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12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14 **EASTERN DIVISION**

15  
16 **SECURITIES AND EXCHANGE  
COMMISSION,**

17 **Plaintiff,**

18 **vs.**

19 **ALAN CHARLES KAPANICAS,**

20 **Defendant.**  
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Case No.: 5:17-cv-1704

**COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF**

1 Plaintiff Securities and Exchange Commission (“Commission”) alleges:

2 **SUMMARY OF THE ACTION**

3 1. This case involves violations of the antifraud provisions of the federal  
4 securities laws by Alan Charles Kapanicas (“Defendant”) in connection with the 2012  
5 and 2013 municipal bond offerings of the Beaumont Financing Authority (“BFA”).  
6 Defendant was the City Manager of the City of Beaumont, California (“Beaumont”)  
7 and the Executive Director of the BFA from approximately 1995 to 2015.

8 2. In 1993, Beaumont established the City of Beaumont Community  
9 Facilities District 93-1 (“District”) to finance the acquisition or construction of public  
10 facilities by issuing local obligations primarily secured and paid by special taxes  
11 levied on homes within the boundaries of the district. The BFA sold bonds to public  
12 investors and, in turn, used the funds to acquire these District local obligations. The  
13 District receives the proceeds from the BFA bond sales and the BFA bonds are  
14 primarily secured and paid from the revenues from the repayment of the District local  
15 obligations.

16 3. From the period of March 2003 to April 2013, Defendant, on the BFA’s  
17 behalf, raised approximately \$260 million from investors in 24 separate municipal  
18 securities offerings. In connection with each of those offerings, the District, in its  
19 capacity as an obligated person with respect to the bonds, entered into a continuing  
20 disclosure agreement (“CDA”) for the benefit of investors in the BFA’s bonds  
21 pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934. In each CDA,  
22 the District agreed to publicly file annual reports containing specified financial  
23 information and operating data about Beaumont and the District, as well as  
24 information about the occurrence of certain enumerated events pertaining to the  
25 bonds at issue. From the period of at least 2004 through April 2013, the District  
26 regularly failed to comply with its CDAs. Defendant drafted, approved and filed the  
27 deficient annual reports.

28 4. In 2012 and 2013, the BFA issued approximately \$32.26 million of

1 revenue bonds in five separate municipal securities offerings based upon  
2 representations in the official statements that the District had filed its annual reports  
3 when due “and has not otherwise failed to meet its continuing disclosure requirement  
4 under [Rule 15c2-12].” Defendant knew or should have known that this statement  
5 was false because he personally drafted, approved and filed the District’s deficient  
6 annual reports. Defendant’s misconduct threatened significant harm to investors in  
7 BFA bonds who counted upon the continuing disclosure requirements to ensure that  
8 the District took its ongoing bond obligations seriously and to ensure that they  
9 received timely and accurate updates.

### 10 JURISDICTION AND VENUE

11 5. The Court has jurisdiction over this action pursuant to Sections 20(b),  
12 20(d) and 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(b),  
13 77t(d) and 77v(a)].

14 6. Venue is proper in this district pursuant to Section 22(a) of the Securities  
15 Act [15 U.S.C. § 77v(a)] because Defendant’s primary residence is in this district and  
16 many of the transactions, acts, practices and courses of conduct constituting  
17 violations of the federal securities laws occurred within this district.

18 7. Defendant directly and indirectly made use of the means and  
19 instrumentalities of interstate commerce and of the mails in connection with the  
20 transactions, acts, practices, and courses of business alleged herein, and will continue  
21 to do so unless enjoined.

### 22 DEFENDANT

23 8. **Alan Charles Kapanicas**, age 65, is a resident of Palm Desert,  
24 California. From approximately 1995 to 2015, Kapanicas was both the Executive  
25 Director of the BFA and City Manager of Beaumont. Kapanicas worked for the city  
26 on a contract basis from approximately 1995 to 2011. In 2011, his position was  
27 converted from independent contractor to employee of the city. Kapanicas worked  
28 for the city as an employee from 2011 to 2015. The position of City Manager at all

1 relevant times herein included the title and responsibilities of Executive Director of  
2 the BFA. In his positions as Executive Director of the BFA and City Manager of  
3 Beaumont, Kapanicas was involved in nearly every aspect of the management of the  
4 BFA and the District. In addition to his position as City Manager of Beaumont,  
5 Kapanicas was at all relevant times herein the President and owner of a consulting  
6 business called GGMS, Inc. (“GGMS”). GGMS advises local governments on  
7 management and performs special tax consulting and other services for community  
8 facilities districts. Kapanicas continues to own and operate this company.

