assumed a projected 8% rate of return. Any actual earnings above 8% were  
9 considered to be surplus earnings to be used in years in which the earnings fell  
10 below the assumed return rate.

11 19. Since the early 1980s, the City used CERS's surplus earnings to fund  
12 an ever-increasing amount of additional non-pension benefits for CERS members  
13 including, but not limited to, paying retiree health care benefits and funding certain  
14 portions of the employee pension contributions.

15 20. In total, the City used surplus earnings of \$150 million as of the end  
16 of fiscal year 2001 and an additional \$25 million as of the end of fiscal year 2002  
17 primarily to fund non-pension benefits for CERS members. From fiscal years  
18 1997 through 2003, this use by the City of surplus earnings accounted for 17% of  
19 the increase in the City's unfunded liability to CERS.

20 **B. The City's 2002 and 2003 Municipal Securities Offerings**

21 21. In 2002 and 2003, the City conducted five municipal securities  
22 offerings totaling \$261,850,000 in par value. These offerings were entitled:

- 23 • \$25,070,000 Public Facilities Financing Authority of the City of San  
24 Diego Lease Revenue Bonds, Series 2002B (Fire and Safety Project)  
25 (June 2002);
- 26 • \$93,200,000 City of San Diego, 2002-03 Tax Anticipation Notes  
27 Series A (July 2002);
- 28 • \$15,255,000 City of San Diego/Metropolitan Transit Development

- 1 Board Authority 2003 Lease Revenue Refunding Bonds (San Diego  
2 Old Town Light Rail Transit Extension Refunding) (April 2003);  
3 • \$17,425,000 City of San Diego 2003 Certificates of Participation  
4 (1993 Balboa Park/Mission Bay Park Refunding) (May 2003);  
5 • \$110,900,000 City of San Diego 2003-04 Tax Anticipation Notes  
6 Series A (July 2003).

7 22. For each of the offerings, the City issued offering documents that  
8 purported to disclose the material information regarding the offering and the City.  
9 The offering documents included the City's fiscal year 2001 and 2002 financial  
10 statements. Saiz and CJO's role in these offerings was twofold. First, as further  
11 alleged below, Saiz drafted the footnote disclosures to the City's financial  
12 statements, which draft disclosures were subject to review and approval by the  
13 City. Second, as further alleged, Saiz and CJO consented to the inclusion in the  
14 offering documents of CJO's unqualified fiscal year 2001 and 2002 audit reports  
15 on the City's financial statements.

16  
17 **C. Saiz And CJO Draft False And Misleading Footnotes To The City's**  
18 **Financial Statements**

19 23. Saiz drafted footnote disclosures for the City's fiscal year 2001 and  
20 2002 financial statements, which were subject to the review and approval of the  
21 City, that included false and misleading information regarding the City's funding  
22 of CERS, the City's NPO, and the City's retiree health care obligations. These  
23 false and misleading statements were included in the City's offering documents for  
24 its 2002 and 2003 municipal securities offerings.

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