9 **RELEVANT ENTITIES**

10 9. **Beaumont** is a city in Riverside County, California. It has a population  
11 of approximately 40,000 residents and is managed by an elected five-member City  
12 Council. The City Council also serves the governing board of the BFA. Beaumont  
13 governs and administers the District.

14 10. **Beaumont Financing Authority** is a joint exercise of powers authority  
15 formed by Beaumont under the California Joint Exercise of Powers Act. Among  
16 other things, the BFA issues bonds to public investors to provide funds for the  
17 acquisition of local obligations issued by the District. The District receives the  
18 proceeds from the BFA bond sales for the acquisition and construction of public  
19 facilities permitted under state law. The BFA bonds that are sold to public investors  
20 are secured by revenues from the repayment of the District local obligations and  
21 certain other specified sources of repayment. The Mayor of Beaumont serves, ex  
22 officio, as the Chairperson of the BFA and the City Manager of Beaumont also serves  
23 as the BFA’s Executive Director. Beaumont performs general administrative and  
24 support functions for the BFA.

25 11. **City of Beaumont Community Facilities District 93-1** is a community  
26 facilities district formed by Beaumont for the purpose of financing and refinancing  
27 the acquisition or construction of public facilities, which have included the public  
28 infrastructure of real estate developments. The District issues local obligations

1 secured and paid by special taxes levied on homes within the boundaries of the  
2 district. From approximately 1995 to 2015, Kapanicas managed the operations of the  
3 District in his capacity as Beaumont's City Manager. Among other things, his  
4 responsibilities involved reviewing, signing, and filing documents on behalf of the  
5 District, including CDAs and continuing disclosure reports.

6 **FACTUAL ALLEGATIONS**

7 12. Defendant was the City Manager of Beaumont from approximately 1995  
8 to 2015. He also was the Executive Director of the BFA and managed the operations  
9 of the District during this period.

10 13. From the period of March 2003 to April 2013, Defendant, on the BFA's  
11 behalf, raised approximately \$260 million from investors in 24 separate municipal  
12 securities offerings. In connection with each of those offerings, the District, in its  
13 capacity as an obligated person with respect to the bonds, executed a CDA pursuant  
14 to Rule 15c2-12 under the Securities Exchange Act of 1934. In each one of those  
15 CDAs, Defendant, on the District's behalf, agreed to publicly file annual reports  
16 containing specified financial information and operating data about Beaumont and the  
17 District, as well as information about the occurrence of certain enumerated events  
18 pertaining to the bonds at issue. Among other things, the CDAs required that such  
19 annual reports contain special tax delinquency data, the status of facilities being  
20 constructed with bond proceeds, the balances of various funds that could be drawn  
21 upon to pay bondholders in the event of insufficient special tax collections, and  
22 Beaumont's audited financial statements. The CDAs also identified the filing  
23 deadlines for the annual reports and notices as well as the repositories where the  
24 required information was required to be posted.

25 14. In December 2008, Rule 15c2-12 was amended to designate the  
26 Municipal Securities Rulemaking Board's Electronic Municipal Market Access  
27 System ("EMMA") as the central repository for ongoing disclosures by issuers,  
28 effective July 1, 2009. Prior to the effective date, municipal issuers and obligated

1 persons made continuing disclosure filings on multiple electronic repositories called  
2 Nationally Recognized Municipal Securities Information Repositories and State  
3 Information Depositories.

4 15. Defendant approved and signed all 24 CDAs during this period on behalf  
5 of the District. He also was responsible for drafting, approving, and filing the  
6 District's continuing disclosure annual reports and notices that were required by the  
7 CDAs.

8 16. In December of 2011, while reviewing a preliminary official statement  
9 for a 2011 bond offering by the BFA, a credit analyst at a large institutional investor  
10 requested that the District revise the terms of a draft CDA for those bonds. The  
11 revisions included changing the due date for the District's required annual reports and  
12 including information about various fund balances in the District's annual reports that  
13 served as sources of potential repayment of, and security for, the BFA's bonds.  
14 Defendant and the BFA knew about and approved the specific changes. The District  
15 also included the revised due date and additional fund balances in the CDAs that it  
16 entered into in connection with the BFA's 2012 and 2013 offerings.

17 17. From the period of at least 2004 through April 2013, the District  
18 regularly failed to comply with its CDAs. It filed its annual reports late virtually  
19 every year during this period, including by as many as 117 days. Moreover, the  
20 annual reports that it filed consistently omitted information required by its CDAs.  
21 Two required components of the annual reports were a description of the status of  
22 facilities being constructed with bond proceeds and Beaumont's audited financial  
23 statements. The District, however, never included these items in any of its annual  
24 reports. It also failed to include complete special tax delinquency data and reserve  
25 fund balances for several years. Other required disclosures missing in certain annual  
26 reports included cash flow management fund balances, rate stabilization fund  
27 balances, residual fund balances, and special escrow fund balances. The cash flow  
28 management, rate stabilization, and residual funds served as additional sources of

1 repayment and security for the BFA's bonds. Defendant drafted, approved and filed  
2 these deficient annual reports.

3 18. In 2012 and 2013, the BFA issued approximately \$32.26 million of  
4 revenue bonds in five separate municipal securities offerings. These offerings were  
5 titled:

- 6 • \$5,650,000 Beaumont Financing Authority 2012 Local Agency  
7 Revenue Bonds, Series A (Improvement Area No. 8C) (March 14,  
8 2012);
- 9 • \$3,265,000 Beaumont Financing Authority 2012 Local Agency  
10 Revenue Bonds, Series B (Improvement Area No. 20) (April 10,  
11 2012);
- 12 • \$3,655,000 Beaumont Financing Authority 2012 Local Agency  
13 Revenue Bonds, Series C (Improvement Area No. 7B and  
14 Improvement Area No. 7C) (May 23, 2012);
- 15 • \$8,810,000 Beaumont Financing Authority 2013 Local Agency  
16 Revenue Bonds, Series A (Improvement Area No. 19C) (January  
17 17, 2013); and
- 18 • \$10,875,000 Beaumont Financing Authority 2013 Local Agency  
19 Revenue Bonds, Series B (Improvement Area No. 17A) (April 2,  
20 2013).

21 19. In each of the foregoing five municipal securities offerings, Defendant,  
22 on the BFA's behalf, prepared final official statements that the BFA used to offer and  
23 sell its municipal securities to investors by means of interstate commerce and the  
24 mails.

25 20. The official statements in each of the BFA's 2012 offerings included a  
26 section titled "Continuing Disclosure," which represented in part: "The District filed  
27 a report due November 1, 2002, with respect to the 2000 District Bonds on December  
28 21, 2002, and has not otherwise failed to meet its continuing disclosure requirement

1 under [Rule 15c2-12].” The official statements in each of the BFA’s 2013 offerings  
2 included the same continuing disclosure section and representation with a slight and  
3 non-substantive variation in the language. In each instance, this representation was  
4 false when it was made. As noted above, the District repeatedly failed to comply  
5 with its prior CDAs. It regularly filed annual reports late, and those reports did not  
6 contain several pieces of financial information and operating data required by those  
7 prior CDAs.

8         21. In each of the 2012 and 2013 offerings, the BFA delegated to its  
9 Executive Director, Defendant, responsibility for carrying out the bond issuances, and  
10 for reviewing and approving the draft and final official statements. Defendant, acting  
11 within the scope of his employment and within his job responsibilities, signed the  
12 final official statements for each bond offering on behalf of the BFA after the BFA  
13 approved the documents for dissemination to the investing public.

14         22. The reality of the District’s history of compliance with its prior CDAs  
15 was very different from its representation to investors. Reasonable investors would  
16 have wanted to know about the District’s many disclosure failures from 2004 through  
17 2013 and would have viewed the omitted information as significantly altering the  
18 total mix of information made available in making a trading decision. The BFA’s  
19 and Defendant’s failure to disclose the District’s true record of compliance with its  
20 past CDAs made the BFA’s bonds appear more attractive to investors than they  
21 actually were. The BFA and Defendant also misled these investors regarding the  
22 likelihood that the District would timely comply with its CDAs in the future.

23         23. As City Manager, Defendant reviewed and signed all of the District’s  
24 CDAs listing specific financial and operating data that was required to be included in  
25 the District’s continuing disclosure annual reports. He subsequently prepared,  
26 approved and filed deficient annual reports. Defendant then, as Executive Director of  
27 the BFA, repeatedly reviewed, approved and signed official statements that falsely  
28 stated that, absent one instance several years earlier, the District was in compliance



1 with its past CDAs. Defendant failed to exercise reasonable care. He repeatedly  
2 either failed to read and understand the District's CDAs or disregarded their  
3 requirements. He also repeatedly failed to read and confirm that the statements in the  
4 BFA's 2012 and 2013 official statements concerning the District's compliance with  
5 past CDAs were accurate and complete, or ignored the fact that the statements were  
6 false.

7 **FIRST CLAIM FOR RELIEF**

8 **Violations of Section 17(a)(2) of the Securities Act**

9 **(Defendant)**

10 24. The Commission re-alleges and incorporates by reference Paragraphs 1  
11 through 23 above.

12 25. By engaging in the conduct described above, Defendant, directly or  
13 indirectly, in the offer or sale of securities, by use of the means or instruments of  
14 transportation or communication in interstate commerce or by use of the mails,  
15 obtained money or property by means of untrue statements of material fact or by  
16 omitting to state a material fact necessary in order to make the statements made, in  
17 light of the circumstances under which they were made, not misleading.

18 26. By reason of the foregoing, Defendant has violated, and unless  
19 restrained and enjoined, will continue to violate Section 17(a)(2) of the Securities  
20 Act [15 U.S.C. § 77q(a)(2)].

21 **SECOND CLAIM FOR RELIEF**

22 **Violations of Section 17(a)(3) of the Securities Act**

23 **(Defendant)**

24 27. The Commission re-alleges and incorporates by reference Paragraphs 1  
25 through 23 above.

26 28. By engaging in the conduct described above, Defendant, directly or  
27 indirectly, in the offer or sale of securities, by use of the means or instruments of  
28 transportation or communication in interstate commerce or by use of the mails,

1 engaged in transactions, practices, or courses of business which operated or would  
2 operate as a fraud or deceit upon the purchasers.

3 29. By reason of the foregoing, Defendant has violated, and unless  
4 restrained and enjoined, will continue to violate Section 17(a)(3) of the Securities  
5 Act [15 U.S.C. § 77q(a)(3)].

6 **PRAYER FOR RELIEF**

7 WHEREFORE, the Commission respectfully requests that this Court:

8 I.

9 Enter an Order of Permanent Injunction restraining and enjoining Defendant,  
10 his officers, agents, servants, employees, attorneys and those persons in active  
11 concert or participation with Defendant who receive actual notice of the Order, by  
12 personal service or otherwise, and each of them from, directly or indirectly, engaging  
13 in transactions, acts, practices or courses of business described above, or in conduct  
14 of similar purport and object, in violation of Sections 17(a)(2) and (3) of the  
15 Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)].

16 II.

17 Enter an Order of Permanent Injunction restraining and enjoining Defendant,  
18 his officers, agents, servants, employees, attorneys and those persons in active  
19 concert or participation with Defendant who receive actual notice of the Order, by  
20 personal service or otherwise, and each of them from, participating in an offering of  
21 municipal securities, including engaging in activities with a broker, dealer, or issuer  
22 for the purpose of issuing, trading, or inducing or attempting to induce the purchase  
23 or sale of any municipal security; provided, however, that such injunction shall not  
24 prevent Defendant from purchasing or selling municipal securities for his own  
25 personal account.

26 III.

27 Enter an Order imposing civil money penalties upon Defendant pursuant to  
28 Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)].

1 IV.

2 Retain jurisdiction of this action in accordance with the principles of equity and  
3 the Federal Rules of Civil Procedure in order to implement and carry out the terms of  
4 all orders and decrees that may be entered, or to entertain any suitable application or  
5 motion for additional relief within the jurisdiction of this Court.

6 V.

7 Grant such other relief as this Court may deem just and appropriate.

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9 Respectfully submitted,

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11 Dated: August 23, 2017

/s/

12 Steve Varholik

13 Attorney for Plaintiff

14 SECURITIES AND EXCHANGE COMMISSION  
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